



Conditions of Sale ("Conditions")

- 1. GENERAL**
 - 1.1. In these Conditions (a) "the Company" means Dynamic Load Monitoring (UK) Ltd (company no: 02924110); (b) "the Customer" means the person placing the order for the Goods; (c) "the Goods" means the goods the subject of a contract between the Company and the Customer, incorporating these Conditions; and (d) headings are inserted for the sake of convenience and do not affect the construction of these Conditions.
 - 1.2. Unless otherwise agreed by the Company, the Goods are supplied on these Conditions to the exclusion of any terms or conditions stipulated by the Customer and of any representations, warranties or communications not expressly incorporated herein or the Company's order acceptance.
 - 1.3. Where these Conditions form part of a quotation submitted by the Company to the Customer such a quotation shall be open for acceptance by the Customer for the period stated therein or, where no period is stated, for the period of 30 days after its date and, if not so accepted, shall be automatically withdrawn.
 - 1.4. No person has authority on behalf of the Company to vary these Conditions except a Director of the Company and only in writing.
 - 1.5. Unless otherwise agreed by the Company the Goods may be partially or wholly outsourced at the Company's discretion.
 - 1.6. These Conditions shall be construed and shall take effect in all respects in accordance with English law and all disputes or differences concerning or relating thereto shall be subject to the exclusive jurisdiction of the Courts of England and Wales .
 - 1.7. Any notice given hereunder by post, fax or email to the recipient at his or its principal or registered office shall be deemed to have been properly served at the time when in the ordinary course of post or transmission it would reach its destination. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
 - 1.8. Any and all regulatory requirements must be declared by the Customer at time of request for quote, this will include but is not limited to document storage and notification to certification bodies.
 - 1.9. The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under these Conditions.
 - 1.10. These Conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to their subject matter.
 - 1.11. No failure or delay by a party to exercise any right or remedy provided under these Conditions 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.
 - 1.12. If any provision or part-provision of these Conditions is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Conditions.
 - 1.13. Unless otherwise expressly stated, these Conditions do not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the contract between the parties.
- 2. DELIVERY**
 - 2.1. The time and place of delivery shall be as specified in the Company's order acknowledgement or as otherwise communicated to the Customer and the means of delivery shall be at the absolute discretion of the Company.
 - 2.2. The Company shall use reasonable endeavours to meet delivery dates but shall be under no liability for failure to deliver on a specified date or within a specified period. Time of delivery shall not be of the essence.
 - 2.3. The Customer shall pay to the Company the costs of packaging and delivering the Goods in addition to the purchase price.
 - 2.4. If the Customer fails to accept delivery of the Goods the Company shall be entitled without prejudice to any other rights it may have to store the Goods at the cost and risk of the Customer.
 - 2.5. The Company will at its option either repair, replace free of charge or credit goods lost or damaged in transit to the UK Customer, or to British port for an export Customer, provided that the Customer notifies the Company within reasonable time of such loss or damage.
 - 2.6. Deliveries of up to 5 per cent above or below those specified shall be accepted by the Customer as conforming to contract and the price shall be adjusted accordingly.
- 3. INSTALLMENTS**
 - 3.1. The Company shall be entitled to deliver the Goods by one or more instalments and in that event each such instalment shall be invoiced and paid for separately.
 - 3.2. Where the Goods are delivered to the Customer by instalments or over a period and the Customer has failed to pay on its due date any invoice for Goods already delivered the Company shall be entitled (without prejudice to any other rights it may have) to suspend delivery of further instalments or the Goods until all amounts outstanding to the Company from the Customer shall have been paid or to terminate the contract in relation to Goods not yet delivered.
- 4. PRICES**
 - 4.1. The Company reserves the right to vary any prices quoted for Goods to take account of variations in cost, including, but not by way of limitation, cost of materials, manufacture, labour, transport and any new or increased taxes, duties or other imposts.
 - 4.2. Where an exchange rate is included in a quotation or acknowledgement the price is directly related to that exchange rate and any change in the rate between the time of acknowledgment or quotation and delivery will be included at the time of invoice where the size of such change in exchange rate is greater than 1 per cent.
 - 4.3. Prices quoted are net ex works for UK trade and FOB British port for export trade and exclusive of delivery and VAT and only apply to the total quantities and delivery dates and rates specified.
- 5. PAYMENT AND INTEREST**
 - 5.1. The Goods (and any instalment in the case of delivery by instalments) shall be paid for within thirty days of the date of the relevant invoice.
 - 5.2. The prompt payment of the Company's accounts is a condition precedent of further deliveries and (without prejudice to any other remedies the Company may have in respect of overdue payments) the Company reserves the right to charge interest (as well after as before judgement) at the rate of 4 per cent per annum above the Lloyds Bank Plc base rate for the time being in force on all sums overdue for payment by the Customer hereunder.
- 6. TITLE TO THE GOODS**
 - 6.1. The Goods shall remain the sole and absolute property of the Company as legal and equitable owner until all amounts owing to the Company by the Customer on any account whatsoever have been paid to the Company in full.
 - 6.2. So long as the Goods remain the Company's property the Customer shall, as the Company so requires, keep the Goods separately stored and/or marked at the Customer's expense so as to be clearly identifiable as the Company's property.
 - 6.3. If the Goods are mixed with, or incorporated or processed by the Customer into other articles, such articles shall be separately stored and marked so as to be identifiable as being made from or with the Company's goods and shall thereupon become the Company's property until such payment as aforesaid has been made.
 - 6.4. The Company may at any time recover and resell the Goods (if in the Customer's possession and if the Goods have not been mixed with, or incorporated or processed by the Customer into other articles) if payment therefore is overdue and for this purpose the Company's employees or agents may enter upon the Customer's or other premises upon which the Goods are situated. The Company may exercise the like rights of recovery resale and entry so long as any payment owed by the Customer on any account is overdue.
 - 6.5. The risk of loss or damage to the Goods shall pass to the Customer (in the case of a UK Customer) on delivery to the place of delivery as specified in clause 2.1 hereof or (in the case of a non-UK Customer) on delivery to the appropriate British port (or, in the case of the articles referred to in paragraph 6.3 hereof, shall be that of the Customer at all times after they come into being).
 - 6.6. The Customer shall ensure that the Goods do not become subject to any charge, lien or encumbrance, but the Customer may resell the Goods to third parties in the normal course of business and the proceeds of any such resale shall belong to the Company to the extent that any payments referred to in paragraph 6.1 hereof remaining owing by the Customer, and the Customer shall be under a fiduciary duty to account to the Company for such proceeds. The Customer shall pay all such proceeds of sale into a separate trust account pending accounting to the Company therefor.
 - 6.7. The Customer shall not be deemed to be the Company's agent for any purpose and (without prejudice to sub-clause 12.1 hereof) shall indemnify the Company against any liability that the Company may incur to third parties (whether in contract, tort or otherwise, and including all the Company's expenses attributes thereto) in connection with the Goods, other than liability which would have arisen if the preceding paragraphs of this condition had not formed part of the contract of sale.
- 7. WARRANTY AGAINST DEFECTS**
 - 7.1. The Company warrants that on delivery, and for a period of 12 months from the date of delivery ("warranty period"), the Goods shall:
 - 7.1.1 conform in all material respects with their description; and
 - 7.1.2 be free from material defects in design, material and workmanship.
 - 7.2. Any Goods which fail to comply with the warranty given in 7.1, will be replaced or repaired free of charge, or credit will be given in respect of such Goods, at the Company's option provided that:
 - 7.2.1. such defect of failure is notified to the Company in writing within 12 months after delivery or within 30 days after the defect or failure shall have come to the notice of the Customer, whichever is sooner, or within 30 days after delivery in the case of any defect or failure which would have been apparent to the Customer if the Goods were inspected by the Customer on delivery (which inspection the Customer undertakes to make), and any Goods in respect of which no such notification is given to the Company shall be deemed to be in all respects in accordance with the contract and the Customer shall be bound to accept and pay for the same accordingly;
 - 7.2.2. in respect of Goods or parts not of the Company's manufacture, the Company shall endeavour to assign for the benefit of the Customer such rights (including guarantee or warranty rights) as the Company has against such manufacturer and shall supply the Customer with such relevant information regarding such guarantee or warranty where applicable, but shall not be liable for such Goods beyond this;
 - 7.2.3. the Customer if so requested shall return the Goods carriage paid to the Company's works together with sufficient details in writing to enable the Goods and the alleged defect or failure to be clearly identified;
 - 7.2.4. if the claim is not accepted the Company will so notify the Customer and hold the goods for 14 days for the Customer's instructions, failing receipt of which the Company shall then be entitled to dispose of the Goods or store them at the Customer's expense without incurring any liability to the Customer;
 - 7.2.5. repairs, alteration or modifications have not been made or attempted by anyone other than the Company;
 - 7.2.6. the Goods have not been subject to misuse, negligence or other accident.
 - 7.3. Except as provided in this Clause 7, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 7.1.
 - 7.4. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the contract between the parties.
 - 7.5. These Conditions shall apply to any repaired or replacement Goods supplied by the Company.
- 8. LIABILITY**
 - 8.1. Nothing in these Conditions limits any liability which cannot legally be limited, including liability for:
 - 8.1.1 death or personal injury caused by negligence;
 - 8.1.2 fraud or fraudulent misrepresentation; and
 - 8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979
 - 8.2. Subject to clause 8.1, the Company's liability in terms of these Conditions is in lieu and to the exclusion of all other warranties, conditions or obligation imposed by statute or otherwise in relation to the quality or description of the Goods or their fitness for any particular purpose, and all liability for any indirect or consequential loss (howsoever arising) is hereby expressly excluded. The Customer shall be fully responsible for providing the Company with the necessary load cell dimensions and any other relevant information requested by the Company to be able to supply the Goods and any product advice given by the Company is for guidance purposes only and the Company shall have no liability in this respect.
 - 8.3. Subject to clause 8.1, the Company's total liability to the Customer shall not exceed the price of the Goods.
- 9. DRAWINGS ETC**
 - 9.1. Unless otherwise specified in the Company's quotation all specifications, drawings and particulars of weights and dimensions submitted therewith are approximate only, and the descriptions and illustrations contained in the Company's catalogues, price lists and other advertisement matter are intended to present a general idea of the equipment described therein, and none of these shall form part of the contract. All specifications, drawings and technical descriptions submitted with or in connection with the Company's quotation are copyright of the Company. All such copyright material and all information and "know-how" whenever supplied, shall at all times be treated by the Customer as confidential and shall not without the Company's written consent be used by the Customer except for purposes of the operation of the equipment supplied thereunder, nor shall they without like consent be communicated to third parties save insofar as may be necessary for the purpose of such operation.
- 10. CUSTOMER-SUPPLIED ITEMS**
 - 10.1. Items to be supplied by the Customer must conform to specifications approved by the Company and delivered as and when required in quantities sufficient to cover production of the Goods, and the Customer shall indemnify the Company against any loss which the Company may suffer whether wholly or partially by reason of the Customer's failure to supply any such item in accordance with this Clause.
- 11. TOOLING**
 - 11.1. Unless otherwise agreed in writing signed by both parties the Company shall retain full title and possession of all moulds and tooling of any kind (including but not limited to Calibration Blocks, Mechanical Jigs, gauge tools, software and fixtures, etc) used in the production of products furnished hereunder.
- 12. INTELLECTUAL PROPERTY**
 - 12.1. The Customer shall not claim ownership of any patents, trademarks, trade names, copyrights or designs in relations to the Goods and shall not take any action which might infringe and patent, trademark, trade name, copyright design or other form of protection for any intervention discovery improvement design mark or logo in relation to the Goods and the Customer shall indemnify the Company and keep it indemnified from and against all costs claims liabilities or proceedings damages and expenses arising or indirectly as a result of any breach of the foregoing obligation by the Customer.
 - 12.2. The Customer shall notify the Company immediately of any infringement or apparent or threatened infringement of or any actions claims or demands in relation to any patent, trademark, trade name, copyright design or other form of protection for any invention discovery improvement design mark or logo in relations to the Goods and the Customer shall provide the Company at the Company's expense with all assistance which the Company may reasonably require in connection therewith including but not limited to the prosecution of any actions which the Company may deem necessary for the protection of any rights in relation to the Goods and if so requested by the Company in relation to any claim or action brought against the Customer shall authorise the conduct of the same and of all negotiations for the settlement of the same by the Company.
 - 12.3. The Customer shall indemnify the Company against all claims for infringement or alleged infringement of third parties patent or other intellectual property rights, and all costs and expenses incurred in connection therewith, arising from the execution of the Customer's order.
- 13. CANCELLATION BY THE CUSTOMER**
 - 13.1. The Customer may cancel or vary any contract only with the prior written consent of the Company and in the event of such cancellation or variation the Customer shall indemnify the Company against any loss of profit and any other costs and expenses of any kind which the Company may have reasonably incurred in connection with such contract.
- 14. INDEMNITY FOR THIRD PARTY CLAIMS**

- 14.1. The Customer shall indemnify the Company against all claims for personal injury, loss or damage to property brought against the Company by third parties arising from the Goods unless such injury, loss or damage is solely attributable to the negligence of the Company, its employees or agents.
15. **FORCE MAJEURE**
- 15.1. The Company shall not be liable to the Customer or incur any penalties for the failure to perform or for the delay in the performance of its obligations hereunder where such failure or delay is due wholly or in part directly or indirectly to causes beyond its reasonable control including but not by way of limitation the failure of a third party to manufacture the Goods or deliver them to the Company.
- 15.2. The Customer shall not be entitled to avoid any liability to the Company for the Customer's failure to perform or for any delay in the performance of any of the Customer's obligations hereunder whether by attributing such failure or delay wholly or in part, directly or indirectly, to causes beyond the Customer's reasonable control or otherwise and the Customer shall indemnify the Company against any liability arising directly or indirectly from such attribution including any professional costs incurred in advertising or assisting the Company in relation to the same.
16. **TERMINATION BY THE COMPANY**
- 16.1. If the Customer makes default in or commits any breach of the Customer's obligations set out in these Conditions, or if the Company after using all reasonable endeavours is unable to design the Goods or to procure their manufacture, or if the Company after using all reasonable endeavours does not obtain satisfactory credit and trade references within thirty days of the Company's acceptance of the Customer's order, or if any distress or execution is levied upon the Customer, the property or assets, or if the Customer makes or offers to make any arrangement or composition with his creditors or commits any act of bankruptcy, or if any petition or receiving order in bankruptcy is presented or made against the Customer, or if the Customer is a limited company, if for any resolution or petition to wind up such company's business is passed or presented otherwise than for reconstruction or amalgamation or if a receiver of such company's undertaking property or assets or any part thereof is appointed, the Company shall (without prejudice to any claim or right the Company might otherwise make or exercise) have the right to determine the contract forthwith and without further notice and the customer shall thereupon indemnify the Company against all costs and expenses reasonably incurred by the Company in connection with the Customer's order.