

## TERMS AND CONDITIONS OF SALE

### 1. Terms of Contract

1.1 These Terms and Conditions of Sale shall be incorporated into all contracts of sale made by Dynamic Climate Limited., a company registered in England (Hove site) (hereinafter referred to as "**Dynamic Climate**") for the sale of any goods and/or ancillary services related to delivery of the goods ("**Contract**"). Any printed or other terms or conditions used by the person, firm or company placing the order (hereinafter referred to as the "**Customer**") are excluded. Dynamic Climate shall not be bound by any terms or conditions in the Customer's order. If the Customer's order contains any terms and conditions, then these Terms and Conditions of Sale shall take precedence over such terms and conditions in the Customer's order which shall be deemed deleted without notice.

1.2 Amendment of any Contract can only be made by agreement between the parties and to bind Dynamic Climate must be made in writing and signed by an authorised official of Dynamic Climate. Any such amendment will entitle Dynamic Climate to adjust the price and delivery dates appropriately.

### 2. Quotations and Acceptance of Orders

2.1 No quotation by Dynamic Climate shall constitute an offer. Quotations may be withdrawn at any time.

2.2 A Contract shall only be formed upon issue of Dynamic Climate's standard acknowledgement of order form.

2.3 Dynamic Climate shall not be obliged to accept any order and reserves its entire discretion in this respect.

### 3. Specification

Goods will be supplied in accordance with Dynamic Climate's standard specification for the relevant type. Dynamic Climate reserves the right to make such improvements to and modifications of such specification as it or its suppliers think desirable in all circumstances.

### 4. Packaging

The specification for packaging the products shall be entirely at the discretion of Dynamic Climate's suppliers who shall have the right to pack all products in such manner and with such materials and in such quantities as it in its absolute discretion thinks fit and shall not be obliged to comply with any packaging instructions or requests of the Customer.

### 5. Delivery and Risk

5.1 a) In the case of all UK sales involving delivery within the UK the goods will be delivered by Dynamic Climate's suppliers to the Customer's premises. Goods shall be at the Customer's risk immediately on delivery into the Customer's premises (or into custody on Customer's behalf if sooner) and should be insured accordingly.

b) Unless otherwise agreed, in the case of all non-UK sales involving delivery outside the UK the goods will be delivered FOB the premises or port nominated by Dynamic Climate. Risk of loss and damage to the goods shall pass to the Customer upon delivery FOB the place nominated by Dynamic Climate. The goods shall, once the risk has passed to the Customer in accordance with this clause, be and remain at the Customer's risk at all times unless and until Dynamic Climate has retaken possession of the goods and the Customer shall insure accordingly.

5.2 A delivery schedule should be agreed with Dynamic Climate prior to placing the order. While Dynamic Climate will endeavour to comply with such or any other agreed time(s) for delivery, Dynamic Climate shall not in any circumstances be liable for any failure to do so or any delay in delivery.

5.3 Dynamic Climate reserves the right to charge carriage, insurance and storage in cases where the Customer refuses to accept delivery of goods supplied by Dynamic Climate in response to a duly authorised order received from the Customer.

5.4 Goods shall be signed for on receipt. Any alleged shortages, discrepancies or damage must be notified to Dynamic Climate within 10 days of receipt of goods by notice in writing addressed to:

Dynamic Climate Limited – info@dynamic-climate.co.uk

For the attention of: Credit Dept.

5.5 The Customer agrees not to re-sell outside the UK any goods supplied by Dynamic Climate and covered by the Export of Goods (Control) Order 1989 (or any reenactment thereof) or the Export Administration Act 1979 (as amended) (or any reenactment thereof) without obtaining all necessary licences thereunder and agrees not to resell such equipment in the UK to a purchaser, knowingly or being given reasonable grounds to suspect by the purchaser that the purchaser intends to export such equipment without first obtaining such licences or a copy of such licences obtained by the purchaser, and the Customer agrees to impose upon persons purchasing such equipment obligations corresponding to those set out above.

## **6. Property and Risk**

6.1 Dynamic Climate shall retain title to the goods until it has received payment in full of all sums due in connection with the Contract or any other account. For these purposes Dynamic Climate has only received a payment when the amount of that payment is irrevocably credited to its bank account.

6.2 The Customer shall store goods owned by Dynamic Climate in such a way that they are clearly identifiable as Dynamic Climate's property and shall maintain records of such goods identifying them as Dynamic Climate's property. All goods supplied by Dynamic Climate in the Customer's possession shall be presumed to belong to Dynamic Climate (unless the Customer can prove otherwise).

6.3 Until title to the goods has passed to the Customer in accordance with Clause 6.1 Dynamic Climate shall be entitled to trace the proceeds of sale of any goods owned by Dynamic Climate. Such proceeds shall be held by the Customer on trust for Dynamic Climate and at Dynamic Climate's request will be paid into a separate bank account.

6.4 Customer will not give less than fourteen (14) days' notice to Dynamic Climate before applying to the Court for appointment of an administrator. Failure to give such notice shall be deemed to be a fundamental breach of the Contract.

6.5 Customer's right to possession of the goods will cease at the earliest of the following dates:

6.5.1 the date of a notice given under Clause 6.4 or the latest date on which such notice should have been given.

6.5.2 the date on which the Customer commits any act or makes any omission which would entitle a receiver to take possession of any asset or would entitle any person to present a petition for winding up or to apply for an administration order in respect of the Customer or any event referred to in Clause 6.6 occurs.

6.6 If the Customer fails to make any payment to Dynamic Climate when due, compounds with its creditors, executes an assignment for the benefit of its creditors, commits any act of bankruptcy or, being a company, enters into voluntary or compulsory liquidation or has a receiver, manager, administrator or administrative receiver appointed over all or parts of its assets or takes or suffers any similar action in consequence of a debt or becomes insolvent or if Dynamic Climate has reasonable cause to believe that any of these events is likely to occur, Dynamic Climate shall have the right, without prejudice to any other remedies:

6.6.1 to enter without prior notice any premises where goods owned by it may be,

and to repossess and dispose of any goods owned by it so as to discharge any sums owed to it by the Customer under the Contract or any other agreement;

6.6.2 to require the Customer not to resell or part with possession of any goods owned by Dynamic Climate until the Customer has paid in full all sums owed by it to Dynamic Climate under the Contract or any other agreement;

6.6.3 to withhold delivery of any undelivered goods and stop any goods in transit;

6.6.4 to amend the payment terms of the Contract at its sole discretion, so as to require of the Customer on five (5) days' notice issued by post or email: to make the immediate payment of all monies owing to Dynamic Climate on a date of Dynamic Climate's choosing; to pay cash with order; and/or to make payment(s) on any other terms instructed by Dynamic Climate; and

6.6.5 to terminate a respective Contract, or any other agreement or accepted order, in part or full, at the sole discretion of Dynamic Climate without incurring any liability by giving the Customer no less than seven (7) days' notice by post or email.

6.7 Unless Dynamic Climate expressly elects otherwise, any Contract between it and the Customer for the supply of goods shall remain in existence notwithstanding any exercise by Dynamic Climate of its rights under Clause 6. The Customer shall be responsible for any costs and expenses incurred by Dynamic Climate in exercising its rights under this Clause 6.

6.8 Nothing in this Clause 6 shall give the Customer any right to return the goods. Dynamic Climate may sue the Customer for the price when due (without prejudice to its other rights hereunder) notwithstanding that the property in the goods may not have passed to the Customer.

6.9 The Customer acknowledges that Dynamic Climate is the absolute owner of Dynamic Climate's "Intellectual Property Rights" (being any patents, inventions, copyright and related rights, trade marks, trade names, rights to goodwill or to sue for passing off rights in designs, rights in computer software, database rights, rights in confidential information (including know-how), utility models and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world) and the Customer shall not assert or attempt to assert any rights in relation to Dynamic Climate's Intellectual Property Rights. Dynamic Climate shall not be liable for claims arising from an infringement of third party Intellectual Property Rights.

6.10 The Customer shall not use or exploit Dynamic Climate's Intellectual Property Rights, and in no circumstance shall the Customer reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer any of Dynamic Climate's Intellectual Property Rights or any software embedded in, or forming part of (directly or indirectly) Dynamic Climate's goods and/or ancillary services related to delivery of the goods, or create derivative works based on the whole of or any part of the software or incorporate the software into any other software program not provided by Dynamic Climate, and the Customer undertakes to only use any such software in the operation of the goods and/or ancillary services related to delivery of the goods.

6.11 The Customer shall indemnify Dynamic Climate and keep Dynamic Climate indemnified from and against all claims, damage, losses, costs (including all reasonable legal costs), expenses, demands or liabilities arising out of or in connection with any claim alleging that Dynamic Climate has infringed the Intellectual Property Rights of a third party in supplying the goods and/or ancillary services related to delivery of the goods in accordance with the Customer's instructions or to a specification provided by the Customer.

## 7. Price and Payment

7.1. Unless agreed separately and in writing by Dynamic Climate the price of the goods shall be the price ruling in Dynamic Climate's current Trade Price List at date of despatch.

Dynamic Climate has the right to alter the prices contained in the Trade Price Lists at any time without prior notice and it shall notify the Customer of any price variations before despatch of the goods and the Customer shall be entitled upon receiving notification of such variation to cancel the Contract by written notice to Dynamic Climate delivered within seven (7) days of such notification without incurring liability to Dynamic Climate.

7.2. Unless otherwise agreed in writing all money due to Dynamic Climate shall be paid by the end of the month following the date of the invoice. Any sums unpaid shall thereafter bear interest at 2% per calendar month accruing from day to day.

7.3. The Customer agrees and acknowledges that Dynamic Climate reserves the right by notice in writing to withdraw any credit facility offered to the Customer in the event the Customer's financial standing deteriorates to a level whereby it is unable to pay its debts as they fall due; or Dynamic Climate has reasonable cause to believe that the foregoing is imminent and/or reasonably likely to occur during the term of the Contract(s), as determined by Dynamic Climate either: (i) acting alone or (ii) in conjunction with its credit insurance provider (a "**Financial Change**").

7.4. In the event that credit is withdrawn due to a Financial Change, Dynamic Climate may:

7.4.1 at its option, without incurring any liability, cancel any undelivered or incomplete portion of the Contract, or cancel any other agreement with the Customer and stop the manufacture and/or delivery of any goods;

7.4.2 change the Customer's account to a cash with order account; and

7.4.3 without prejudice to any other rights, demand immediate payment of any outstanding amounts which shall thereupon become due and payable.

7.5. Unless otherwise agreed in writing for goods to be delivered by Dynamic Climate to a shipping destination outside the UK, the Customer undertakes to make payment by irrevocable letter of credit, confirmed by a first class London or Scottish clearing bank, at least ten (10) days prior to the scheduled delivery date.

7.6. Should the Customer make default in any payment or commit any act of bankruptcy or be the subject of a bankruptcy petition or execute an assignment for the benefit of his creditors, or, being a company, enter into voluntary or compulsory liquidation or suffer a Receiver or Administrator to be appointed over all or any part of his or its assets, then without prejudice to any other rights or remedies Dynamic Climate may at its option without incurring any liability cancel any undelivered or incomplete portion of the Contract or cancel any other contract with the Customer and stop any goods in transit, and may without prejudice to any other rights demand immediate payment of any outstanding amounts which shall thereupon become due and payable.

## 8. Guarantee and Exclusions

8.1 All warranties and guarantees are subject to Dynamic Climate's suppliers terms and conditions of sale which are available upon request.

## 9. Returned Goods

9.1 The Customer shall be responsible for the cost of carriage and insurance in respect of all goods returned by the Customer to Dynamic Climate for service or credit which goods shall be at risk of the Customer until actual receipt thereof by Dynamic Climate.

9.2 Dynamic Climate will not accept returned goods for credit or rectification unless such return has been authorised in writing by the appropriate Department of Dynamic Climate or otherwise confirmed in accordance with that Department's returns procedure and

the goods are received by Dynamic Climate in stock condition and Dynamic Climate reserves the right to determine at its sole discretion whether to accept the return of the goods or whether to rectify the goods or whether to issue a credit note in respect thereof.

#### **10. Cancellation**

Orders, once accepted, cannot be cancelled by the Customer without Dynamic Climate's written approval, in which case the Customer agrees to indemnify Dynamic Climate for all loss suffered by it as a result of an approved cancellation. Dynamic Climate may in any event terminate any Contract in part or full, or any other agreement or accepted order subject to these Terms and Conditions of Sale, at any time without incurring any liability; by giving the Customer no less than seven (7) days' notice by post or email.

#### **11. Technical Information and Trademarks**

11.1 All technical information, specifications and drawings and any confidential information of any kind coming into the possession of the Customer in connection with any of Dynamic Climate's products remain the property of Dynamic Climate and shall not be used by the Customer other than for the performance of any contract between Dynamic Climate and the Customer. All documents shall be returnable on request.

11.2 All information of a technical nature and particulars of goods and performances given by Dynamic Climate are given in good faith, but no responsibility is accepted by Dynamic Climate for their accuracy and their supply shall not be used to found liability on Dynamic Climate's part.

11.3 The Customer shall not do any act in relation to the goods to which Section 6 of the Trade Marks Act 1938 (as amended) applies, namely the Customer shall not:

11.3.1 Apply any trade mark of which Dynamic Climate is the proprietor or registered user ("Dynamic Climate Trade Mark") to the goods after they have suffered any alteration in their state or condition, get-up or packing;

11.3.2 Alter partly remove or partly obliterate any Dynamic Climate Trade Mark;

11.3.3 Apply any other trade mark to the goods;

11.3.4 Add any other matter in writing that is likely to injure the reputation of any Dynamic Climate Trade Mark.

#### **12. Availability of Goods**

Delivery is subject to the availability of the goods and if, owing to non-availability of such goods or any other cause beyond the control of Dynamic Climate, Dynamic Climate shall be unable to carry out its obligations hereunder it shall be entitled to determine this Contract forthwith by giving notice in writing to the Customer to that effect.

#### **13. Severability**

In the event that any of these Conditions or any part of any of them shall be held to be invalid or unenforceable, such invalidity or unenforceability of such condition or part thereof shall not affect the validity and enforceability of all remaining Conditions and parts of Conditions.

#### **14. Proper Law and Jurisdiction**

14.1 This Contract shall in all respects be governed by English Law.

14.2 The Customer submits to the non-exclusive jurisdiction of the English Courts, without prejudice to the right of Dynamic Climate to bring any action before any other courts having jurisdiction.

#### **15. COVID-19 and Brexit**

15.1 The (i) global spread, and subsequent pandemic waves, of coronavirus ("COVID-19"), and (ii) the process of the United Kingdom's exit from the European Union and



direct and indirect consequences of the foregoing ("**Brexit**") are, together and/or separately, reasonably likely to result in material delay to component procurement, production, shipment and delivery and in other supply chain delays which in turn may cause delays in any delivery date or completion of Dynamic Climate goods and/or ancillary services related to delivery of the goods, whether foreseen or unforeseen (together, or separately, a "**Special Delay**").

15.2 As a prevailing special condition to any Dynamic Climate quotation, and without prejudice to these Terms & Conditions, the Customer acknowledges and agrees that any indicated or proposed date, milestone or other time period set out in a Contract and/or in any other document, email, purchase order, order acknowledgment or communication (in oral or recorded form); is to be construed solely as an estimate for time of delivery or performance; and any provision or term to the contrary is deemed amended and to be interpreted in accordance with this clause.

15.3 Any Special Delay shall not be grounds for the Customer to terminate or cancel an order for goods and/or ancillary services related to delivery of the goods which is the subject of a Dynamic Climate quotation, without Dynamic Climate's prior written approval.

15.4 Dynamic Climate does not accept liability for any loss, cost, liquidated damages or any unascertained, general or special damages of any nature whatsoever or any other claim or fine or expense (directly or indirectly) connected to COVID-19 or Brexit.

15.5 If either party becomes aware of the likelihood of delay or any actual delay in delivery or performance resulting from a Special Delay, the party first aware of the Special Delay shall use all reasonable endeavours to notify the other party of the same in writing, by recorded post, whereupon Dynamic Climate shall issue a revised delivery date or alternative remedy.

Reviewed: November 2020

## **Data Protection and personal data**

### **How and why we use your information:**

Dynamic Climate Limited may obtain Credit and Anti-Fraud Information (defined below) from you, credit reference agencies and fraud prevention agencies for the purposes of verifying your identity, to comply with anti-money laundering duties and to meet its obligations under the Criminal Finances Act 2017 to ensure no facilitation of tax evasion, determining your eligibility for credit and to administer your payment. This may also involve us obtaining details of your financial associates (a person with whom you have or have had joint personal financial arrangements with) and/or individual director(s), partners(s) or proprietors of the applicant.

If you give Dynamic Climate false or inaccurate information it will record this. When you ask for credit Dynamic Climate may share any of the preceding information, the request for credit and its our response with credit reference agencies who may share it with other lenders as part of a reciprocal credit analysis and anti-fraud scheme and who may take such information into account in relation to their lending or fraud detection decisions. Dynamic Climate may also share this information with debt recovery agents. Formally applying for credit with Dynamic Climate (as opposed to an exploratory quote) will create a "hard search footprint" which may be taken into account in future credit assessments.

We justify our use of this information on the basis that it is either necessary for the performance of a contract with you, or it is on the basis of our legitimate interests (to better price credit risk and to protect our business and society from crime and its consequences), or (where criminal convictions data or politically exposed persons listings are processed) that it is in the substantial public interest (the detection and prevention of crime).

Credit and Anti-Fraud Information means information which establishes your identity, such as driving licences, passports and utility bills; information about transactions, requests for

credit and non-payment of debts with us and third parties and credit ratings from credit reference agencies; fraud, offences, suspicious transactions, politically exposed person and sanctions lists where your details are included. The credit reference agencies may include: COFACE, Experian and others.

**Who your data is shared with:**

In addition to those credit reference and fraud prevention agencies, we may pass any personal data you disclose on this form to any third party supplier or subcontractor, agent or advisor performing services activities or conduct data processing services on our on our behalf.

**Data retention:**

As noted in our privacy policy, our retention periods for personal data are based on business needs and legal requirements; we retain personal data for as long as is necessary for the processing purpose(s) for which the information was collected, and any other permissible, related purpose.

When personal data is no longer needed, we either irreversibly anonymise the data (and we may further retain and use the anonymised information) or securely destroy the data.

However, where you provide personal data in your capacity as a data controller then you (and any data subject) may request at any time amendment or deletion of any personal data held by us.