

DATUM TERMS AND CONDITIONS OF SALE AND SERVICE

DEFINITIONS:

"Buyer" - the party who will purchase Material and/or Services from DATUM;
"Conditions" - these Terms and Conditions of Sale and Service;
"Contract" - means the contract between Buyer and DATUM for the supply of Material and/or Services which shall comprise these Conditions and the Order;
"DATUM" - the DATUM company named in the written document to which these Term and Conditions are attached or in which they are referred.
"Material" - goods of any description to be supplied to Buyer by DATUM;
"Order" - means i) Buyer's instruction to supply the Goods and/or Services (or Buyer's acceptance of DATUM's offer to supply the same) whether made in writing (by letter, email or fax or other electronic means) or orally or by conduct or ii) the written document to which the Conditions are attached or in which they are referred to or iii) any other document in writing evidencing the terms for the supply by DATUM of Goods and/or Services;
"Price" - the price of the Goods and/or Services as set out in the Order;
"Services" - services or work of any kind to be performed for Buyer by DATUM;

ENTIRE CONTRACT:

These Conditions are exclusive and in lieu of all other terms and conditions appearing on Buyer's purchase order or elsewhere and apply to all supplies of Material and/or Services by DATUM. Any other terms, whether in a purchase order or other document issued by or referred to by Buyer, irrespective of their materiality, which are either different or additional to the Conditions are objected to by DATUM and excluded unless expressly and clearly agreed to in writing by DATUM. Supply of Material or Services by DATUM shall constitute Buyer acceptance to the Conditions. There are no understandings, representations or warranties of any kind not expressly set forth herein. Any request by the Buyer for delivery or acceptance by Buyer of Material and/or Services delivered shall, notwithstanding any terms or conditions proposed by the Buyer or other action of Buyer, constitute complete acceptance of these Conditions.

TERMS OF PAYMENT:

Terms of payment shall be the terms set out on the face of this Contract as supplemented by the terms of this paragraph. If not otherwise stated on the face of this Contract, DATUM shall be entitled to invoice Buyer periodically as Material and/or Services are provided and payment shall be due and payable within 30 days after the date of each invoice. Should payment be overdue DATUM shall be entitled to recover interest at a rate of 2% above the Barclays UK Base Rate. Buyer also shall be liable for all legal fees and reasonable expenses incurred by DATUM in the collection of past due accounts. DATUM, upon notice to Buyer, may decline to make deliveries under this Contract, except for cash sales, whenever DATUM for any reason doubts Buyer's ability to make payments as agreed under the Contract. Buyer may not set off or withhold any amounts owed to DATUM (or any company associated with DATUM) against any amounts owed to or purported to be owed to Buyer (or any company associated with Buyer) by DATUM (or any company associated with DATUM).

DELIVERY/RISK OF LOSS/TITLE:

Unless otherwise indicated on this Contract, delivery of Materials shall be ex-works. Delivery dates are estimates only and will be communicated upon receipt of a binding order from Buyer. Risk of loss or damage to, and responsibility for, the Material shall pass to Buyer upon delivery to carrier at shipping point. No shipment shall be diverted or re-consigned without DATUM's prior written consent. Unless otherwise agreed, DATUM shall select means of transportation and routing. Title and right to possession of any Material covered by this Contract shall remain with DATUM until the purchase price is paid in full or until DATUM's lien rights cease. DATUM may suspend all deliveries if a payment by Buyer is overdue or the Buyer is otherwise in breach of the Contract or does not satisfy DATUM's safety, health and environmental requirements.

ACCEPTANCE OF MATERIAL:

Upon delivery of any Material to Buyer, Buyer shall immediately inspect the Material and shall give written notice to DATUM of any shortages and of any Material rejected as damaged or otherwise nonconforming. Where delivery is made by common carrier, such notice shall be accompanied by the original freight bill with a notation thereon by the carrier confirming the shortage, damage or nonconformity. Any Material not so reported by Buyer to DATUM as rejected shall be deemed to be irrevocably accepted. If Buyer so notifies DATUM of any shortage or rejected Material, DATUM may if it reasonably notifies Buyer have a further reasonable time to tender substitute Material.

WARRANTIES:

Materials - DATUM warrants to Buyer only that the Materials delivered hereunder will conform to their specifications (either as agreed in writing with Buyer or DATUM's standard specifications as set out in its product literature in force at the date of delivery) at the time of delivery and shall be free from defects in material and workmanship at the time of delivery. Any recommendations or technical advice provided Buyer by DATUM is believed reliable, but DATUM makes no warranty of results to be obtained or fitness for Buyer's purpose and Buyer accepts such recommendations or advice at Buyer's risk.
If Buyer notifies DATUM in writing of any defect in Material or workmanship or other breach of warranty within 30 days after the date of last delivery or work performed by DATUM hereunder and the Material or work affected are accessible to repair, replacement or rework without causing material damage to surrounding property, then Buyer's sole and exclusive remedy shall be to cause DATUM, at DATUM's option to repair, replace or rework such nonconforming Material or work. If Buyer so notifies DATUM and the Material or work affected are not so accessible to repair, replacement or rework, then Buyer's sole and exclusive remedy shall be reimbursement for the cost of remedying the deficiency, but in no event shall the reimbursement exceed the Price.

DATUM MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY, STATUTORY OR OTHERWISE, CONCERNING THE MATERIALS INCLUDING, WITHOUT LIMITATION, A WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR A WARRANTY OF MERCHANTABILITY OR QUALITY. THE WARRANTIES GIVEN UNDER THIS SECTION ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. ALL IMPLIED WARRANTIES ARE EXCLUDED TO THE MAXIMUM EXTENT OF APPLICABLE LAW.

Services Warranty - DATUM warrants that the Services will be performed in a good and workmanlike manner. Buyer's sole and exclusive remedy and DATUM's entire liability with respect to this warranty will be, at the sole option of DATUM, to either (a) use its reasonable commercial efforts to re-perform or cause to be re-performed any Services not in substantial compliance with this warranty or (b) refund amounts paid by Buyer related to the portion of the Services not in substantial compliance; provided, in each case, Buyer notifies DATUM in writing within 30 days after performance of the applicable Services. EXCEPT AS SET FORTH HEREIN OR IN ANY STATEMENT OF WORK THAT EXPRESSLY AMENDS DATUM'S WARRANTY, DATUM EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS OR COVENANTS, EITHER EXPRESS OR IMPLIED (INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, DURABILITY, TITLE, ACCURACY OR NON-INFRINGEMENT) ARISING OUT OF OR RELATED TO THE PERFORMANCE OR NON-PERFORMANCE OF THE SERVICES.

LIMITATIONS ON DATUM'S LIABILITY:

DATUM's total aggregate liability under this Contract and for any damages in any action or claim based upon contract or tort (including negligence) or breach of statutory duty or for any other reason and which arises out of or in connection with this Contract or the supply of Materials and/or Services shall in no event exceed 100% of the total amount actually paid to DATUM by Buyer under this Contract. However, nothing excludes or limits DATUM's liability for (i) death or personal injury resulting from its sole negligence, or (ii) any claim against Buyer relating to DATUM infringing a third party's intellectual property, or (iii) DATUM's willful or deliberate conduct or for fraud by DATUM.

In no event shall DATUM be liable for i) any liquidated or delay damages or for any costs, losses or damages related to delays or the avoidance of delays ii) any consequential, special or incidental damages or indirect losses, (including without limitation fines, punitive damages, loss of profit, business or contract, pure economic loss, depletion of goodwill incurred or suffered by Buyer).

CLAIMS:

All claims, except for the infringement of patents, must be made in writing strictly within 30 days after delivery of the Materials or completion of Services or the part of the Services to which the claim relates hereunder, and failure so to do shall constitute a waiver by Buyer of any such claims. Buyer shall use all reasonable efforts to minimize such claims or sums and to mitigate its losses. No claim of any kind shall be greater in amount than the paid purchase price of the Material or Services for which a claim is made. Any claim that is not asserted as a claim, counterclaim, defense or set off in a judicial proceeding instituted within one (1) year after the date on which the Materials were delivered to Buyer or Services performed, whichever date is earlier, shall be forever waived, barred and released. Time is of the essence for all Buyer notifications to DATUM.

Buyer shall indemnify, hold harmless and defend DATUM from and against any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including actual legal fees and expenses, attributable or alleged to be attributable in whole or in part to Buyer's breach of the Contract, its negligence or other fault arising out of or pertaining to the use, performance, non-performance or misuse of the Material or Services supplied by DATUM hereunder.

FORCE MAJEURE:

DATUM may, without liability, delay, reduce or cancel orders or deliveries if it is hindered, delayed or prevented from performing the Contract through circumstances beyond its reasonable control including, but not limited to, employment disputes (including those involving its own employees), accidents, adverse weather conditions and other natural events, shortages of operating resources, breakdown of plant or machinery, shortages of raw materials from usual sources, transport problems or shortages or governmental action or inaction.

TAXES:

Any tax, excise, fee or other charge or any increase thereof now or hereafter imposed by law upon the production, storage, withdrawal, sale, transportation, use or delivery of the Material sold or Services provided hereunder, shall be in addition to the price quoted and shall be paid by Buyer. If Buyer has to withhold part of any payment due to DATUM under local taxation or similar regulations, Buyer will "gross up" any payment due to DATUM so as to ensure that DATUM receives 100% of the Price due to DATUM.

All DATUM's obligations are subject to the current Corona epidemic and the related restrictions not affecting DATUM production facilities, DATUM personnel, DATUM supply chain, DATUM subcontractors or otherwise DATUM ability to perform our contractual commitments.

ASSIGNMENT:

No right or interest under the Contract shall be assigned and no obligation under the Contract shall be delegated by Buyer without the prior written approval of DATUM. Any attempted assignment or delegation without such approval shall be wholly void and totally ineffective for all purposes.

APPLICABLE LAW/FORUM:

This Contract shall be governed by the laws effective and in force on the date hereof in the state or province in which DATUM's office indicated on the face sheet of the Contract or the Order is located. Any action arising out of or related to the Contract shall and may be brought only in the court of appropriate jurisdiction of the state, district or province of the pertinent DATUM location; provided, however, that DATUM, at its option, may bring an action in any jurisdiction where the Material and/or Services provided hereunder are located, or where Buyer maintains an office or other facility.

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COMPLIANCE:

Buyer agrees that the Materials purchased hereunder will be purchased and used in compliance with all applicable laws. Buyer agrees to comply with all applicable export control regulations. On request, Buyer is obliged to give DATUM all information and documents, which are necessary for the export, import or delivery of Material or Services, such as the name and address of the end customer as well as the place and purpose of use of the Material. If Buyer does not provide this information, DATUM may terminate the Contract with immediate effect.

If this Contract covers Materials which are manufactured especially for Buyer and the Contract is terminated or an order thereunder cancelled, Buyer will take delivery of and make payment for such Material as has been manufactured and such as is in the process of being manufactured on the date notice of such termination of cancellation is received by DATUM.

CHANGE ORDERS:

Buyer may request changes in the Material or Services to be delivered under the Contract consisting of additions, deletions or other revisions. Before DATUM shall be required to proceed with such change order, the parties must agree in writing as to the adjustment to the Price and other terms for such changed work.