

Terms and Conditions for the supply of machine tools for domestic business in the United Kingdom by DMG MORI UK LIMITED (“the Company”, “We”, “Us”, or “Supplier”) to The Customer (“You”)

These terms and conditions shall apply exclusively to any Contract in relation to the supply of Machine Tools by The Company to You, the Customer, and may only be varied, other than as stated herein, by both Parties agreeing to the same in writing.

1. General

- 1.1. The Customer accepts and agrees that all supply, deliveries and services are governed by these Terms and Conditions as varied by the Company in accordance with the provisions of clause 1.3 hereof or any specific contractual agreements agreed in writing, if any. The Parties agree that a contract is entered into upon written confirmation of the order being received by the Company. 'Written' can be by letter, e-mail or fax.
- 1.2. The Company reserves all ownership and propriety rights and all Intellectual Property Rights in samples, cost estimates / quotations, drawings and similar information in whatever format, including for the avoidance of doubt, provided orally, electronically or by paper and the Customer agrees they must not be made available to third parties. The Company will not disclose to any third party information from the Customer marked "Confidential" unless required by Law, or following receipt of a court order, without the Customer's written permission.
- 1.3. The Customer agrees that the Company may at its sole discretion immediately on giving written notice to the Customer (the Notice) at any time;
 - 1.3.1. Amend with immediate effect the Terms and Conditions of any order placed by the Customer (The Old Terms) including inter-alia varying the Price of the Goods, Terms of Delivery or Specification, provided that the alteration of the Specification does not materially adversely affect the performance thereof, as it thinks fit (The New Terms) if the United Kingdom leaves the European Community (EU) whether or not the same results in a change of trading status and the introduction of Trade Tariffs or Currency Fluctuations insofar as the United Kingdom is concerned in its dealings with remaining members of the EU.
 - 1.3.2. The Customer agrees that the New Terms shall immediately be incorporated into and vary the Old Terms of any Agreement in any order placed with the Company by the Customer from the date of the Notice as if the New Terms had been incorporated therein from the outset.

2. Price and Payment

- 2.1. Unless stated, all the prices are excluding works, including loading at the works, but exclusive of packaging. The prices are exclusive of value-added tax, which has to be paid at the statutory rate valid from time to time.
- 2.2. Unless agreed in writing, payment is due and payable by the Customer without deduction to the Company's account as follows:
 - o 30% of order value + VAT due with order.
 - o 70% of order value + VAT due on delivery.
- 2.3. The Customer may not withhold or delay payment; if sums due are not paid, the Company may charge interest at the rate of 8% per annum on all outstanding sums from the date that the payment fell due through until the actual date of payment.
- 2.4. In addition, if any payment due hereunder is received after the same is due, the Company may at its sole discretion, without penalty and in addition to any other remedy, extend any estimated delivery or performance date by the period calculated from the date the payment was due to the date the payment in cleared funds was received.

3. Delivery time, delay in delivery

- 3.1. Any delivery time specified in the agreements concluded between the contracting parties does not make time of the essence of the agreement. Compliance with such delivery times by the Company will not occur until all technical issues have been clarified between the parties as to the delivery and installation of the goods and that the customer has fulfilled all obligations incumbent on them and which, for the avoidance of doubt, (but the list is not exhaustive) shall include the provision of any required official certificates or permits, the failure to make any payments, or the provision of power and other items to enable the goods to be installed. If the Customer is in breach of any delivery requirements, the delivery time will be extended correspondingly.
- 3.2. If delivery is delayed as a result of the fault or non-performance by the Customer, the costs incurred or reasonably incurred by the Company, or on its behalf as a result of the delay, will be payable by the Customer. If non-compliance with the delivery time is due to force majeure, industrial riots or other events beyond the Company's control, the delivery time will be extended by an adequate period. The Company will inform the Customer, or vice versa, as soon as possible after it becomes aware of such circumstances and immediately at the end of such circumstances.
- 3.3. Should the Company acting reasonably become aware that it shall not be able to deliver the Products on or about the agreed estimated date of delivery, it shall within 5 working days notify the Customer thereof in writing (the "Notice"). The Notice shall include a description of measures the Company considers (acting reasonably) it is taking to recover or limit the delay, if any, and a new estimated delivery date. The Notice shall be sent by e-mail or First Class post and delivery thereof shall be deemed to have occurred on the third working day after posting.
- 3.4.
- 3.5. Company will exert its best efforts to cause the Machine Tools to be shipped in accordance with its quotations and these Terms. Unless a date is expressly agreed to as 'fixed' however, all dates stated by Company are approximate dates only, and are estimated in good faith to the best of Company's ability, commensurate with foreseeable scheduling and subject to availability of product and transit.
- 3.6. Company shall not be liable for any loss or damage whatsoever, including loss of income and/or profits, incidental, special or consequential damages resulting from Company's delayed shipment or delivery of the Machine Tools for any reason whatsoever. Any claims for shortages or claims that the Machine Tools shipped is other than that which was ordered or claims for damages prior to delivery to Customer or Customer's agent must be made in writing to Company with fifteen (15) days after the arrival of the Machine Tools at Customer's plant or place of business.

- 3.7. If delivery is delayed due to circumstances for which the Customer is liable, or which is due to Force Majeure (according to clause 4), a new delivery date may be agreed on the Company's acceptance acting reasonably.

4. Force Majeure

- 4.1 The obligations of either party in relation to a sale by the Company shall be suspended to the extent that such performance is impeded or made unreasonably onerous by an occurrence beyond the control of the party affected, Force Majeure includes, but is not limited to, industrial disputes, fire, extreme weather, pandemics, war, extensive military mobilisation, insurrection, requisition, seizure, embargo, restrictions in the use of power and defects or delays in deliveries by sub-contractors caused by any such circumstances whether occurring prior to or after the formation of the contract.
- 4.2 The party that claims being a Force Majeure situation shall notify the other party in writing within 5 working days of becoming aware of the same when the circumstance starts and when it expects it to end.
- 4.3 Regardless of what might otherwise follow from these Conditions, either party shall be entitled to terminate the contract by notice in writing to the other party if performance of the contract is suspended due to Force Majeure for more than nine months.

5. Passing of risk, commissioning, acceptance and approval, performance by third parties

The risk, but not the title, passes to the Customer as soon as the goods to be delivered have left the Company's premises.

6. Reservation of title

- 6.1. The Company reserves title to the goods notwithstanding that the risk has passed until all payments under the contract have been received. If following delivery, the installation or assembly services are to be undertaken, title to the delivered goods will only pass to the Customer after receipt of the full charges payable for the goods and services.
- 6.2. The Customer may not sell, pledge or transfer title to the delivered goods without the prior written consent of the Company until such time as payment has been made in full to the Company.
- 6.3. If the Customer is found to be in breach of the contract, including failing to pay sums which are due, the Company is entitled to claim return of the delivered goods, relying on the reservation of title set out in clause 5 and the Customer agreeing to let representatives of the Company attend at its site to recover the same without prejudice to any other remedies the Company has.
- 6.4. If the Customer resells or deals in any way in breach of clause 5 and 6 hereof with the goods, the customer assigns to the Company any and all claims up to the final invoice amount (including VAT) outstanding to the Company, including interest thereon, which will be owing to the Customer by such transaction and the Customer will remain liable for any shortfall due to the Company and the Customer assigns to the Company its right to receive and collect payment due thereunder by action if necessary.
- 6.5. Any processing or transformation of the delivered item by the Customer is always deemed to be carried out for and on behalf of the Company. If the delivered item is processed together with other items not belonging to the Company, the Company will become co-owner of the new item in the proportion of the value of the delivered item to that of the other processed items at the time of the processing. Apart from that, the item generated by the processing is subject to the same regulations as the goods delivered, subject to reservation of title.
- 6.6. If the delivered item is inseparably mixed with other items not belonging to the Company, the Company will share title to, and become co-owner of the new item in the proportion of the value of the delivered item to that of the other mixed items at the time of the mixing. If the mixing is made in the way that the item of the Customer must be considered as the main item, the parties are deemed to have agreed that the Customer transfers to the Customer pro rata ownership of the new item. The Customer retains the so generated sole-ownership or co-ownership item for the Company.
- 6.7. If a petition in insolvency is filed, the Company will be entitled to withdraw from the contract and demand immediate return of the delivered goods and the Customer insofar as it is able will assist in the collection thereof.

7. Warranty

The Company gives warranty in respect of the quality of the delivered goods as set out in section 7 hereof excluding at the same time any further rights and claims of the Customer, subject to the provisions in section 8.

7.1. Defects of quality of new delivered goods:

- 7.1.1. All parts which prove to be defective within 12 months from delivery due to any circumstance having occurred before the passing of the risk must, at the Company's choice, either be subsequently repaired or substituted by new goods. The Company must be informed of any detected defects in writing without undue delay and in any event within 5 working days of the defect being noticed. Any parts that have been replaced become the property of the Company until payment, if any, has been made.
- 7.1.2. The customer is obliged, after consultation with the Company, to grant to the Company the time and opportunity that the Company considers necessary for any subsequent repair or replacement or substitution;
- 7.1.3. Any warranty is excluded in the following cases (which are not exhaustive): Unsuitable or improper use, defective installation/assembly, commissioning by the customer or third parties, regular wear and tear, defective or careless treatment, improper maintenance, unsuitable operating means or facilities, defective construction work, unsuitable building ground, chemical, electrochemical or electric influences.
- 7.1.4. If the Customer or a third party carries out the subsequent rectification improperly, the Company will accept no liability for the consequences resulting therefrom. The same applies to any changes made to the delivered goods without the prior consent of the Company.

7.2. Special regulation for defects of quality of used goods:

Notwithstanding the preceding provisions, the warranty for defects of the quality of used goods is excluded. This does not apply in the case of any fraudulently concealed defects or the breach of a guarantee.

8. Liability

- 8.1. If the delivered goods are faulty through no fault of the Customer, the Company is only liable for damages arising from the defect and not any subsequent consequential losses.
- 8.2. Subject to clause 7, the Company will not be liable to the Customer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any:
- (a) direct or indirect loss of use, profit, anticipated profit, revenue, business, contracts, overhead recovery, machining costs, revenue or anticipated savings;
 - (b) damage to the Customer's reputation or goodwill;
 - (c) product recall or business interruption costs;
 - (d) liability arising out of third-party claims against the Customer; or
 - (e) special, indirect or consequential loss or damage.
- 8.3. Even if the Company has been advised of such loss or damage arising out of or in connection with the Contract, the Company's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise shall be limited:
- (a) arising out of or in connection with any Goods or Services provided or required to be provided by third parties (including The Company's sub-contractors) in connection with this Contract shall not exceed the amount recovered by The Company from such third party in respect of such Goods or Services; and
 - (b) arising out of or in connection with this Contract will in any event be limited to the Contract price.
- 8.4. This clause 8 shall survive the termination or expiry (for whatever reason) and shall be enforceable notwithstanding the same.

9. Limitation

Any claims of the customer are subject to the Provisions of the Statute of Limitations.

10. Use of software

- 10.1. If, and to the extent that the delivered goods include software, the customer is granted a non-exclusive right to use the delivered goods together with their documentation. It will be provided for use on the delivered goods destined for such purpose. The Customer does not have permission to use the software on more than one system.
- 10.2. The customer undertakes not to remove or modify without the prior explicit consent of the company any manufacturer information including, but not limited to, any copyright notes.
- 10.3. All other rights in the software and the documentations, including any copies, thereof remain the property of the Company supplying the software. Any grant of sublicenses is forbidden.

11. Applicable law, place of jurisdiction

All legal relations between the Company and the Customer are exclusively governed by the law of England and Wales. A competent Court in England and Wales will have jurisdiction to resolve disputed matters between the parties.

12. Insolvency of Buyer

This clause applies if:

- 12.1. The Buyer takes any step-in connection with making a voluntary arrangement with its creditors; or becomes subject to an administration order; or being an individual or firm becomes bankrupt; or being a company, goes into liquidation, otherwise than for amalgamation or reconstruction; or
- 12.2. A distraint occurs and anyone takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 12.3. The Buyer ceases or threatens to cease to carry on business, or
- 12.4. the Seller acting reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly. If this clause applies, then and without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled at its discretion to cancel the contract or suspend any further deliveries under the contract without having any liability to the Buyer and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Seller shall be entitled if the price is not paid forthwith to recover the Goods from the Buyer and the Buyer will co-operate and allow access to any premises for this recovery and will pay to the Seller the reasonable costs thereof .

13. Cancellation

- 13.1. Orders cancelled within one week of the order date will be subject to a cancellation fee equal to 10% of the order value.
- 13.2. Orders cancelled after one week of the order date will be subject to a cancellation fee equal to 30% of the order value.
- 13.3. Any order cancelled within 90 days of the planned shipment date from the factory will be subject to a cancellation fee equal to 50% of the order value.
- 13.4. Any order cancelled within 60 days of the planned shipment date from the factory will be subject to a cancellation fee equal to 75% of the order value.
- 13.5. Any order cancelled within 30 days of the planned shipment date from the factory will be subject to a cancellation fee equal to 100% of the order value.

14 Definition

- 14.1 The following terms and conditions, including those set out in this paragraph, shall apply to all current and future After Sales Services undertaken by The Company in relation to the repair, maintenance and other services for machine tools ("Services") as well as the delivery of spare and replacement parts ("Parts" or "Part").
- 14.2 These terms and conditions shall apply exclusively. Any contractual terms of the Customer shall not apply, unless expressly agreed upon in writing and acceptance of the Services, or the request for the supply of Parts, or the provision of Services by the Customer, or the Customer confirms by its conduct acceptance of the Terms herein. A binding contract between the Company and the Customer will only become enforceable upon receipt by the Company of the Customer's written order by letter, fax or e-mail.
- 14.3 **Corona:** the disease known as corona disease (COVID-19) and the virus known as severe acute respiratory syndrome corona (SARS-CoV-2).
- 14.4 **Corona Event:** an event or delay caused by, or arising from or in relation to, a Corona epidemic or pandemic that prevents or delays the scheduled delivery or performance in relation to this contract or the performance of any obligations under this Contract, including, but not limited to:
- a) absences or unavailability of staff at the Company, non-attendance of persons who have been scheduled to attend to carry out service or maintenance work, or delay in the delivering parts or equipment, and any loss of, or disruption to, any of their facilities;
 - b) any illness, quarantining, shielding or self-isolation (including, but not limited to, precautionary self-isolation) including social distancing of any party (including engineering staff, service or sales personnel or equipment), or any other staff of the Company where the decision to quarantine or self-isolate is reasonable, and or any recommended or mandatory measures introduced by the Government intended to prevent or delay the spread of Corona;
 - c) any disruption of, or interruption to, any services required for the performance of any contract including (but not limited to) the connection to electricity, telecommunications and data services;
 - d) any unavailability of removal services or facilities, movers, or transport providers.
- 14.5 **Corona Event Cessation Notice:** a notification that a Corona Event that was preventing or delaying the performance of a booking under this contract, has ceased to have that effect.
- 14.6 **Function:** The work or supply which is the subject of this contract.
- 14.7 **Government:** local, regional or central government.

15 Suspension of remedies

- 15.1 If, due to a Coronavirus Event, a party (**Affected Party**) is prevented from, or delayed in:
- a) supplying goods, equipment or services that are the subject of this contract in accordance with this contract; or
 - b) carrying out any of its other obligations in relation to the supply of goods or services that are the subject of this contract, i.e. a Coronavirus Event leading to a cancellation due to the non-attendance of service personnel or others employed by the Company, their servants or agents, or the failure to supply equipment or machinery due to any Government restriction.
- 15.2 Neither party shall be in breach of this contract or liable for any failure to perform, or any delay in performing, any of their respective obligations under this contract that are prevented or delayed by that Coronavirus Event. In particular, but not limited to, neither party shall be liable to pay compensation to the other in respect of the cancellation.
- 15.3 Each party agrees with the other party that it shall:
- a) notify the other party as soon as reasonably practicable, and in any event no later than 10 working days, after becoming aware of a Coronavirus Event that will or may prevent or delay the Event: or
 - b) they will cause the Affected Party from performing any of its other obligations under this contract in relation to the Event; and
 - c) that notice shall include details of that Coronavirus Event;
 - d) use all reasonable endeavours to mitigate the effect of any Coronavirus Events on the performance of its obligations.
 - e) as soon as practicable after the Coronavirus event is over contact the other party to make fresh arrangements for the supply of goods or services.

16 Processing of Replacement Parts

- 16.1 If, in a case where upon placing an Order it is not clear as to which spare part is required, the Customer has, with explicit prior agreement with the Supplier, ordered several spare parts for the purpose of reducing the time for the repair and/or servicing of the machine, such that a Customer has the right, in respect of the unused spare parts, to cancel the order within four weeks. The exercising of such right of cancellation within the deadline requires the return of the respective spare parts and the receipt of them by the Supplier, or any of its affiliates as designated by the Supplier, within four weeks of the delivery of those spare parts to the Customer. The return is made at the expense and risk of the customer (Carriage Insurance Paid storage place of the Supplier, CIP Incoterms 2020). The Customer will be liable for any damage to the returned spare parts, e.g. signs of use as a result of installation or removal, and will be charged accordingly.
- 16.2 The Supplier may charge the Customer with a fee for inspection and restocking of the returned spare parts. Such fee amounts to 10% of the respective spare part cost, but not more than £140.00 per spare part. Return of spare parts with a value of less than £50.00 per item or position shall be excluded; these spare parts shall not be credited.

SALES INFORMATION ON NETSERVICE DMG MORI

Value

Benefits for Customer:



- **Reduction of downtime and increase of productivity:**
 - + High remote fix rates through **NETservice** and **SERVICEcamera**
 - + **Direct expert support** through qualified online diagnostics (electrical/mechanical problems)
 - + **Fast problem solving** through the remote communication network with multi-user conference
 - + **Fast identification of spare parts** with **SERVICEcamera**

NETservice

+ Participants

Operators, service experts, service technicians and, where necessary, experts from the factory can work together within the communication network to provide maintenance and support.

+ SERVICEcamera

Targeted support for the operation and maintenance of your machine made possible by real-time transmission.

+ Whiteboard

The whiteboard is a digital sketch paper for conference participants. Together, they can work on photos, screenshots and circuit diagrams (e.g. Marking, circling or underlining)

+ Text Conference

In the chat session, all text messages are immediately sent to conference participants via instant messaging.

Machines can be retrofitted with RetrofitKIT and Monitoring and Service Package:

- + Many other machines of customers can be retrofitted, depending on the Control Type and recent updates from DMG MORI (ask for availability)



For further information please speak to your responsible Person for Retrofit Orders: Local Life Cycle Product Specialist

Pricing

New machines:

- + **Free NETservice** for all customers within machine warranty (18 or 24 months)
- + All machines in warranty can be retrofitted for free, if technically possible (see retrofitting information)
- + Optional: **SERVICEcamera** (£335 / piece)



New Machines after Warranty and After-Sales:

- + **Monitoring and Service Package** (24 months Contract)
 - One Machine: £100 / month = £2400 total
 - 4 Machines: £220 / month = £5280 total
- + Please ask for special bundle prices.

Customer Requirements

- + Dedicated Ethernet Communication connection
- + 2 designated IP addresses, (Heidenhain TNC control with CELOS requires 3 designated IP addresses)
- + Encrypted access to DMG MORI Central Server to enable NETservice to function.
- + All machine access is controlled by the customer
- + NETservice Connector has firewall built in only to allow access to the DMG Server

CONTACT

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