

## DMTL Terms & Conditions Issue 5

### Sale

#### 1 DEFINITIONS

- 1.1 “DMTL” means Distributed Micro Technology Limited.
- 1.2 “The Buyer” means the person or company who orders, buys or agrees to buy the goods.
- 1.3 “The goods” means the goods supplied by DMTL to the Buyer in accordance with these Terms and Conditions of Sale.

#### 2 GENERAL

- 2.1 All orders are accepted and goods supplied to the following Terms and Conditions of DMTL. These conditions may not be modified unless agreed in writing by DMTL.
- 2.2 These Conditions of Sale override any other terms or conditions contained in or referred to in the Buyers order or in correspondence or elsewhere implied by trade custom.

#### 3 PRICE

- 3.1 The price of the goods shall be the price issued in DMTL’s quotation or such other price as agreed by DMTL and the Buyer.
- 3.2 Any quotation supplied by DMTL is valid for thirty days subject to prior sale.
- 3.3 Unless otherwise specified all prices are quoted in Pounds Sterling and are subject to V.A.T at the appropriate rate.
- 3.4 Prices quoted do not include carriage or packaging unless agreed and stated in the DMTL quotation.
- 3.5 Prices may be subject to increase in the event of an increase in DMTL’s costs or other circumstances beyond DMTL’s reasonable control, including but not limited to, manufacturers’ price increases, change in exchange rate, or an error in quotation.

#### 4 PAYMENT

- 4.1 Where account facilities have been approved payment terms are 30 days after invoice unless prior agreement reached.
- 4.2 DMTL reserves the right to charge interest at 2% per calendar month over the base rate compounded monthly from the date of invoice to the date of payment.
- 4.3 DMTL reserves the right to suspend deliveries where payment of invoice has not been received by the due date.
- 4.4 The Buyer shall not be entitled to withhold payment due to any dispute or claim by DMTL in connection with any sale and in the case of short delivery or damaged goods shall remain liable to pay the full invoice price of all other goods delivered.
- 4.5 All payments must be made in the currency billed on the original invoice.

#### 5 DELIVERY

- 5.1 Any delivery date stated by DMTL is an estimate only and is not a contractual commitment and DMTL shall not be liable for any losses or damages arising from any delay.
- 5.2 Delivery to the Buyers address or any other agreed place stipulated by the Buyer or by the Buyer collecting the goods from DMTL’s place of business shall constitute delivery.
- 5.3 DMTL shall not be responsible for any delays or inability to deliver due to circumstances out of their control.
- 5.4 If the Buyer fails to take delivery of the goods in accordance with Clause 5.2 then DMTL may:

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5.4.1 Store the goods until delivery to the Buyer who shall be liable for the storage costs.

5.4.2 Sell the goods at the best obtainable price and if the goods are sold for less than the price payable by the Buyer, the Buyer shall be liable to pay DMTL the price difference.

### 6 DELIVERY SHORTAGES/NON-DELIVERY

6.1 No claim for short delivery, damaged or defective goods may be made unless notified to DMTL within 5 working days from receipt of the goods. If such notice is not provided by the Buyer then the transaction shall be deemed complete in accordance with the contract.

6.2 DMTL reserves the right to reject any claim in respect of shortages, damages in transit or non-delivery of goods.

6.3 Where goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by DMTL to make one delivery of goods shall not have the effect of avoiding any other contract between the Buyer and DMTL.

6.4 No claim for non-delivery may be made unless notified to DMTL within 14 days of the shipment being generated. If such notice is not provided by the Buyer then the transaction shall be deemed complete in accordance with the contract.

### 7 DEFECTIVE GOODS

7.1 DMTL's liability (whether in contract or tort) in respect of defective goods shall be limited to replacement of the faulty items or credit issued or such other compensatory measures as DMTL considers appropriate in the circumstances.

7.2 DMTL shall not be liable for any loss or damage sustained or incurred by the Buyer or any third party resulting from any breakdown of or fault in the supplied products, unless caused by the negligence or misconduct of DMTL, its employees or sub-contractors.

7.3 When goods are returned it is the responsibility of the Buyer to insure the goods. DMTL is not responsible for any loss or damage incurred to the goods when in transit.

### 8 TITLE AND RISK

8.1 Risk passes on delivery, Title to products passes to the Buyer when full payment is made and DMTL shall be entitled at any time before title passes (without liability):

8.1.1 To terminate the Buyers right to use or sell the products.

8.1.2 To enter the premises of the Buyer and re-possess products.

8.1.3 To use or sell the product.

### 9 CANCELLATION

9.1 DMTL may at its sole discretion reject or accept the cancellation of any order or part of placed by the Buyer.

9.2 In the event of a cancellation being accepted:

9.2.1 The Buyer will be liable to a handling charge payable to DMTL in respect to the cancelled order.

9.2.2 At DMTL's discretion the Buyer will be liable to a charge in respect to goods obtained and work carried out pursuant to the cancelled order prior to the date on which the order cancellation is accepted by the Buyer.

### 10. NON-CANCELLABLE / NON-RETURNABLE PRODUCTS

10.1 From time to time, DMTL will notify Customer of a product that is "NCNR", (Non-Cancellable/Non-Returnable) upon determining that an order requires such conditions of sale.

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10.2 Customer understands that "NCNR" products are obtained by DMTL from the manufacturer specifically for the Customer.

10.3 Irrespective of circumstances, the Customer agrees that "NCNR" products may not be cancelled, returned, or rescheduled by the Customer without the agreement of both DMTL's supplier and the written consent of DMTL.

10.4 Products labelled as moisture sensitive or Electro-Static Sensitive (ESD) are NCNR if the packaging has been opened.

10.5 All products purchased by Customers classified by DMTL as Electronic Component Distributors or Brokers shall be deemed Non-Cancellable/Non-Returnable.

### **11 TERMINATION**

11.1 This condition applies if:

11.1.1 The Buyer makes any 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 (other than for reconstruction or amalgamation purposes).

11.1.2 A receiver or administrative receiver is appointed or takes possession of any of the property or assets of the Buyer.

11.1.3 The Buyer ceases to carry on business.

11.1.4 The Buyer commits any breach of any of the terms of agreement and shall have failed within 30 days after receipt of the request in writing to remedy the breach.

11.2 If this condition applies then, without prejudice to any other right or remedy of DMTL, DMTL shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer. If the goods have been delivered but the invoice not paid, the invoice becomes immediately payable.

### **12 FORCE MAJEURE**

11.2 DMTL shall have no liability regarding any failure or delay in fulfilling any of DMTL's obligations due to circumstances or events beyond DMTL's reasonable control.

### **13 NOTICES**

13.1 All notices must be in writing and sent out to the recipient as set out in the agreement or the recipients registered office.

13.2 Any such notice shall be delivered personally, by prepaid letter or by fax/email transmission and shall be deemed to have been served, if by hand when delivered, if by post, 5 days after posting and if by fax or email, when despatched.

13.3 Any notice concerning the validity or existence of the agreement must be delivered personally or sent by recorded delivery post.

### **14 LAW AND JURISDICTION**

14.1 The agreement shall be governed by and construed in accordance with the laws of England and shall be subject to the exclusive jurisdiction of the English Courts.

### **15 DATA PROTECTION**

15.1 When providing the goods to the Buyer, the Seller may gain access to and/or acquire the ability to transfer, store or process personal data of the employees of the Buyer

15.2 The parties agree that where such processing of personal data takes place, the Buyer shall be 'data controller'

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and the Seller shall be 'data processor' as defined in the General Data Protection Regulation (GDPR) as may be amended, extended, and or re-enacted from time to time

15.3 For the avoidance of doubt, 'personal data', 'processing', 'data controller', 'data processor' and 'data subject' shall have the same meaning as in the GDPR

15.4 The Seller shall only process Personal Data to the extent reasonably required to enable it to provide the goods as mentioned in these terms and conditions or as requested by, and agreed with, the Buyer; shall not retain any Personal Data longer than necessary for the processing and refrain from processing any Personal Data for its own purposes, or for the purposes of any third party

15.5 The Seller shall disclose personal data to any third parties other than employees, directors, agents, subcontractors or advisors on a strict "need to know" basis and only under the same (or more extensive) conditions as set out in these terms and conditions or to the extent required by applicable legislation and/or regulations

15.6 The Seller shall implement and maintain technical and organisational security measures as are required to protect personal data processed by the Seller on behalf of the Buyer.

15.7 For any enquiries or complaints regarding data privacy you can contact the directors of DMTL at [info@dmtl.co.uk](mailto:info@dmtl.co.uk)

### 16. RESTRICTION OF SALE

16.1 It is a condition of the sale of all **Kyocera** product that it will not be used in its entirety or in part for:

- (i) the development, production, handling, operation, maintenance, storage, detection, identification or dissemination of chemical, biological, radiological or nuclear weapons or other nuclear explosive devices, or
- (ii) the development, production, maintenance or storage of missiles or other systems capable of delivering such weapons, or
- (iii) any other military end-use

Hence the product will only be used for civil end-use

## Purchase

### 1. DEFINITIONS

1.1 "DMTL" means Distributed Micro Technology Limited (the Buyer)

1.2 "The Seller" means the person or company who accepts an order, sells or agrees to sell the goods

1.3 "The goods" means the goods supplied to DMTL by the Seller in accordance with these Terms and Conditions of Purchase

### 2. ACCEPTANCE OF ORDER

2.1 The Seller's acknowledgement of order, acceptance of payment or commencement of supply shall constitute an unqualified acceptance of these terms and conditions. Failure to comply with the terms of a purchase order may result in delayed payment, cancellation of order, return of product at Seller's expense or reduction in future orders. The Seller is required to use applicable methods, processes and equipment and to flow down to sub-tier suppliers all applicable requirements of any purchase order, including specifications, drawings or process requirements

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#### **3. ORDER FULFILMENT**

3.1 Each delivery against an order shall be accompanied by a certificate of conformity, test reports or authorised release certificate as applicable

3.2 Any special processes required by a purchase order must be performed by a competent, qualified individual

3.3 All applicable customer/regulatory requirements must be flowed down to sub-tier suppliers and, where required, the Seller will use customer-designated or approved external providers and process sources

#### **4. CHANGES/AMENDMENTS**

4.1 The Seller shall immediately notify the Buyer of a change affecting any aspect of the current Purchase order, including (but not limited to) change to process, items ordered, schedule of delivery, location of manufacture or change in sub-tier supplier

4.2 Only the individual who raised the Purchase Order for the Buyer can authorise the change and make a formal record on the 'amended' Purchase Order

#### **5. NON-CONFORMITY**

5.1 All Sellers should target zero defects in products and services provided and should, when asked, provide the statistical measurement information of on time delivery and product conformity to DMTL

5.2 The Seller shall ensure that suspected unapproved, unapproved, or counterfeit goods are not delivered to DMTL through the implementation of policies that include prevention, detection and risk mitigation methods to protect against the use and supply of suspected unapproved, unapproved, or counterfeit parts.

5.3 The Seller shall notify the Buyer of nonconforming products or processes and obtain The Buyer's approval for nonconforming product disposition

#### **6. COUNTERFEIT GOODS PREVENTION**

6.1 The Seller will ensure that deliveries are free of suspected unapproved, unapproved and counterfeit product through the implementation of policies that include prevention, detection and risk mitigation

6.2 In the event where the Seller becomes aware, or suspects that, it has supplied suspected unapproved, unapproved or counterfeit parts, it shall immediately notify DMTL. When requested by DMTL, the Seller shall provide authorised supplier documentation that authenticates traceability of the parts

#### **7. RECORD RETENTION**

7.1 Any products supplied must be traceable. The identification of material shall include but not be limited to the following information where appropriate: date, specification, lot numbers and expiry dates etc. DMTL requires the Seller to retain records relating to our purchase order in accordance with the Seller's document retention procedure or as specified by contract and to flow relevant information down the supply chain. DMTL, our customers, the government or regulatory representatives shall have access to The Seller's facilities and any applicable documented information pertaining to purchase orders, at any level of the supply chain.

#### **8. QUALITY MANAGEMENT SYSTEM**

8.1 The seller shall have in place a suitable implemented Quality Management System

8.2 DMTL reserves the right to review and approve any Quality Management System

#### **9. INVOLVEMENT**

9.1 The Seller will ensure that persons under their control are aware of their contribution to product or service quality, product safety and the importance of acceptable, ethical behaviour. This awareness will be promoted within the Seller's organisation and flowed down to relevant external providers

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10. CONFIDENTIALITY

10.1 Confidential information is information that has not been made public by us or with our authority

10.2 The Seller will receive and maintain all confidential information disclosed or delivered to it in strict confidence and will only use it for the purpose of the sale

10.3 where disclosure is necessary to officers, employees or agents of the Seller's company, such persons also agree to be bound by the terms and conditions of this agreement