

DEPE GEAR COMPANY LIMITED
CONDITIONS OF SALE OF GOODS AND/OR SERVICES

General

DePe and the Customer have agreed that DePe shall provide the Goods (as defined below) in accordance with these terms and conditions.

Whereby it is agreed as follows:-

1. INTERPRETATION

1.1 Definitions

In these Conditions, the following definitions apply:

DePe: means DePe Gear Company Limited or any subsidiary or holding company or associate thereof (as such terms are defined in the Companies Act 2006 (as amended from time to time)).

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 12.6.

Contract: any contract between DePe and the Customer for the supply of Goods and/or Services made in accordance with these Conditions.

Customer: the individual, firm, company or other party from whom an Order is received by DePe.

Force Majeure Event: has the meaning given in clause 12.

Goods: the goods (or any part of them) set out or referred to in the relevant Order or the Order acknowledgment issued by DePe (where there is a conflict between Order and Order acknowledgment the acknowledgment will prevail) or otherwise agreed as being the Goods by the parties.

Order: the Customer's order for the Goods.

Services: the services, supplied by DePe or its selected sub-contractor to the Customer as set out in the Service Specification below.

DePe Materials: has the meaning set out in clause 7.1(g).

Service Specification: the written description or specification of the Services provided by DePe to the Customer.

Specification: any specification for the Goods that is agreed in writing by the Customer and DePe, or in the absence of agreement the specification for the Goods as set out in DePe's technical files approved by the BSI.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract (and to any sales of Goods and/or Services from DePe to the Customer) to the exclusion of any other conflicting terms and/or standard terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when DePe issues a written acceptance of the Order (or upon electronic confirmation), at which point the Contract shall come into existence.

2.4 The Customer is deemed to acknowledge that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of DePe.

2.5 Save as expressly set out in these terms or in any Order or Order acknowledgement but only to the extent expressly stated any samples, drawings, descriptive matter, or advertising produced by DePe and any descriptions or illustrations contained in DePe catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the Contract or have any contractual force.

2.6 Any quotation given by DePe shall not constitute an offer. A quotation shall only be valid for a period of 60 Business Days from its date of issue.

3. GOODS

3.1 The Goods are described in DePe's data sheets as set out on its website as modified by any applicable Specification.

3.2 DePe reserves the right to amend any Specification if required by any applicable statutory or regulatory requirements.

3.3 If the quoted price includes carriage, point of delivery will be deemed to take place at the point of entry to the Customer's works or site specified in the Contract. Unless otherwise stated, DePe will not be responsible for

offloading. The method of carriage shall be selected by DePe at its discretion.

3.4 If the quoted price for the Goods does not include carriage, point of delivery will take place when the goods leave DePe's works, however transported.

3.5 Notwithstanding that title in the Goods shall not pass until payment, all Goods shall be at the risk of the Customer from the point of delivery (see further clause 5) .

3.6 Where the quoted price includes carriage, DePe shall not be liable for loss or damage in transit unless the notice of such loss or damage is given to the carriers and to DePe verbally within 24 hours and in writing within 5 days of point of delivery.

3.7 DePe may arrange specific types of carriage at the request and cost of the Customer as agent of the Customer only and without liability or obligation on the part of DePe.

3.8 If through instructions or lack of instructions from the Customer, DePe is unable to despatch the Goods within seven days after the date of notification that they are ready for despatch, the Goods will be deemed to have been delivered and DePe shall be entitled to arrange insurance and storage within its own works or elsewhere on behalf of the Customer and the Customer will pay DePe reasonable charges incurred for such insurance or storage. The goods shall be invoiced and the customer must pay within the normal agreed terms of payment.

3.9 DePe is not responsible for export demurrage charges and/or customs charges or additional costs resulting from delay in unloading.

3.10 Any dates quoted for delivery of Goods are estimates only. No warranty is given for the specific time of delivery. Time of delivery is not of the essence. DePe shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide DePe with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, or in any event any delay which is less than 4 months from the original estimated time of delivery.

3.11 If DePe fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

4. WARRANTY FOR SUPPLY OF GOODS

4.1

(a) DePe warrants that on the point of delivery, and (unless specifically agreed otherwise before order placement) for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall conform in all material respects with their description and any applicable Specification.

4.2 Subject to clause 4.3, if:

(a) the Customer gives notice in writing to DePe during the Warranty Period that some or all of the Goods do not comply with the warranty set out in clause 4.1;

(b) DePe is given a reasonable opportunity of examining such Goods; and

(c) The Customer makes the Goods available in a safe and above ground location where DePe can reasonably undertake any remedial works necessary,

DePe shall, at its option, (i) repair or replace the defective Goods, or (ii) refund the price paid or to be paid for the element of the Goods found to be defective or (iii) where DePe have worked upon materials supplied by the Customer refund the contract price of the works undertaken pro rata in proportion to the amount of the Goods found to be defective.

4.3 DePe shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 in any of the following events:

(a) the Customer, and/or end user and/or installer failed to follow DePe's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(b) the Customer and/or end user and/or installer alters or repairs such Goods without the written consent of DePe; or

(c) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

4.4 Save for such terms as are implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 (as

amended from time to time) all other implied terms are expressly excluded from the Contract.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Customer from the point of delivery.

5.2 Title to the Goods shall not pass to the Customer until:

- (a) DePe receives payment in full (in cash or cleared funds) for the Goods and any other goods that DePe has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; unless
- (b) (in circumstances where the Customer is a mercantile agent and it resells the Goods in the normal course of trade); in which case title to the Goods shall pass to the Customer at the time specified in clause 5.4.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as DePe property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify DePe immediately if it becomes subject to any of the events listed in clause 9.2; and
- (e) give DePe such information relating to the Goods as DePe may require from time to time.

5.4 Subject to clause 5.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before DePe receives payment for the Goods (as principal and not as DePe's agent) in which event title to the Goods shall pass to the Customer immediately before the time of resale. However, if the Customer resells the Goods before DePe receives payment for them the Customer will hold on trust for DePe so much of the proceeds of sale received by it, under contracts which include any of the Goods hereby sold either in their original or altered state, as are necessary to discharge payment in full to DePe.

5.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.2, then, without limiting any other right or remedy DePe may have:

- (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
- (b) DePe may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. WARRANTY FOR SUPPLY OF SERVICES

6.1 DePe shall provide the Services to the Customer in accordance with the Service Specification in all material respects.

6.2 Any performance dates specified by DePe for delivery or completion of the Services shall be estimates only and time shall not be of the essence for the performance of the Services. DePe shall have no liability for delay in the delivery of Services provided that such Services are delivered within 4 months of when estimated.

6.3 DePe shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and DePe shall notify the Customer in any such event.

6.4 DePe warrants that the Services will correspond with their description.

6.5 All implied terms pertaining to the skill and care with which the services are provided are expressly excluded.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

(a) ensure that the terms of the Order and (if submitted by the Customer) the Goods Specification and/or Service Specification are complete and accurate;

(b) co-operate with DePe in all matters relating to the Services;

(c) provide DePe, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by DePe to provide the Services;

(d) provide DePe with such information and materials as DePe may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;

(e) at the customer's cost prepare in all material respects the property and/or area (if not owned or occupied by DePe) where the Services are to be deployed for the supply of the Services and prepare in all material respects any relevant items which are intended to be the subject of the Services so that the Services may begin on time and without delay or further preparatory work not specifically agreed and costed by DePe;

(f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start; and

(g) keep and maintain all materials, equipment, documents and other property of DePe (**DePe Materials**) at the Customer's premises in safe custody at its own risk, maintain DePe Materials in good condition until returned to DePe, and not dispose of or use DePe Materials other than in accordance with DePe's written instructions or authorisation.

7.2 If DePe's performance of any of its obligations in respect of the Services or the Goods is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

(a) DePe shall without limiting its other rights or remedies have the right to suspend performance of the Services and/or further delivery of the Goods until the Customer remedies the Customer Default, and DePe shall be relieved from the performance of any of its obligations to the extent the Customer Default prevents or delays DePe's performance of any of its obligations;

(b) DePe shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from DePe's failure or delay to perform any of its obligations caused directly or indirectly by a Customer Default; and

(c) the Customer shall reimburse DePe on written demand for any costs or losses sustained or incurred by DePe arising directly or indirectly from the Customer Default.

8. CHARGES AND PAYMENT

8.1 The price of the Goods shall be the price as agreed between the parties or, if no price is agreed, the price set out in DePe's published price list in force as at the date of delivery.

8.2 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

8.3 The charges for Services shall be as quoted by DePe. In the absence of DePe providing a quote or the parties otherwise agreeing the price DePe shall be entitled to charge a fair sum having regard to all the circumstances as if agreement had been reached between a willing buyer and seller.

(a) If extra works are required over and above that estimated by DePe when quoting for the Services for any reason other than which is DePe's sole responsibility then DePe shall be entitled to charge additional sums to that quoted on a Pro Rata basis. Similarly if the works take longer than was anticipated by DePe or are delayed for any reason other than which is DePe's sole responsibility DePe may charge additional sums on a Pro-Rata basis.

(b) DePe shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom DePe engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by DePe for the performance of the Services, and for the cost of any materials.

8.4 DePe reserves the right to:

- (a) increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to DePe that is due to:
- (i) any factor beyond the control of DePe (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
 - (iii) any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give DePe adequate or accurate information or instructions in respect of the Goods.
- 8.5 Unless otherwise expressly agreed between the parties, in respect of Goods, DePe shall invoice the Customer on or at any time after completion of delivery. In respect of Services, DePe shall be entitled invoice the Customer weekly in arrears.
- 8.6 The Customer shall pay each invoice submitted by DePe:
- (a) By the end of month following month of despatch
 - (b) in full and in cleared funds to a bank account nominated in writing by DePe, and
- time for payment shall be of the essence of the Contract.
- 8.7 The price of the Goods and/or Services is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from DePe, pay to DePe such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 8.8 If the Customer fails to make any payment due to DePe under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 5% per annum above the Bank Of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 8.9 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). DePe may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by DePe to the Customer.
- 9. TERMINATION AND SUSPENSION**
- 9.1 If the Customer becomes subject to any of the events listed in clause 9.2, DePe may terminate the Contract with immediate effect by giving written notice to the Customer.
- 9.2 For the purposes of clause 9.1, the relevant events are:
- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (d) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - (e) (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - (f) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - (g) (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - (h) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a) to clause 9.2(f) (inclusive);
 - (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - (k) the Customer's financial position deteriorates to such an extent that in DePe's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
 - (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 9.3 Without limiting its other rights or remedies, DePe may suspend provision of the Goods and/or Services under the Contract or any other contract between the Customer and DePe if the Customer becomes subject to any of the events listed in clause 9.2(a) to clause 9.2(l), or DePe reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due to DePe on the due date for payment. DePe shall have no liability to the Customer for suspension properly exercised under this clause.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to DePe all of DePe's outstanding unpaid invoices and interest.
- 9.5 Termination of the Contract, however arising, shall not affect either of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 9.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 10. LIMITATION OF LIABILITY UK CONTRACTS**
- 10.1 .
- 10.2 Nothing in these Conditions shall limit or exclude DePe liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (d) breach of the terms implied by Section 2 of the Supply of Goods and Services Act 1982;
 - (e) defective products under the Consumer Protection Act 1987; or
 - (f) any matter in respect of which it would be unlawful for DePe to exclude or restrict liability.
- 10.3 Subject to clause 10.2 DePe shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise or that of its agents, or employees, for:
- (a) any loss of profit; or
 - (b) loss of business, depletion of goodwill and/or similar losses; or
 - (c) loss of anticipated savings; or
 - (d) loss of goods; or
 - (e) loss of contract; or

- (f) loss of use; or
- (g) loss of production, shut down or none operation; or
- (h) the cost of demobilisation, disassembly or reconstruction; or
- (i) the cost of renting or leasing a back-up unit, cost of renting or leasing a crane and any form of manipulator, costs of transportation for obtaining replacement equipment or components;
- (j) loss or corruption of data or information; or
- (k) any loss of government grant or similar financial allocation; or
- (l) any loss of trust status or similar; or
- (m) any special loss;
- (n) any indirect loss;
- (o) any consequential loss; or
- (p) any pure economic loss, costs, damages, charges or expenses.

10.4 (a) All free issue material, equipment and goods provided by the Customer and intended for incorporation into the works of DePe shall be at the Customer risk as regards any loss or damage howsoever caused

((b) If such loss is caused by Depe it shall process substitute materials supplied by the Customer, at no additional charge, but shall have no further liability to the Customer what so ever.

10.5 DePe's total liability to the Customer in respect of all claims arising under or in connection with the Contract shall be limited to £20,000 or the price originally agreed for the Goods and/ or Services the subject of any successful claim whichever is the lower.

10.6 Where so instructed in DePe's installation instructions for a product, the Customer accepts responsibility for the recording of the location of installation of any Goods supplied by DePe. DePe shall have no liability for additional losses or costs incurred by the Customer or its customers caused by the failure to record the precise location of installation of each individual item of Goods.

11. FORCE MAJEURE

11.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, a latent defect in a component or product not revealed by any testing prior to manufacture or delivery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of DePe's or subcontractors or DePes.

12. GENERAL

12.1 Assignment and other dealings.

- (a) DePe may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of DePe.

12.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party

may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action. For the purpose of this clause "writing" shall not include emails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by email.

12.3 Severance.

- (a) If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

12.4 Waiver.

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract 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.

12.5 Third party rights.

A person who is not a party to the Contract shall not have any rights to enforce its terms.

12.6 Variation.

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by DePe.

12.7 Governing law.

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

12.8 Jurisdiction.

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).