



## PMW Dynamics Limited

### TERMS AND CONDITION OF SALE

#### 1. Definitions

In these Conditions of Sale, the following expressions shall have the following meanings:

- 1.1 "The Company" shall mean PMW Dynamics Limited, Newman Lane, Alton, Hampshire GU34 2QW, United Kingdom
- 1.2 "The Buyer" shall mean the immediate purchaser under the Contract of Sale with the Company.
- 1.3 "The Products" shall mean the goods, products, or other equipment the subject matter of the Contract of Sale with the Company.

#### 2. General

- 2.1 Quotations are given and Orders are accepted by the Company only upon the Company's Standard Conditions of Sale as printed herein and these Conditions of Sale shall apply to the exclusion of all other conditions or terms to all contracts for the sale of Products by the Company unless (and then save only to the extent that) they are expressly excluded or varied in writing by the Company on the face of the Order Acceptance.
- 2.2 Any purported qualification of these Conditions by the Buyer and any other term or condition which the Buyer shall seek to impose (whether in the Buyer's order or acceptance of the Company's tender or quotation or otherwise) shall be invalid unless expressly accepted in writing by the Company on the face of the Order Acceptance.
- 2.3 Unless otherwise expressly stated on the face thereof a tender or quotation issued by the Company shall expire 30 days after the date thereof provided always that it shall not have been withdrawn previously by the Company.
- 2.4 All orders placed by the Buyer for Products (whether or not based on a previous tender or quotation) are subject to acceptance by the Company. An order shall only be deemed to have been accepted and a binding contract created with the Company when a written Order Acceptance has been sent by the Company to the last known address of the Buyer.

#### 3. Cancellation

- 3.1 Once a contract subsists between the Buyer and the Company, the Buyer shall not cancel the contract, except with the prior written consent of the Company, and upon terms, which

will indemnify the Company against all loss or damage, whether direct or indirect (including but without prejudice to the generality of the foregoing), loss of profit to the Company.

#### **4. Prices**

- 4.1 Where no price is agreed in writing between the Buyer and the Company the price payable by the Buyer shall be the Company's current list price when the Products are ready for collection by or despatch to the Buyer.
- 4.2 Unless otherwise clearly stated on the face thereof all prices quoted for Products in the Company's Price lists, Catalogues, Quotations and Order Acceptances are ex-works prices for the U.K. Mainland. Prices are F.O.B. English port for export Orders. Packing cases and/or stillages will be charged separately (subject as mentioned below), returnable packaging/stillages will be credited if returned to the Company's works carriage paid in good condition within one month of the date of delivery. Packing cases for export shipment are non-returnable.
- 4.3 Prices quoted include the cost of materials and labour at the date of Quotation. In the event of wage increases or increases in the cost of materials or parts of the Products supplied by sub-contractors occurring after the date of quotation but before the Products are ready for delivery, the Company reserves the right to vary its prices accordingly without notice to the Buyer. The Buyer's Order is accepted on the basis that it shall be deemed to be a term of the contract entered into that the contract will be performed at the prices ruling on the date when the Products are ready for delivery by the Company to the Buyer.
- 4.4 Notwithstanding that the delivery terms for the Products may be ex-works or F.O.B. (as the case may be) the Company will if requested in writing by the Buyer at the cost of the Buyer arrange for the delivery of the Products to an address specified by the Buyer and in such event the Buyer shall reimburse the Company for all the cost of packing, insurance, freight and carriage, of the Products provided that nothing in this subclause shall be taken or read so as to exclude or amend the provisions of paragraph (7.2) of Conditions 7 hereof.
- 4.5 Where applicable Value Added Tax at the appropriate rate will be added to the price payable by the Buyer determined in accordance with preceding paragraphs of this condition and shall also be payable by the Buyer.
- 4.6 The total price payable by the Buyer for the Products ("the invoice price") shall be the price determined in accordance with the preceding paragraphs of this Condition together with any storage charges incurred pursuant to Condition 7.3 below.
- 4.7 The Buyer shall not be entitled to any right of set-off in relation to the invoice price with respect to amounts (if any) due and owing by the Company to the Buyer.

## **5. Terms of Payment**

- 5.1 The terms of payment specified in the Company's Order Acceptance shall apply to the Contract, and if none be specified, unless the Buyer has an approved account with the Company, payment of the invoice price shall be made in full at the time when the Products are ready for delivery. Where the Buyer has an approved account with the Company, payment of the invoice price shall be made in full in cash not later than the 30 days following the date of invoice. Any further sums which may become due to the Company over and above the invoice price, howsoever arising shall be paid in full at the same time as the invoice price, if arising after that time, shall be paid on demand.
- 5.2 Unless otherwise expressly agreed in writing, all payments shall be made in sterling in London.
- 5.3 If for any reason the Buyer is unable or unwilling to take delivery when the Products are ready for delivery or if delays of any kind arise through causes beyond the Company's control or if there be minor defects in the goods which do not substantially affect their commercial use, payment of the products must not be withheld or deferred.
- 5.4 Without prejudice to the Company's right to immediate payment the Company shall be entitled to interest on any sum payable in accordance with the terms of payment at a rate of 1.5% per month computed from the date upon which the sum becomes payable until the date of actual payment and the Buyer shall be liable for all the costs and expenses (including legal costs) incurred by the Company in the collection of any outstanding sums.
- 5.5 Any liability of whatsoever kind upon the Company's part is subject to the Buyer having made payment in full according to the provisions of this clause and to the performance by the Buyer of all the Buyer's other obligations to the Company under the contract.

## **6. Property**

- 6.1 The property in the Products sold or agreed to be sold by the Company will not pass to the Buyer until whichever is the latter of the following.
- a) the date upon which full payment of the invoice price is made by the Buyer to the Company; and
  - b) the date upon which the risk in the Product passes to the Buyer provided always that the Company shall nevertheless be entitled to maintain an action for the invoice price or any part thereof unpaid at any time after the due date for payment of the invoice price and in respect of such payment time shall be of the essence.

- 6.2 Until property in the Products shall have passed to the Buyer the Company may recover possession of such Products from the Buyer and resell such Products and for that purpose the Buyer agrees that the Company, its servants and agents may enter upon any land or building upon which the Products are situated and is permitted to detach the Products if they become installed in products from other sources.
- 6.3 The Buyer (acting on its own account and not as agent of the Company) may agree to sell any of the Products in its possession in the ordinary course of trading notwithstanding that the property in the goods has not then passed to it provided the Company has not required their return. Any such agreement to sell shall be subject to the passing of property under this contract and shall not prejudice the Company's title to the goods except where title becomes properly vested in some other person by the operation of any statute. The Buyer must not otherwise deal with, charge otherwise encumber or dispose of the Products until the property in the Products is passed to it.
- 6.4 It is expressly stated that the Buyer, whilst it holds Products, title in which remains with the Company, holds the Products on a fiduciary basis and is bailee for the Company.

## **7. Despatch, Delivery and Risk**

- 7.1 Any time or times quoted by the Company for delivery or despatch are to be computed from the date of the Order Acceptance or, if later, the date upon which the Company has in its possession all necessary information (if any) to be supplied by the Buyer to enable the Company to proceed with the contract. In any event any dates or periods named by the Company for despatch or delivery of the Products are approximate and given and intended as an estimate only and are deemed not to be of the essence of the Contract the Company shall not be liable to the Buyer in any way for loss or damage arising from delivery or despatch at a date later than that specified howsoever caused and such late despatch or delivery shall in no way constitute a breach of contract by the Company.
- 7.2 Delivery of the Products is to be made F.O.B. English port in the case of export orders only and EX-WORKS in the case of U.K. Orders. Upon delivery as aforesaid F.O.B. English port or EX-WORKS (as the case may require) risk in the Products will forthwith pass to the Buyer.
- 7.3 U.K. orders - if the Company shall give the Buyer notice that the products are available for delivery EX- WORKS and at the expiration of 14 days after such notice the Buyer shall not have collected them from the Company's premises the Company shall be entitled to arrange storage of the Products on behalf, and at the cost and risk, of the Buyer (either at the Company's premises or elsewhere at the option of the Company) and all storage carriage or other charges in connection therewith shall be payable by the Buyer. Notwithstanding that the property in the products may have passed to the Buyer the

Company shall have a lien upon the Products pending payment by the Buyer of such charges as aforesaid and the duty which the Company would otherwise owe as bailee of the Products to the Buyer is hereby excluded.

- 7.4 The Company reserves the right to make delivery of products by instalments and to tender a separate invoice for each instalment setting out the invoice price for such instalment. Payment for any such instalment must be made in accordance with Condition 5 hereof and any delay in the delivery of any one or more instalments shall not entitle the Buyer to refuse to accept delivery of any further instalment.

## **8. Carriage**

- 8.1 Notwithstanding that delivery is F.O.B. English port or EX-WORKS (as the case may be) the Company is prepared (if requested with the Order) to procure carriage and insurance on behalf of the Buyer at the Buyer's cost. In this event the Company shall be under no liability for damage in transit, or for loss or damage to the Products beyond the point to which the Company contracts the delivery the same and up to such point the following provisions shall apply.
- a) the Company will entertain no claim for damage in transit, shortage of delivery or loss of Products, unless in the case of damage in transit or shortage of delivery a separate notice in writing is given to the carrier concerned and to the Company within 7 days of receipt of the Products and in the case of loss of the Products, a separate notice in writing is given to the carrier concerned and to the Company and a complete claim in writing is made within 30 days of the date of consignment;
  - b) where Products are accepted from the carrier concerned without being checked the delivery book of the carrier concerned must be signed "Not examined".
  - c) the Products in respect of which any such claim is made shall be preserved intact as delivered for a period of 21 days from notification of the claim, within which time the Company shall have the right to attend at the Buyer's works to investigate the complaint.
  - d) any breach of this Condition 8 shall disentitle the Buyer to any allowance in respect of the claim.
  - e) Section 32 (2) of the Sale of Goods Act 1979 shall not apply to the contract.
  - f) Where the property in the Products has not passed to the Buyer at or before the time of delivery of the Products by the Company to the carrier concerned, the right of disposal of the Products is hereby reserved by and to the Company.

## **9. Warranty**

- 9.1 The Company guarantees that if within twelve months of delivery of the Products (EX-WORKS or F.O.B. as the case may be) the Buyer shall return carriage paid to the Company's works immediately on discovery the Products or any part thereof which the Buyer alleges to be defective together with a complete written description of the faults alleged then the Company will examine such part or parts. If the Company shall be satisfied that such Products or parts or any of them are defective as alleged and that
- a) the defects are due solely to defective materials or defective manufacture (defects due to fair wear and tear of Products or component parts in normal use excluded)
  - b) no alteration or additions have been made to the Products without the Company's prior consent; and
  - c) there has been no misuse, neglect, or failure to observe strictly any instructions relating to the operation or use of the Products then the Company will in its absolute discretion repair or replace the same (including in the case of repair, the manner of repair) as the Company shall think fit and re-deliver the repaired or replacement Products or parts (as the case may be) to the Buyer free of charge. The guarantee does not extend to any proprietary equipment or component parts not manufactured by the Company. Any part, which the Company shall decide to replace, shall become the property of the Company. The benefit of this warranty shall not be assignable by the Buyer.
- 9.2 The warranty contained in paragraph (a) of this Condition does not extend or apply to any part or parts of the Products listed as "engineering samples" on the face of the Order Acceptance.
- 9.3 The warranty given by the Company in paragraph 9.1 of the Condition in respect of the Products shall not apply to any Products manufactured or supplied by the Company to the design or specification of, or in accordance with drawings or special instructions given or furnished by, the Buyer in his Order or otherwise except where (and then only to the extent that) the Products do not comply with such specification, design, drawings or instructions as aforesaid in which event the liability of the Company shall be limited to modifying or repairing the Products so that they accord with the said specification, design, drawings or instructions.
- 9.4 Save as aforesaid in paragraph 9.1 of this Condition there are excluded from the contract with the Buyer all conditions guarantees or warranties (including but without prejudice to the generality of the foregoing any conditions, guarantees and warranties as to the capacity, quality, performance or description of any Products supplied by the Company or their suitability or fitness for any purpose or their life or wear or use under any condition whether made known to the Company or not) whether express or which but for these

Conditions of Sale would or might be deemed to be implied by statute or common law or otherwise or would or might be deemed to apply by reason of any representation whether express or implied and whether oral or in writing. This paragraph (9.4) shall not however be construed or apply so as to exclude the Company's liability under the provisions of Section 12 of the Sale of Goods Act 1979.

9.5 The liability of the Company for the acts or defaults of its servants or agents in carrying out any repair work pursuant to the warranty contained in paragraph (9.1) of this Condition shall be limited to rectifying any damage to the Products which may be caused by such servants or agents and except to that extent only the Company shall not be liable for any loss, damage, injury or expense of any kind whatsoever (including but not limited to consequential damage or expense or loss of profits or liability to third parties) which may be incurred by the Buyer in consequence of the acts or defaults of the Company or its servants or agents in providing such repairwork under the warranty. This paragraph (9.5) shall not be construed or apply so as to exclude or restrict the Company's liability for death or personal injury resulting from negligence on the part of the Company.

9.6 Save as expressly provided in these Conditions the Company shall be under no liability whatsoever in respect of any loss, damage, injury or expense whatsoever arising from any defect in the Products and in particular (but without prejudice to the generality of the foregoing) the Company shall not be liable for any consequential damage or expense or any loss of profit or any liability to third parties incurred by the Buyer in consequence of such defects. This paragraph (9.6) shall not be construed or apply so as to exclude or restrict the Company's liability for death or personal injury resulting from negligence on the part of the Company nor so as to exclude any liability arising under legislation implementing EC Council Directive 85/374/EEC.

## **10. Force Majeure**

10.1 Should delivery of any or all of the Products sold or agreed to be sold be hindered prevented or delayed by happenings or occurrences due to "force majeure" or by reason of any delays occasioned by strikes, lockouts or other labour troubles, war, fire, accident to or breakdown of machinery or due to delay enroute, delay in delivery of goods or materials by suppliers or other persons, government action, Act of God, or any cause whatsoever outside the control of the Company, the Company reserves the right to cancel or suspend deliveries without prejudice to its rights to payment for any of the Products already delivered.

10.2 In any event the Company shall not be liable in any way for loss or damage arising directly or indirectly through or in consequence of such events or happenings as are particularised in paragraph (10.1) of this Condition

#### **11. Buyers Breach or Bankruptcy**

If the Buyer makes default in paying any sum due under the contract with the Company as and when such sum becomes due, or commits any breach of any of its obligations to the Company, or if any distress or execution is levied upon the property or goods of the Buyer, or if the Buyer offers to make any arrangement with its creditors or commits any act of bankruptcy or (being a limited company) goes into liquidation (save for the purpose of amalgamation or reconstruction without insolvency) or if a receiver or manager is appointed of the whole or any part of the property or undertaking of the Buyer, the Company may forthwith either suspend all further deliveries until the default has been made good or determine the contract then subsisting so far as any further Products remain to be delivered. Any such determination shall be without prejudice to any claim that the Company might otherwise have for breach of contract. If requested the Buyer shall pay to the Company an appropriate proportion of the invoice price for the Products for work carried out prior to the date of cancellation and shall also take over and pay for at the then current prices such materials as the Buyer may have allocated for the purposes of the contract.

#### **12. Inspection**

The Company's Products are carefully inspected and where practicable submitted to the Company's standard tests at the Company's works before despatch. If tests other than those specified in the Company's Quotation, Order Acceptance or otherwise or physical tests on materials or running tests in the presence of the Buyer or his representatives are required, these will be charged for extra. Where applicable Value Added Tax at the appropriate rate will be added to such charge. If the Buyer fails to attend such tests after seven days' notice that the Company is ready to conduct such tests, the tests will proceed in the absence of the Buyer and shall be deemed to have been made in his presence and to his satisfaction. Section 34 (2) of the Sale of Goods Act 1979 shall not apply to this contract.

#### **13. Drawings etc.**

Although every reasonable precaution will be taken by the Company to ensure the accuracy of all drawings, descriptive matter, performance, weights, dimensions and shipping specifications submitted to the Buyer with the Company's Quotation or otherwise, and the descriptions and illustrations contained in the Company's catalogues, price lists and other advertising matter, the Company does not warrant the accuracy of such information which is approximate only, and intended merely to give a general idea of the Products, and no part of the same shall be deemed to form part of the contract between the Buyer and the Company and the Buyer in entering this contract admits that it has not relied upon any such matters as being representations of fact made by the Company.

#### **14. Copyright**

All drawings, specifications and other technical information supplied by the Company shall remain the property of the Company, copyright being reserved, and shall not be reproduced, in





whole or in part, without the prior written consent of the Company nor used for any purpose whatsoever other than in connection with the use or resale of the Products and shall be treated as confidential and returnable on request.

#### **15. Trademarks**

No trademark or name, patent, or patent application number, carried on any of the Products shall be erased or replaced by the Buyer without the consent of the Company.

#### **16. Notices**

Where written notice from either party to the other is required by these Conditions such notice shall be sent by pre-paid properly addressed letter (Or airmail letter as the case may require) to the last known address of the party to be served or where necessary or desirable by telegraphic means. Where these conditions require that a notice be given within a specified period such notice to be valid must reach the party to whom it is addressed within that period.

#### **17. Buyers Indemnity**

The Buyer warrants that any designs, specifications, drawings or instructions furnished or given by the Buyer with his Order or otherwise shall not be such as will cause the Company to infringe any letters patent, registered design, copyright, trade mark or trade name in the performance of the contract and the Buyer shall indemnify the Company against all damages, penalties, costs and expenses to which the Company may become liable if any work done in accordance with the Buyer's designs, specifications, drawings or instructions involves an infringement of any letters patent, registered design, trademark, copyright, trade name or other property right whatsoever.

#### **18. Industrial Property Rights**

Without prejudice to the generality of the provisions of paragraph 9.4 of Condition 9 above the Company shall not be liable to the Buyer for any liability accruing to the Buyer consequent upon the Buyer's purchase, importation, use or resale of the Products or any of them resulting in any infringement or alleged infringement of any letters, patent, registered design, trademark, trade name, copyright, or other property right whatsoever.

#### **19. Published Data and Advice**

The descriptions, illustrations, dimensions, and other particulars contained in any Company publication are given in good faith, but are not intended to, and do not, constitute any guarantee or warranty given by the Company nor form part of any contract. All advice, recommendation and calculations are offered to the best of our current knowledge and, require actual life testing to confirm fitness for purpose.

## **20. Tools**

Tools made for the manufacture of piece parts remain the Company's property notwithstanding that the Buyer may have been charged with any sum in respect of the cost thereof. Provided however that such tools shall be transferred to him without further payment if the Company shall go into liquidation (except for the purpose of amalgamation or reconstruction) and if the Buyer shall have discharged all his liabilities to the Company whether under the contract or otherwise.

## **21. Proper Law**

The contract between the Company and the Buyer shall be governed by and construed in accordance with English law and The Uniform Laws of International Sales Act 1967 shall not apply. The Buyer hereby agrees to submit to the non-exclusive jurisdiction of the English courts.

## **22. Licenses and Duties**

The payment of any taxes and the obtaining and maintenance in full force and effect of any necessary export and import licences, authorisations, and consents in respect of the Products is the sole responsibility of the Buyer and the Company shall be under no liability whatsoever in respect of Products exported or imported without any necessary licences, authorisations, or consents.

## **23. Health and Safety at Work Act etc. 1974**

23.1 The Buyer shall if requested by the Company promptly deliver to the Company an undertaking (in a form to be approved by the Company) on the part of the Buyer in accordance with Section (6) (8) of the Health and Safety at Work etc. Act 1974.

23.2 The Buyer shall indemnify the Company from and against all actions, claims, demands, expenses and all liability whatsoever which may be made against or sustained, paid or incurred by, the Company by reason or in consequence of any failure by the Buyer to disseminate to its employees any information given by the Company to the Buyer about the Products, or to take such steps as are communicated in writing by the Company to the Buyer and such other necessary steps to ensure, so far as reasonably practicable, that the Products will be safe and without risks to health when properly used.

## **24. Hire Work**

24.1 Hire work and work involving the use of the Buyer's materials is undertaken by the Company only on the express understanding that the Company cannot be responsible for any distortion, faults or defects which appear or develop during, or are caused by, the work, however arising, even resulting from any fault or negligence or mistake of the Company. The Company gives no guarantee or warranty of any kind but subject to the availability of capacity and facilities it will endeavour to correct any such distortion, faults or defects at the Buyer's expense and risk. The Company shall not in any circumstances be liable for



damages, compensation, costs, expenses, losses, or other liabilities, whether direct or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law.

- 24.2 The Buyer agrees that it will reimburse the Company for any damage caused to any plant or machinery of the Company by the material supplied by the Buyer to the Company.