

Terms and Conditions of Trading ("Conditions") of **DC Space and Storage Solution Ltd** ("**DC Direct/Us/Our/Ours/ We**") company registration number 10897225 registered office Westward House, Cofton Road, Marsh Barton, Exeter, Devon EX2 8QW, VAT registration number 341 3779 96.

## 1. Interpretation

1.1 These Conditions apply to all contracts with Our Customers ("**Customer**" "**You/Your/s**") for the supply of goods ("**Goods**") and the provision of services by Us ("**Services**").

1.2 In these Conditions:

1.2.1 reference to a party includes its personal representatives, successors or permitted assigns;

1.2.2 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted; and

1.2.3 any phrase introduced by the terms including, include, in particular or any similar expression, shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## 2. Basis of Contract

2.1 Orders for Goods and/or Services placed with Us may be placed in writing, by telephone or by email, but in all cases will be subject to Our written acceptance. The contract between You and Us will become legally binding only when We have notified You in writing of Our acceptance of Your order. Accepted orders will be deemed to incorporate these Conditions and will form part of the contract "**Contract**" with You.

2.2 The Contract overrides any other previous statements, promises, representations and undertakings given or made by Us in relation to the subject matter of the Contract which are not set out in the Contract including brochures, Our website, specifications and advertising and the Contract excludes all such items and all other terms not set out in the Contract, including those implied by trade and/or custom and practice (and you acknowledge that you have not relied on any of these such things).

2.3 Quotations provided by Us (whether written or oral) do not constitute offers and We may withdraw them at any time without giving You notice. Quotations will automatically lapse 30 days after the date of the quotation unless We agree otherwise in writing.

2.4 We reserve the right to make any changes to the Goods and/or Services that may be necessary to comply with applicable law or safety requirements, or which do not materially affect the nature or quality of the Goods and/or Services.

2.5 In the event of any conflict or inconsistency between the terms of an order which We have accepted including any terms marked as " Special Conditions" and these Conditions, the order which is accepted by Us (including any Special Conditions) will take priority.

## 3. Price

3.1 The price for the Goods and/or Services will be as specified on the written quotation We give to You. Unless otherwise itemised on the order acceptance, the price quoted includes delivery to one mainland UK location. VAT will be charged in addition at the rate applying at the time of delivery of the Goods and/or performance of the Services.

3.2 The price excludes all other taxes which may be applicable, and You shall pay any such tax in addition to the price.

## 4. Supply of the Goods or Services

It is Your obligation to ensure that there is no asbestos or other such hazardous material on Your site. If when We attend Your site We become aware of such hazardous materials, We will be unable to continue and a return visit will be subject to an additional fee.

### Specifications

4.1 Where We supply Goods or Services in accordance with Your specifications, drawings, instructions or designs ("**Specification**"), You shall ensure that the Specification is in writing, is accurate and is provided in good time in order for Us to fulfil your order.

4.2 Without prejudice to clause 4.1, where We provide any design services or conduct any site survey at Your premises prior to providing a quotation ("**Site Survey**") in relation to the Goods or Services, You must check and confirm that Your instructions have been interpreted correctly and We may request that you sign and return a copy of the Specification or Site Survey to confirm that You have ensured that the agreed design meets Your Specification or requirements. You acknowledge and agree that no further Services will be

provided, and no Goods delivered in accordance with your order until We have received the returned signed copy of the Specification or Site Survey. We shall have no liability for errors in any Specification or details supplied and/ or approved by You.

### **Installations**

4.3 Where We provide installation Services to You, You must ensure that:

- 4.3.1 You provide Us with access to the installation location promptly upon arrival at Your premises;
- 4.3.2 the installation area and access to it are clear and free from obstacles for the duration of the installation;
- 4.3.3 facilities including electricity, lighting and water are readily available to Us;
- 4.3.4 the flooring in the installation is suitable for the installation.

4.4 Where You do not comply with Your obligations in clause 4.3, We reserve the right to charge You for any additional costs or losses that We incur as a result of any delay in the installation.

4.5 We do not accept any liability for any defect or damage to and Goods supplied and/or installed by Us resulting from any modifications or alterations performed by anyone other than Us.

### **Inspections**

4.6 Where We provide inspection Services to You, You must ensure that:

- 4.6.1 You provide Us with access to the inspection location promptly upon arrival at Your premises;
- 4.6.2 the inspection area and access to it are clear and free from obstacles for the duration of the installation; and
- 4.6.3 facilities including electricity, lighting and water are readily available to Us.

4.7 We will inspect only those areas and items that we can easily locate and access. We will not empty the location or any racking, shelves or other such things and We accept no liability in respect of being unable to gain access to any areas for inspection purposes.

4.8 Where You do not comply with Your obligations in clause 4.6, We reserve the right to charge You for any additional costs or losses that We incur as a result of any delay in the inspection.

### **Maintenance**

4.9 Where We provide any maintenance Services to You, You must ensure that:

- 4.9.1 You provide Us with access to equipment being maintained promptly upon arrival at Your premises; and
- 4.9.2 the area and access to it are clear and free from obstacles for the duration of the maintenance work; and
- 4.9.3 facilities including electricity, lighting and water are readily available to Us.

4.10 Where You do not comply with Your obligations in clause 4.9, We reserve the right to charge You for any additional costs or losses that We incur as a result of any delay in the inspection.

4.11 When We undertake maintenance work on Your behalf, We may, in Our absolute discretion, use re-conditioned parts.

4.12 Where We carry out maintenance services on Goods that We have not supplied to You, We do not accept any liability if Our maintenance work invalidates any warranty that You might have with Your supplier of the Goods.

## **5. Intellectual Property Rights**

5.1 For the purpose of this clause 5 "**Intellectual Property Rights**" mean all patents, rights to inventions, utility models, copyright and related rights, trade-marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world from time to time.

5.2 The Intellectual Property Rights in any materials, Software and/or equipment, in whatever form, existing prior to the entering into of a Contract, or developed solely by one party entirely independently and unrelated to the Contract, shall be owned by the developing party.

5.3 The Intellectual Property Rights in any materials, Software and/or equipment, including drawings, designs, specifications or data, developed or produced by Us in pursuance of a Contract shall remain vested in Us unless We specifically agree otherwise in writing.

## **6. Cancellation**

6.1 We may suspend or cancel the Contract or any part of it, by written notice if:

- 6.1.1 You fail to pay Us any money when due (under the Contract or otherwise); or

6.1.2 You go into liquidation or a winding up petition is presented in respect of your business (other than for the purpose of a solvent bona fide reconstruction) and such petition is not discharged within 7 days of its presentation or an order is made for the appointment of an administrator or documents are filed for the appointment of an administrator or notice of intention to appoint an administrator is given by You, Your directors or a qualifying floating charge holder, or a receiver or administrative receiver is appointed over the whole or any part of the assets of Your business or You propose to enter or make any arrangement or composition with Your creditors or make an application to a court for the protection of Your creditors in any way, are otherwise unable to pay Your debts (within the meaning of any relevant insolvency law) or You are the subject of any similar event in any jurisdiction.

6.2 Subject to clause 8.2, You may only cancel the Contract or any part of it if We agree in writing and, in such circumstances, You shall pay to Us all costs incurred up to cancellation, including (but not limited to):

6.2.1. any material, processing and manufacturing costs; and

6.2.2 the price of specialist/customer specific goods and/or Services; and

6.2.3 costs of failed delivery attempts; and

6.2.4 any other costs related to the Contract which We have incurred which are notified by Us to You.

## **7. Return of Goods**

7.1 We may, in Our sole discretion, accept the return of Goods from You:

7.1.1 if We have expressly agreed to do so in writing; and

7.1.2 if the Goods are a standard stock item when You request the return; and

7.1.3 on payment of an agreed handling charge; and

7.1.4 in all cases, where the Goods are returned in the same condition as when We supplied them to You.

7.2 You may not return bespoke Goods or Goods made to your specification unless they are faulty.

## **8. Delivery**

8.1 We shall use Our reasonable endeavours to meet any performance dates and times specified in the Contract but any such dates and times including all delivery times are estimates only and time shall not be of the essence for delivery of Goods and/or performance of the Services.

8.2 If You accept delivery of the Goods or performance of the Services after any estimated delivery or performance time given by Us, delivery or performance will be deemed to have been in accordance with the Contract.

8.3 We may deliver the Goods in instalments. Each instalment will be treated as a separate contract.

8.4 If delivery does not take place because You are at fault or for reasons beyond Our control, We may charge You in respect of any wasted time and costs incurred by Us in respect of the failed delivery and We may store and insure the Goods at Your expense. In such circumstances, We will use reasonable endeavours to attempt to deliver the Goods, but We have the right to sell them after a period of 14 days has passed since the original delivery attempt. We may recover from the proceeds of such sale, any costs of storage and insurance together with Our costs of attempting to deliver the Goods together with the unpaid balance of the sale price of those Goods as at the day of failed delivery. In the event that the sale proceeds are insufficient to cover the costs and sale price, We may invoice you for the shortfall, and you shall pay to Us those sums in accordance with clause 9.

8.6 Unless We agree otherwise, neither We nor Our carriers will be responsible for unloading the Goods at Your premises. You are responsible for providing sufficient labour and materials for unloading the Goods at Your premises.

8.7 We may decline to deliver the Goods if:

8.7.1 We believe, or Our carrier believes, that it would be unsafe, unlawful or unreasonably difficult to do so; or

8.7.2 the premises, or the access to them, are unsuitable for Our or the carrier's delivery vehicle.

Any unforeseen additional costs resulting from any need for Us or Our carrier to make repeat or abortive delivery attempts as a result of such delivery issues may be invoiced separately and must be paid for by you in accordance with clause 9.

8.8 Delivery will be deemed to have taken place:

8.8.1 at Our premises when You collect the Goods; or

8.8.2 at the agreed delivery address, when You have unloaded the Goods (where We have agreed to arrange carriage).

8.9 We will give You notice of the planned delivery date of the Goods and Services. If You cancel the delivery or request an alternative delivery date less than 24 hours in advance, We will be entitled to charge You for any cost incurred in rearranging the delivery.

## **9. Payment and Credit Terms**

9.1 Subject to clause 9.2, You shall pay Us the price quoted for the Goods and/or Services (as applicable) in accordance with the relevant invoice issued by Us, by the method that We agree with You, on or before delivery of the Goods and/or performance of the Services (as applicable). If You fail to do so, We may decline to deliver the Goods and/or perform the Services.

9.2 We may ask You to pay a deposit in advance of the supply of any Goods and/or provision of Services and may at any time during the performance of the contract request that payment be made by instalments.

9.3 If you have an approved credit account with Us, You shall pay Us by the method agreed by Us no later than the end of the month following the month of delivery of Goods/performance of Services (as applicable) unless We agree otherwise in writing. Where We have agreed a credit account with You, We may still, at Our discretion, ask you to make a proforma payment or to pay a deposit for certain Goods or Services.

9.4 We may, in Our absolute discretion, decline any application for a credit account and We are not obliged to give any reason for such decision.

9.5 In the event that We agree credit terms with You, We may, at Our discretion, and without liability to You, at any time and without notice:

9.5.1 withdraw Your credit account; or

9.5.2 reduce Your credit limit or

9.5.3 bring forward Your due date for payment.

9.6 By placing an order with Us or applying for a credit account with Us, You:

9.6.1 consent to Us carrying out such credit referencing and other due diligence as We consider appropriate on an ongoing basis; and

9.6.2 agree that You shall, when We ask You to, provide us with any information that We reasonably request in relation to Your business operations and/or finances in order to ascertain Your creditworthiness.

9.5 If You fail to pay Us in full for any sums due to Us on the due payment date:

9.7.1 We may suspend or cancel future deliveries of Goods and/or provision of Services under any contract;

9.7.2 We may cancel any discount offered to You; and

9.7.3 You shall pay Us interest on the overdue amount at the rate of 4% per annum above Nat West Bank Plc's base rate from time to time. Such interest will accrue on a daily basis from the due date until actual payment of the overdue amount. You will pay the interest together with the overdue amount.

9.8 You do not have the right to set off any money You may claim from Us against anything You may owe Us.

## **10. Title and Risk**

10.1 Where We provide Goods, title to the Goods shall pass to You when We have received:

10.1.1 all amounts due to Us under the Contract in respect of the Goods and Services; and

10.1.2 all other sums due to Us from You which are outstanding.

10.2 The Goods are at Your risk from the time of delivery in accordance with clause 8.

10.3 Until the date on which title to the Goods passes to You in accordance with clause 10.1, all Goods shall remain Our property and:

10.3.1 You shall store them at Your own cost separately from all other goods so that they are clearly identifiable as Our property and in or on premises to which You are able to grant Us access in accordance with clause 10.4; and

10.3.2 You shall insure them and keep them insured for the full amount due to Us and ensure that Our interest is noted on the policy.

10.4 We may, where title to the Goods remains with Us, recover and resell the Goods and You now grant to Us an irrevocable licence to enter any premises owned and/or controlled by You in order for Us to inspect the Goods and/or recover and sell the Goods where you have not paid all sums due to Us.

10.5 If you fail to pay any sums owed to Us by the due date for payment in accordance with a relevant invoice, notwithstanding Our retention of title to the Goods under this clause 10, We have the right to take legal proceedings to recover the price of Goods/Services supplied together with interest.

## **11. Third Party Contractors**

11.1 By entering into a Contract you agree that We may use third party suppliers and contractors to carry Our contractual obligations to You.

## **12. Warranties, Indemnity and Liability**

12.1 Subject to clauses 4, clauses 12.2 to 12.6 and clauses 12.7 to 12.9, We warrant that:

12.1.1 the Goods and Services will conform to the Specification; and

12.1.2 the Services will be provided with reasonable care and skill.

12.2 Except as set out in clause 12.1 We give no other warranties and We exclude, to the fullest extent permitted by law, all warranties, terms and conditions that would otherwise be implied into the Contract, including all warranties implied by law, custom and practice and course of dealing as to the quality of Goods and/or Services and their fitness for purpose.

12.3 You are responsible for ensuring, and warrant to Us that:

12.3.1 the Specification is complete, accurate and fit for Your purposes; and

12.3.2 the Services provided are suitable for Your purposes.

12.4 Subject to clause 12.9 We shall not be liable, whether in contract (including fundamental breach), tort (including negligence), breach of statutory duty or otherwise for any defect in the Goods or the Services which:

12.4.1 is caused by a breach of any of the warranties given at clause 12.3; or

12.4.2 are produced to the Specification.

12.5 You shall inspect the Goods on delivery. If any Goods are defective on delivery (or only partially delivered) You must mark the advice note accordingly and You:

12.5.1 shall inform Us in writing, with full details, before their use or resale and in any event within 7 days of delivery; and

12.5.2 shall allow Us and any carrier to investigate the alleged defect or non-delivery; and

12.5.3 grant Us access to Your premises and any premises You control and the Goods for the purpose of investigating the alleged defect and We shall not be liable, whether in contract (including fundamental breach), tort (including negligence), breach of statutory duty or otherwise for any defect which would have been obvious had a reasonable inspection of the Goods been carried out by You on delivery.

12.6 If, following Our investigations, the Goods have not been delivered or any Goods or Services delivered are found not to be in accordance with clause 12.1, and You have complied in full with clauses 8.7 and 12.5 We shall, at Our sole option replace or repair the Goods, re-perform the Services or refund the price of the finished Goods.

12.7 Subject to clause 12.9, We shall not be liable to You or to any person claiming through You, whether in contract (including fundamental breach), tort (including negligence), breach of statutory duty or otherwise for any indirect or consequential loss, financial loss, loss of profits, loss of business revenue, loss of contracts, loss of goodwill, or loss of use arising from the Contract, any collateral contract, the supply of Goods or their use or the provision of Services.

12.8 Subject to clause 12.9, Our liability to You for all other losses arising under or in connection with the Contract, whether in contract (including fundamental breach), tort (including negligence), breach of statutory duty or otherwise shall be limited to the price of the Goods or Services (as applicable).

12.9 Nothing in the Contract restricts or limits Our liability for death or personal injury resulting from negligence, for fraud or for any other liability which may not be excluded or restricted by law.

12.10 You shall indemnify and keep Us indemnified in full and on demand from all costs, proceedings, actions, claims or demands, liabilities, losses, damages and obligations which We may incur or for which We may be liable (including legal costs and expenses) arising out of or in connection with:

12.10.1 the Specification infringing or being alleged to infringe third party Intellectual Property Rights; and/or

12.10.2 the Specification and Goods made to the Specification not being fit for Your purposes.

## **13. General**

13.1 Any waiver of a part of the Contract is binding only if it is made by Us in writing and expressly states an intention to waive a part of these Conditions. Such a waiver shall not be deemed to be a waiver of any subsequent breach or default.

13.2 No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single

or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

13.3 Any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by Us.

13.4 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties. No party shall have authority to act as agent for, or to bind, the other party in any way.

13.5 If We are unable to perform Our obligations to You under the Contract (or We are only able to perform them at unreasonable cost) because of a Force Majeure Event We may, without liability to You, cancel or suspend any of Our obligations to You by giving you 7 days notice. If the Force Majeure Event continues for a period of 90 days, You may terminate the Contract on 7 days notice to Us and without liability to Us. For the purpose of this clause 13.5 "Force majeure" means an event beyond Our reasonable control including strikes, lock-outs, other industrial disputes (whether involving Our workforce or the workforce of any other party), failure of a utility service or transport network, act of God, epidemic or pandemic, accident, war, riot, civil commotion, act of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, transport delays, explosion, storm, difficulty obtaining supplies or default of suppliers or subcontractors.

13.6 In order to perform this Contract We may need to disclose your personal information to relevant third parties. We shall comply with all relevant data protection legislation and shall ensure that all such relevant third parties are contractually obliged to do so too. All personal data shall be processed in accordance with Our Privacy Policy as amended from time to time.

13.7 If any of these clauses are found invalid, illegal or unenforceable:

13.7.1 it will not affect the enforceability of any other clause; and

13.7.2 if it would be enforceable if amended, it will be treated as so amended and the amended clause will be deemed to be incorporated into the Contract.

13.8 Any notice to a party which is to be served under the Contract, shall be in the English language, in writing and may be served by leaving it at or by delivering it to by pre-paid post to the other party's registered office or principal place of business. All notices shall be signed by an authorised signatory. Notices delivered by hand shall be deemed served on delivery, those by pre-paid post 3 days after posting, provided proof of posting is available. For the purposes of this clause "writing" shall include emails. Any legal notice in relation to legal proceedings under the Contract shall not be validly served if given by email.

13.9 Except where We have exercised Our rights under clause 13.10, no contract between You and Us will create any right enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999, or otherwise, by any person other than Us and You.

13.10 We may at any time assign, transfer, charge, subcontractor deal in any other manner with all or any of Our rights under the Contract.

13.11 You shall not, without Our prior written consent assign, transfer, charge, subcontract or deal in any other manner with all or any of your rights or obligations under the Contract.

13.12 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, English law and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.