

## TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES OF DYNAPAC UK LIMITED

### 1 Definitions

**“Supply”** means the supply of Goods and/or Services described in the Purchase Order; **“Buyer”** means the party buying Goods or procuring Services, who is named in the Purchase Order; **“Dynapac UK”** means Dynapac UK Limited (company No. 10662985), whose registration office is at Swallowdale Lane, Hemel Hempstead, Hertfordshire, HP2 7HA and who supplies the Goods and/or Services to Buyer; **“Purchase Order”** means an order placed on Dynapac UK by Buyer; **“Goods”** means products, consumable materials, equipment, equipment components, spare parts, software and other Goods and materials supplied by Dynapac UK to Buyer; **“Services”** means any services supplied by Dynapac UK to Buyer which are described in the Purchase Order.

### 2. Formation of Contract and Order of Precedence

- (a) A Purchase Order whether or not based upon a quotation shall not be binding on Dynapac UK unless accepted by it in writing.
- (b) These Conditions shall form part of every contract of supply entered into between Dynapac UK and Buyer. Any purported variation or exclusion (whether contained in any document of Buyer or otherwise) shall be of no effect unless accepted in writing by Dynapac UK.
- (c) Once acknowledged the Purchase Order and these Conditions shall constitute the entire agreement between Dynapac UK and Buyer for the supply of Goods and/or Services (“the Contract”).
- (d) In the event of any conflict between these Conditions and an accepted Purchase Order, the accepted Purchase Order shall prevail.
- (e) Any representations or warranties made or given by anyone on Dynapac UK’s behalf prior to its acceptance of a Purchase Order and not contained in Dynapac UK’s written quotation or Purchase Order acknowledgement are hereby expressly excluded.
- (f) Only such Goods and/or Services as are specified in Dynapac UK’s Purchase Order acknowledgement are included in the scope of the Contract.
- (g) Dynapac UK shall not be obliged to alter the performance or features of the Goods following its acceptance of Buyer’s Purchase Order unless, at its absolute discretion, it agrees in writing to do so and subject to the payment by Buyer of an extra charge.

### 3. Specifications – Intellectual Property Rights

- (a) All drawings, descriptive matter, weights, dimensions and specifications supplied by Dynapac UK are approximate only unless otherwise stated and all descriptions and illustrations contained in Dynapac UK’s catalogues, price lists and advertising are by way of general description stated by Dynapac UK in good faith based on Dynapac UK’s experience as being correct within acceptable tolerances but are approximate only, in no way are binding on Dynapac UK and do not form part of the Contract unless specifically stated to do so. Dynapac UK will supply a set of certified outline drawings after conclusion of the Contract and on request of Buyer if separately contracted to do so. Unless agreed otherwise in writing, it is Buyer’s responsibility to ascertain whether the capacity and performance of the Goods are sufficient and suitable for Buyer’s purposes.
- (b) Dynapac UK retains ownership in any technical information, drawings, specifications and other intellectual property rights relating to the Supply. All such information shall be kept confidential by Buyer and shall not be disclosed to any third party unless and until the same is or becomes public knowledge nor shall any such information be used by Buyer for any purpose other than for the purpose of using any Goods supplied under the Contract without Dynapac UK’s prior written consent. Dynapac UK’s trade marks and names and those of its associated companies shall not be used by Buyer otherwise than as applied by Dynapac UK to Goods or associated documentation.
- (c) Any software owned by Dynapac UK is installed on compatible equipment to record the performance and the use of each of these units (“the Data”). A free royalty and exclusive non-transferable license to use basic data (monthly use) is hereby granted to Buyer from the commissioning of such equipment and Dynapac UK reserves the right to use the Data as it sees fit.

### 4. Tests

- (a) The Goods are carefully inspected, and where appropriate, subject to Dynapac UK’s standard tests. Unless otherwise agreed such tests will be carried out at Dynapac UK’s premises or any of its affiliates’ premises.

- (b) If a special test or witness test in the presence of Buyer or his representative is required, this will be charged for, and in the event of Buyer failing to attend such test within 14 days of Dynapac UK giving it notice that the test is ready for performance, the test will proceed in Buyer's absence and the Goods will be deemed accepted in Buyer's absence.

#### **5. Prices**

- (a) All prices quoted by Dynapac UK are exclusive of delivery costs, packing costs and exclusive of VAT, and any other applicable taxes unless otherwise stated.
- (b) Where a Purchase Order is placed and accepted for Goods differing in size, quality, quantity or in any other way from the Goods specified in Dynapac UK's quotation, an additional charge may be applied.
- (c) Services, installation and commissioning are not included in the purchase price for the Goods.
- (d) Dynapac UK reserves the right to amend Goods and /or Services pricing as it sees fit.

#### **6. Payment - Cancellation**

- (a) Unless otherwise agreed in writing, prices quoted are strictly net and payment shall be made within 30 days from the date of invoice. Invoices will normally be issued on the date of delivery of the Goods or completion of the Services. Time is of the essence for payment of Dynapac UK invoices.
- (b) In the event of any delay in payment Dynapac UK shall be entitled to charge interest on any outstanding balance at the rate of 15% per annum or part thereof. During such period of default and at any other time when Buyer shall be in breach of the terms of the Contract or Dynapac UK shall have reasonable grounds for doubting that payment will be made on the due date, Dynapac UK shall be entitled to withhold deliveries without prejudice to its right to payment for Goods and for work undertaken and expenses incurred in connection with undelivered Goods which shall become immediately due and payable on demand.
- (c) Dynapac UK may accept or refuse, at its sole discretion, a written request for cancellation by Buyer. Without prejudice to any other rights Dynapac UK may have, upon cancellation, Buyer shall pay to Dynapac UK a compensation equivalent to (i)15% of the purchase price for standard Goods and (ii) 30% of the purchase price and/ or the cost of materials and/or labour incurred until the cancellation date, whichever is the highest amount, for non-standard Goods. Such compensation which constitutes a genuine pre-estimate of costs and losses incurred, is due within thirty (30) days from issue of the corresponding invoice.

#### **7. Delivery**

- (a) Unless otherwise agreed, the Goods shall be delivered EX WORKS (INCOTERMS 2010) and the place of delivery shall be Dynapac UK's premises. Delivery is defined in the relevant incoterm.
- (b) Dynapac UK shall endeavour to supply the Goods and Services within the time stated in the Purchase Order, but shall not be liable for late delivery unless Dynapac UK agreed to pay liquidated damages in which case liquidated damages shall constitute Buyer's sole remedy for late delivery. Liquidated damages shall be limited to no more than 5% of total purchase order.
- (c) Buyer shall take delivery of the Goods in accordance with the delivery date specified in the Contract or order acknowledgement or at the latest 5 days from Dynapac UK's notification that the Goods are ready for delivery, whichever is the latest. Buyer's obligation to take delivery of the Goods as provided in the Contract and/or Purchase Order constitutes a material obligation on Buyer.
- (d) If Buyer fails to give Dynapac UK proper delivery or transportation instructions when required or to accept delivery of the Goods when tendered in accordance with the terms of the Contract, Buyer shall be liable for all storage and other costs incurred by Dynapac UK as the result of such failure which shall be immediately due and payable on demand, but such liability shall not affect Buyer's obligation to purchase the Goods and the right of Dynapac UK to claim damages for breach of such obligation.
- (e) In the event that the Goods are delivered at a time and place agreed with Buyer but no representative of Buyer is present when the Goods are so delivered Dynapac UK reserves the right to deposit such Goods at the specified place and shall have no liability in respect of loss or damage resulting therefrom.
- (f) If Buyer fails to collect or take delivery of the Goods within 3 months of the delivery date, Dynapac UK shall be entitled, without prejudice to its other rights, to terminate all or part of the Contract and to

dispose of the Goods, and to charge Buyer (i) 15% of the purchase price for standard Goods and (ii) 30% of the purchase price or the cost of materials and labour incurred until the cancellation date, whichever is the highest amount for non-standard Goods, to be paid by Buyer within 30 days of issue of the corresponding invoice. The parties agree that such sums payable to Dynapac UK under this clause are a genuine pre-estimate of the costs and losses which Dynapac UK would suffer from Buyer not taking delivery of the Goods.

#### **8. Damage in Transit**

- (a) Where the Parties have agreed different delivery terms other than the standard Ex Works delivery, Dynapac UK shall have no liability in respect of Goods lost or damaged in transit unless such loss or damage shall occur prior to delivery; and
  - (i) in the case of a whole consignment failing to arrive, Buyer gives notice in writing to Dynapac UK within 14 days of receipt of Dynapac UK's invoice or despatch note, or
  - (ii) in any other case, Buyer gives notice in writing to Dynapac UK within seven days of the receipt of the Goods or such longer period as may be stated in the Contract.
- (b) Subject to paragraph (a), Dynapac UK's liability in respect of Goods lost in transit shall be limited to replacing such Goods and its liability in respect of Goods damaged in transit shall be determined in accordance with Clause 12.

#### **9. Acceptance**

- (a) Buyer shall not be entitled to reject the Goods or Services unless:
  - (i) within 14 days after delivery or completion or such longer period as may be agreed, Buyer shall have given notice, in writing, to Dynapac UK that the Goods or Services are not in compliance with the Contract,
  - (ii) Buyer shall have provided Dynapac UK with such access to the Goods as it requires and Dynapac UK shall have failed to remedy the defect within 30 days after receipt of Buyer's notice or such longer period as may be stated in the Contract,
  - (iii) the defect materially affects the performance of the Goods, and
  - (iv) the defect is covered by Dynapac UK's warranty in clause 11.
- (b) In the event Buyer rejects the Goods or Services, Dynapac UK shall have no liability to Buyer except for payment of any liquidated damages agreed in the Contract terms and the return of any payments made by Buyer to Dynapac UK in respect of the purchase of the Goods or Services.

#### **10. Retention of Title and Risk**

- (a) Title to the Goods shall remain in Dynapac UK name until payment in full is made by Buyer for all sums due from it to Dynapac UK on any account whatsoever.
- (b) Paragraph (a) of this clause shall not prevent Buyer from embodying the Goods in any product so long as they remain identifiable or from selling the Goods or any product embodying the Goods but, in the event of such supply (to the extent of Buyer's indebtedness to Dynapac UK in respect of the Goods) Buyer:
  - (i) shall hold the proceeds of supply or the right to receive the same on trust for Dynapac UK,
  - (ii) shall place the proceeds of supply in a separate account of Buyer in such a way as to be identifiable as in the beneficial ownership of Dynapac UK, and
  - (iii) at Dynapac UK's request, shall assign the right to receive the proceeds of supply to Dynapac
- (c) The risk in the Goods shall pass to Buyer on delivery.

#### **11. Warranty**

- (a) Except as expressly warranted below, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied as to title by Section 12 of the Supply of Goods Act 1979) are to the fullest extent permitted by law, excluded.
- (b) Subject to clauses 8 (a) and 9, Dynapac UK shall, at its option, repair, replace or credit Buyer with the whole or a due proportion of the purchase price of any Goods supplied to it by Dynapac UK in respect of which any defect shall arise under conditions of normal and proper use and maintenance (fair wear and tear, and consumables excepted) due to faulty materials or workmanship, provided that (i) the defect becomes apparent within duration of the warranty period (12 months from the date of delivery) (the duration of the warranty for spare parts is 6 months from the date of delivery), (ii)

Buyer gives notice of the defect to Dynapac UK in writing as soon as possible and no later than 7 days from when the defect was discovered; (iii) the defect is not attributable to misuse, failure to comply with Dynapac UK's instructions regarding storage, operation or maintenance, or damage caused by any factors beyond Dynapac UK's control, or fair wear and tear; (iv) the Goods have not been repaired or altered by anyone other than Dynapac UK or at Dynapac UK's direction; (v) in the case of equipment and related components, spares and parts not of Dynapac UK's own manufacture, unless otherwise required by law, Dynapac UK's responsibility shall be limited to passing on to Buyer the benefit of any guarantee or warranty given to Dynapac UK by the manufacturer of such Goods or part; (vi) the defect does not arise from Buyer's specification or instructions; and (vii) Buyer provides Dynapac UK with such access to the Goods as it requires or, at Dynapac UK's request, returns the Goods to Dynapac UK for inspection.

- (c) Dynapac UK shall have no liability to Buyer for any information or advice given to Buyer in connection with the Goods, unless confirmed in writing.
- (d) Except as provided in clauses 8, 9 and 11, Dynapac UK shall have no liability to Buyer in respect of any defect in the Goods, and all conditions and warranties, whether express or implied, as to the quality of the Goods, their fitness for any particular purpose, or their design, manufacture, materials, components, specification and performance are excluded.
- (e) Except as expressly warranted above, Services are provided "as is" and Buyer assumes the entire risk as to the results of the Services.

## **12. Limitation of Liability**

- (a) Subject to clauses 8, 9 and 11, the following provisions set out the entire liability of Dynapac UK (including any liability for the acts or omissions of its employees, agents, or sub-contractors) to Buyer in respect of: a) any breach of these Conditions; or (b) any representation, statement or tortious act or omission, including negligence, arising under or in connection with these Conditions.
- (b) Nothing in these Conditions excludes or limits the liability of Dynapac UK for: (i) death or personal injury caused by Dynapac UK's negligence or (ii) fraud or fraudulent misrepresentation or (iii) any other liability that cannot be excluded or limited by law.
- (c) Subject to paragraph (e) below, Dynapac UK shall be liable for physical damage to property to the extent that it results from Dynapac UK breach of contract or Dynapac UK's negligence in connection with the performance of the Contract, subject to an overall limit of the amount received by Dynapac UK from Buyer under the Contract.
- (d) Subject to paragraph (e) below, Dynapac UK's liability under the Contract and for negligence arising out of the Contract shall be capped at the amount received under the contract.
- (e) Dynapac UK shall have no liability to Buyer for indirect or consequential losses including loss of profit; (whether direct or indirect), loss of revenue (whether direct or indirect), loss of business; (whether direct or indirect), loss of production (whether direct or indirect).
- (f) Buyer will indemnify and keep indemnified Dynapac UK from and against any costs, claims, demands, liabilities, damages or losses and all interest, penalties and legal and other professional costs and expenses arising out of or in connection with Buyer's use of Goods or Buyer supplying Goods to any party who is not a party to these Conditions and the Goods' subsequent use. This indemnity shall cover (but is not limited to) Dynapac UK's liability to third parties arising out of the use or supply of the Goods, except to the extent caused by Dynapac UK's negligence.

## **13. Returns**

Returns of Goods not affected by defects will only be accepted by Dynapac UK from Buyer with the prior agreement of Dynapac UK in writing. All items which are accepted as returns will be subject to a handling charge, and must be forwarded to Dynapac UK's head office at Buyer's expense.

## **14. Force Majeure**

Notwithstanding the provisions of any other term of the Contract, a party shall not be regarded as in breach thereof to the extent that such party is prevented from or hindered in fulfilling its obligations by any circumstances outside its reasonable control (including but not limited to strikes, lockouts, shortages of materials, delays in transportation or governmental regulations) provided that such

party shall have given written notice to the other party of such circumstances within a reasonable time after learning of them. In the event of such delay, the date of shipment or performance shall, at the request of Dynapac UK, be deferred for a period equal to the time lost by reason of the delay and otherwise for a reasonable time. If such circumstances shall continue to prevent or hinder the performance of the Contract by such party for more than three (3) months then the other party may by written notice terminate the Contract with regard to the unperformed portion thereof.

#### **15. Termination**

- (a) If Buyer is subject to any act of bankruptcy or, being a company, has a receiver appointed or an administration order made against it or goes into liquidation or if a similar event occurs under applicable insolvency laws (except for the purpose of reconstruction or amalgamation) then all sums due to Dynapac UK under the Contract shall immediately become due and payable and Dynapac UK may, notwithstanding any previous waiver, terminate the Contract forthwith by written notice and Dynapac UK without prejudice to its other rights under these Conditions, shall be entitled to enter upon any land or premises where the Goods or any product embodying the Goods may be for the time being, to detach the Goods if so embodied and to recover possession of them.
- (b) Dynapac UK may terminate the Contract with immediate effect in the event of a failure by Buyer to comply with any material provision of the Contract if the failure continues for more than 14 days after Buyer has been given written notice to remedy the breach.
- (c) If Buyer fails to collect or take delivery of the Goods within 3 months of the Delivery Date, Dynapac UK shall be entitled, without prejudice to its other rights, to terminate all or part of the Contract and to dispose of the Goods, and to charge Buyer a compensation of 15% of the Purchase Price (standard goods) or 30% of the Purchase Price (non-standard goods), to be paid by Buyer within 30 days of issuance of the corresponding invoice. The parties agree that such sums payable to Dynapac UK under this clause are a genuine pre-estimate of the costs and losses which Dynapac UK would suffer from Buyer not taking delivery of the Goods.
- (d) Termination shall be without prejudice to any prior right of either party or any provisions (including but not limited to clauses 3, 12 and 16 which by nature shall survive termination).

#### **16. Governing law and Jurisdiction**

- (a) The Contract shall in all respects be governed by and construed in accordance with the law of England and Wales.
- (b) Buyer and Dynapac UK agree that the courts of England and Wales shall have the exclusive jurisdiction to settle any disputes, which may arise in connection with the Contract.
- (c) Dynapac UK shall have the option to bring suit before the courts of the domicile of Buyer when the claim is for or related to payments due by Buyer.
- (d) Buyer shall comply at all times with Dynapac UK's Business Code of Practice and with all applicable laws, statutes and regulations, in particular those related to anti-bribery and anti-corruption including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act as amended from time to time. Failure to comply with this paragraph (d) shall constitute a material breach which will entitle Dynapac UK to terminate the Contract immediately.

#### **17. Miscellaneous**

- (a) Buyer may neither assign nor transfer nor deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Dynapac UK.
- (b) Save as expressly provided, no term or provision of these Conditions shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).
- (c) No waiver by either party of any breach of any of these Conditions by the other party shall be deemed to constitute a waiver of any other breach nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. A waiver given by a party hereunder shall be binding upon such party only if in writing and signed by such party.

(d) In the event that any term or provision of the Contract is declared null and void or unenforceable by any court of competent jurisdiction, the remainder of the provisions of these Conditions shall remain in full force and effect to the fullest extent permitted by applicable law.

(e) Buyer hereby acknowledges that one copy of relevant manuals relating to the Goods will be supplied by Dynapac UK to Buyer free of charge and may be photocopied by Buyer as required. Buyer shall be fully responsible for the implementation of the contents of all manuals provided by Dynapac UK.