

Terms & Conditions of Sale

1 Interpretation and Definitions

1.1 Unless the context otherwise requires, the following expressions shall have the following meanings:

“Contract” means the agreement between DM and the Customer for the sale and purchase of Products which incorporates these Terms and Conditions.

“Customer” means the person or undertaking who has agreed to purchase Products from DM on these Terms and Conditions and whose name and address appears on an Order Acknowledgement.

“DM” means Dedicated Micros, Inc. whose principal place of business is at 3855 Centerview Drive, Suite 400-B Chantilly, VA 20151

“Delivery Address” means the Customer’s address which appears in the Purchase Order or such other different delivery address as is specified in that document or agreed between DM and the Customer in Writing as being a required address for delivery.

“Internet Order Acknowledgement” means an electronic confirmation of receipt by DM of an Internet Purchase Order delivered by DM to the Customer either or both as web page or e-mail.

“Non-Internet Order Acknowledgement” means a confirmation of receipt by DM of a Non-Internet Purchase Order delivered by DM to the Customer in writing.

“Internet Purchase Order” means an order to purchase Products delivered from DM which is made by means of the completion and electronic submission over the internet of a Purchase Order in the form of an accurately completed electronic form as permitted, from time to time, by DM on its e-trading website or any authorised associate site.

“Non-Internet Purchase Order” means an offer from a Customer to purchase Products from DM.

“Order Acknowledgment” means Internet Order Acknowledgments and Non-Internet Order Acknowledgments.

“Products” means the products to be supplied to the Customer in accordance with these Terms and Conditions and which are identified within a Purchase Order.

“Purchase Order” means Internet Purchase Orders and Non-Internet Purchase Orders.

“Terms and Conditions” means the Terms and Conditions of Supply set out in this document to apply to the purchase of Products by the Customer from DM.

“Writing” means a communication in the form of a letter, telex, cable, facsimile or email.

2 Basis of the Sale

2.1 These Terms and Conditions shall apply to all Contracts entered into between DM and the Customer in respect of the purchase of Products and such Contracts shall be formed in the following manner (but not otherwise).

Internet Purchase Orders

2.2 Where the Customer delivers to DM an Internet Purchase Order, this shall be deemed to be an offer made by the Customer to purchase Products as set out in it and on these Terms and Conditions, which offer shall be deemed accepted and a contract formed between the Customer and DM on the delivery to the Customer of an Internet Order Acknowledgement by or on behalf of DM.

Non-Internet Purchase Orders

2.3 Where the Customer delivers to DM a Non-Internet Purchase Order, this shall be deemed to be an offer made by the Customer to purchase Products as set out in it (as varied thereafter by agreement between the Customer and DM) and on these Terms and Conditions, which offer shall be deemed accepted and a Contract formed between the Customer and DM on the delivery to the Customer of a Non-Internet Order. Acknowledgement by or on behalf of DM.

2.4 Any typographical, clerical or other error or omission in any sales literature, Order Acknowledgements, price lists, invoices or other documents or information originating from or issued by DM shall be subject to correction without any liability on the part of DM.

3 Specification of The Products

3.1 DM reserves the right, prior to actual delivery, to make any changes, without notice, to the specification of the Products where those changes are required to conform with any applicable safety or other legal requirement or which do not materially affect the Products’ quality, performance, or functionality.

4 Price of the Products

4.1 The price of the Products shall be as specified in the Order Acknowledgement or, if omitted, then the price shall be deemed to be in accordance with the prices for identical or equivalent products as appearing in the then current applicable DM’ price list (less any discounts agreed in Writing between DM and the Customer).

4.2 The price for Products as is and do not include delivery charges. Where the Customer arranges for the Products to be collected and shipped at its own cost from DM premises, no charge will be made for delivery, but additional delivery costs will be charged and invoiced to the Customer where the Customer requires delivery by DM to a specified location. Such delivery costs will be as set out in the Order Acknowledgement or, if no such details appear in that document then DM shall charge all reasonably incurred transport, packing, insurance and other costs relating to the delivery of the Products to the Customer’s Delivery Address including in accordance with any particular terms of the Contract (such as urgent delivery requirements).

5 Terms of Payment

5.1 Unless Clause 12 below applies, all sums payable by the Customer in respect of the Products shall be due and payable within 30 (thirty) days from invoice date for the agreed price (together with properly chargeable additional items such as delivery charges,) but which invoice may not be issued by DM prior to the date of actual delivery in accordance with Clause 6.5 below. All invoices will be in the currency specified in the Order Acknowledgment (USD), but provided always that where any payment is made after the due date, DM shall be entitled by notice to the Customer to require payment in a different currency, the conversion rate being calculated as at the date when payment was due.

5.2 If the Customer fails to make any payment on the due date then without prejudice to any other right or remedy available to DM, it shall be entitled in its discretion and on notice to the customer to:

5.2.1 withhold or delay shipment, including partial shipments of Products, cancel any or all remaining deliveries of Products/and/or any or all other contracts to which DM and the Customer may be party to; and/or

5.2.2 require pre-payment prior to any further deliveries of Products; and/or

5.2.3 charge the Customer interest (both before and after any judgement) on the amount unpaid at the rate 1.5% per month on all past due balances.

6 Delivery

Location

6.1 Unless agreed to the contrary and specified in the Order Acknowledgement, delivery of all Products will be ex-works and available for collection by the Customer or its carrier at the premises of DM, the address of which appears on the face of the Order Acknowledgement.

Time of Delivery

6.2 DM will use its reasonable endeavors (although time is not of the essence) to deliver Products to the Customer on the date or dates which appear in Order Acknowledgement or, in default, within a reasonable time thereafter. DM shall not be liable for any delay in delivery, howsoever caused and subject to giving the Customer reasonable prior notice, delivery may be effected early. Where no delivery date is specified in the Order Acknowledgement, DM will deliver the Products within a reasonable period of time following the conclusion of this Contract.

6.3 Products may be collected by the Customer from DM premises, the address details of which appear in the Order Acknowledgement (or such different address as may have been agreed between DM and the Customer in Writing) between the hours of 9:00 a.m.- 5:00 p.m., local time for the relevant premises location and between Monday to Friday (excluding locally recognized business closures for holidays)

6.4 Where DM has agreed to deliver the Products to the Customer it shall do so between the hours of 9:00 a.m. to 5:00 p.m. local time for that location. (excluding locally recognized business closures for holidays)

6.5 Delivery shall be deemed to have been effected for the purposes of these Terms and Conditions:

6.5.1 in the case of delivery ex-works from DM premises, on the actual date of collection of the products by the customer or any person on its behalf or on the giving by DM of notice to the Customer confirming that the Products are available for such collection but provided that such notice may not be given (subject to agreement on early delivery in accordance with Clause 6.2 above) prior to the agreed date for delivery under these Terms and Conditions; or

6.5.2 in the case of delivery by DM to the Customers' Delivery Address, on the actual date of arrival of the Products at that address (whether or not the customer takes possession of those Products).

6.6 DM shall be entitled to deliver the Products in installments. Each delivery shall constitute a separate contract and failure by DM to deliver any one or more of the installments in accordance with these Terms and Conditions or any claim by the Customer in respect of any one or more installments shall not entitle the Customer to treat the Contract as a whole as repudiated.

6.7 If the Products are damaged on delivery or less than the correct amount of products is delivered, then unless the Customer notifies DM and the carrier within 5 days of delivery, no claim against DM may be made in respect of damage to or short delivery of such Products.

6.8 If the Products have not been delivered despite receipt by the Customer of the invoice from DM for those Products, then unless the Customer notifies DM within seven days after the date of such invoice, no claim against DM may be made in respect of non-delivery of those Products.

6.9 Cancelled orders, rescheduled deliveries or any other type of amendments, however specified will be subject to:

6.9.1 DM acceptance in writing; and/or

6.9.2 DM being entitled to charge the Customer an optional restocking/administration fee of 25% of the total order value.

7 Risk and Property

7.1 Risk of damage to or loss of the Products will pass to the Customer on delivery in accordance with these Terms and Conditions. Title to and property in the Products shall only pass to the Customer when full payment has been received by DM in cash or cleared funds for the full price of the Products and all other Products

agreed to be sold by DM to the Customer for which payment is then due including all other charges stated on the invoice, such as any taxes or delivery charges.

7.2 Until such time as title to and property in the Products passes to the Customer, the Customer shall hold the Products as DM fiduciary agent and bailee and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected, insured, and identified as DM property. Until that time the Customer shall be entitled to resell or use the Products in the ordinary course of its business.

7.3 Until such time as title to and property in the Products passes to the Customer (and provided the Products are still in existence and have not been resold) DM shall be entitled at any time to require the Customer to deliver up the Products to DM and if the Customer fails to do so forthwith to enter upon any premises of the Customer or any third party where the Products are stored and repossess the Products.

7.4 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of DM, but if the Customer does so all moneys owing by the Customer to DM shall (without prejudice to any other right or remedy of DM) forthwith become due and payable.

8 Hardware and Software Warranties

Hardware

8.1 The Products are covered by a twelve (12) month warranty from the date of delivery to the distributor or to the end customer if proof of date can be provided to in accordance with these Terms and Conditions, the extent of which shall be limited to defects in work and materials but excluding any and all defects arising from any drawing, design, specification, or requirement of the Customer or which arise from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow Product environment or operating instructions, voltage fluctuations, lightning, water damage, faulty installation or adjustments, improper maintenance, misuse or alteration or repair of the Products other than by DM or an approved engineer and as a result of connection to or a location near any third party equipment.

8.2 Additional warranties may be available for certain Products and the nature of these shall be deemed to be incorporated within these Terms and Conditions (subject to the limitations contained within this Clause 8) subject to registration of products with DM.

Software (Limited Software Warranty)

8.3 For a period of ninety (90) days from the dates of delivery of Products to the distributor or to the end customer if proof of date can be provided DM warrants that any and all software comprised within or provided for use in conjunction with the products shall be on media which is free of defects in materials and workmanship under normal use and that the software will function materially in accordance with all published specifications of DM.

8.4 In no event does DM warrant that the software is error free or that the Customer will be able to operate the software without problems or interruptions.

General

8.5 The Customer shall notify DM in Writing as soon as reasonably possible following the discovery by the Customer of any defect or non-conformity of the Products covered by the warranties at Clauses 8.1, 8.2 and/or 8.3 above and in any event prior to the expiry of the warranty periods in each case. DM shall have no liability in respect of the Products under the above warranties (or any other warranty, condition or guarantee) unless Written notification is received prior to the expiry of the relevant warranty period.

8.6 The above warranties in Clauses 8.1, 8.2, and 8.3 do not extend to parts, materials, equipment or software not manufactured (or, in the case of software, not developed and owned) by DM in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as given by the manufacturer to DM .

8.7 Except where expressly provided in these Terms and Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.8 Unless DM receives notice of rejection of any Products devliered to the Customer within 7 days of the date of delivery, the Products shall be deemed to have been accepted by the Customer.

8.9 DM liability to the Customer in respect of the Products supplied on these Terms and Conditions both generally and specifically under Clauses 8.1, 8.2, 8.3, and 11.1 including as regards to any defect in their quality, perfomance, condition or functionality or failure to meet any agreed specification comprising part of the contract for which DM will be liable under these Terms and Conditions shall be limited to the replacement or repair of the Products or repayment of the price paid by the Customer for such Products (in the absolute discretion of DM), but without further liability to the Customer in respect thereof.

8.10 Except in respect of death or personal injury caused by DM negligence, DM shall not be liable to the Customer by reason of any representation (unless fraudulent) or any implied warranty condition or other term, or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss or profit or otherwise) costs, expenses, or other claims for consequential compensation whatsoever (and whether caused by the negligence of DM, its employees, agents or otherwise) which arise out of or in connection with the supply of the Products or their use or resale by the Customer except as expressly provided in these Terms & Conditions.

8.11 DM shall not be liable to the Customer if performance of its obligations under the Contract is prevented or hindered due to any circumstances outside its control.

8.12 The Customer acknowledges that, in entering into the Contract for the purchase of Products it has not relied on any representation from or on behalf of DM and that no such representations are to be implied as contractual terms herein or form (in whole or in part) terms of any collateral or related contracts between DM and the Customer. The Customer recognizes that any and all facts and matters upon which it relies have been included in the Purchase Order and/or the Order Acknowledgment.

9 Termination of Warranty

9.1 If the Customer fails to comply with all these Terms and Conditions including, but not limited to, as to the time of performance in relation to such matters as payment under Clause 5 above then, without prejudice to all other rights of DM, the warranties contained in Clauses 8.1, 8.2, and 8.3 shall from the date of such non-performance terminate and for the purposes of this Contract shall be deemed excised.

10 Order Variation

DM shall be entitled by notice to the Customer at any time prior to the agreed delivery date to vary the Terms and conditions of this contract (including but not limited to as regards such matters as price, delivery date, availability and specification) (a "Variation Notice") and this Contract shall continue as varied by that notice as from the date of its effective service unless DM receives from the Customer a refusal to accept such variation by notice and within 5 working days of service of the Variation Notice (a "Refusal Notice"). If the Customer serves any such Refusal Notice then this Contract shall terminate on the date of effective service of that Notice without liability on the part of either the Customer or DM.

11 Indemnity

11.1 If any claim is made against the Customer that the products infringe or that their use or resale infringes the patent, copyright, designright, trademark or other industrial or intellectual property rights of any other preson then unless the claim arises from the use of any drawing, design, or specification supplied by the Customer DM shall indemnify and keep indemnified by the Customer in connection with the claim or paid or agreed to be paid by the Customer in steelment of the claim provided that:

11.1.1 DM shall be notified promptly in Writing by the buyer of any notice of a claim; and

11.1.2 DM is given full control of any proceedings or neotgiations in connection with any such claim; and

11.1.3 The Customer undertakes no act or permits any omission within its power or control (save with the prior Written agreement of DM) which might compromise or otherwise prejudice the defense of that claim; and

11.1.4 Customer shall give DM all reasonable assistance for the purposes of any such proceedings or negotiations

11.2 DM shall be entitled to the benefit of and the Customer shall accordingly account to DM for all damages and costs (if any) awarded in favor of the Customer which are payable by or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by any other party in respect of any such claim.

11.3 DM shall be entitled to require the Customer to take such steps as DM may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which DM is lisable to identy the Customer under this Clause.

12 Insolvency of Customer

12.1 Without prejudice to any other right or remedy available to DM, DM shall be entitled to cancel tehe Contract or suspend any furhter deliveries under the Contract without any liability to the Customer and if the Products have been delivered but not paid for the price shall become immediately due and payable not withstanding any previous agreement or arrangement to the contrary if:

12.2 The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) ; or

12.3 a third party (acting in accordance with its rights) takes possession or a receive is appointed to any of the property or assets of the Customer; or

12.4 the Customer ceases or threatens to cease to carry on business; or

12.5 DM reasonably apprehends that any of the vents mentioned aobve is about to occur in relation to the Customer and notifies the Customer in Writing accordingly.

13 Internet Orders- Assumed Authority

Where, from time to time, this Contract is formed as a a consequence of an Internet Purchase Order and where the Customer has, for the purposes of submitting that Order, properly input a user anme and password previously allocated as a distinctive identifier for that Customer within DM's business and then DM shall be entitled to assume (and for these purposes the Customer warrants and represents that this is the case) and the in putting of such data is undertaken by and with the express consent and authority of the Customer.

14 Laws and Regulations

The Customer shall comply with all laws and regulations relating to the ownership and use of the Goods including health and safety requirments and export control legislation.

15 General

15.1 This Contract may only be modified by a Written Document issued by authorized representatives of DM and Customer.

15.1.2 If any provision of these Terms and Condiitons is held by any competent authority to be invalid or unenofrceable in whole or in part the validity of the other provisions of these Terms and Coniditons and the remainder of the provision in question shall not be affected.

15.2 The Contract contains all the terms agreed by the parties relating to the subject matter of the Contract and supersedes any prior agreements, understandings or arrangements between them, whether oral or in writing.

15.3 Any notice required to be given under or in respect of this Contract shall be served personally, sent by fax or by first class recorded delivery post and any such notice so given shall be deemed to have been dually served if personally delivered, on the day of delivery, if faxed, 8 hours after the recorded transmission time or, if posted, two days after the day after posting. Notices may not be given by email or other electronic means whether or not incorporating a recognized digital signature.

15.3.1 In the event of a breach of this agreement, the breaching party shall pay to the other party any reasonable legal fees and other costs and expenses incurred by the non-breaching party in connection with the enforcement of any provisions of this agreement.

15.4 For US Customers, the Customer grants DM a security interest in Products purchased under this Agreement to secure payment for those Products. If requested by DM, Customer agrees to execute financing statement to perfect this security interest.

15.5 The construction validity, and performance of this Contract is governed by the law of Virginia, USA and the parties now accept the jurisdiction of the United States Courts in respect thereof. The Customer shall have the right (in its absolute discretion) to commence proceedings in the English Courts or the courts of any country where the Products are delivered or in which the Customer is resident or which otherwise has jurisdiction to hear the matters in issue in accordance with any international convention or treaty.

15.6 DM may without notice assign the Customer's debt to a factoring agent or an invoice discounting facility, at such time and to such extent as DM determines and the Customer shall provide all such reasonable assistance as DM may require in that respect, its reasonable costs incurred in respect of which shall be borne by DM.