

DMCA Solutions Limited Standard Terms of Sale and Delivery



Last updated August 14th 2019

1. Scope

- 1.1. The present terms of sale and delivery shall apply to any sale of a product from DMCA Solutions Limited (DMCA Solutions) to a buyer (the Buyer), unless specifically or generally deviated from through a written agreement between the parties or in a separate offer or order confirmation from DMCA Solutions.
- 1.2. The present terms of sale and delivery were handed over to the Buyer at the conclusion of the agreement between DMCA Solutions and the Buyer, and the Buyer confirms that he is aware of and has had the chance to review the contents of the present terms and has on receipt of order confirmation from DMCA Solutions accepted all stipulations in the present terms of sale and delivery.
- 1.3. The Buyer has been made aware of and has accepted that DMCA Solutions is using sub-suppliers, including and particularly in the Far East, for full or partial production of the products to be delivered by DMCA Solutions to the Buyer.

2. Order Acceptance

- 2.1. Orders placed by the Buyer shall not be considered accepted by DMCA Solutions until the Buyer has received a written order confirmation from DMCA Solutions and only on the terms stated in the order confirmation.
- 2.2. DMCA Solutions may require full or partial payment or payment guarantee in advance of shipment if it is necessary in DMCA Solutions' reasonable opinion.

3. Specifications

- 3.1. DMCA Solutions' production of products for the Buyer shall only be according to the Buyer's instructions and according to the specifications, drawings, colours/colour samples, etc., handed over by the Buyer, and DMCA Solutions shall make the products in accordance with the above. Unless otherwise agreed separately, DMCA Solutions does not undertake to assess the use, usefulness, durability or in any other way appropriateness of the products ordered by the Buyer, and DMCA Solutions therefore does not undertake any responsibility for the above.

4. Price

- 4.1. Any price stated shall, unless otherwise agreed in writing between the parties, be based on terms of delivery ex works (EXW - Incoterms 2020).
- 4.2. Prices stated in DMCA Solutions' offer or order confirmations have been stated subject to regulation because of subsequent changes to customs duty, taxes and other duties, and similar costs which may affect the price of the product covered by the agreement. Thus, DMCA Solutions reserves the right, and the Buyer accepts DMCA Solutions' right to increase the agreed price before or at the time of delivery of the products covered by the agreement, provided that this is due to the above changes.
- 4.3. If the quantity of products stated in DMCA Solutions' offer as a basis for the calculation is not bought by the Buyer within the stipulated deadline, DMCA Solutions reserves the right to debit an additional

amount at its own option to cover such part of the tool costs which may have been included in the tool part. DMCA Solutions shall have the right of ownership to the tools.

5. Payment

- 5.1. Unless otherwise agreed in writing, the Buyer shall be obliged to make payment to DMCA Solutions by the due date stated on the invoice.
- 5.2. Payments from the Buyer shall be written off on claims or parts of claims, including interest, at DMCA Solutions' option. DMCA Solutions shall be entitled to affect a set-off in any claim which the Buyer may have against DMCA Solutions, regardless of whether the claims are related or not.
- 5.3. If the Buyer does not pay on time, DMCA Solutions shall be entitled to claim, and the Buyer shall be obliged to pay, interest on overdue amounts at a rate of interest corresponding to 5% above the official discount rate as fixed by the US Federal Reserve at any time. Interest shall be calculated and added at the end of each month.
- 5.4. If the Buyer does not pay the purchase amount and the interest incurred after DMCA Solutions' forwarding of reminder at the end of a two-week time limit stated therein, all DMCA Solutions' claims against the Buyer shall be due for immediate payment. In this case, DMCA Solutions shall be entitled only to make future deliveries against advance payment from the Buyer or against full security for payment provided by the Buyer and accepted by DMCA Solutions. Furthermore, DMCA Solutions shall be entitled to cancel all existing and future orders which have not been executed with a notice of four weeks, and to claim compensation for any loss, direct or indirect, suffered by DMCA Solutions in connection with the Buyer's default.
- 5.5. The Buyer shall not be entitled to set off claims against DMCA Solutions in the purchase amount or in any other way withhold payment of the purchase amount because of counterclaims, unless the counterclaim has been determined by final enforceable court order and relates to the agreement/legal matter from which the counterclaim originates.

6. Delivery

- 6.1. Time of delivery shall be agreed in detail between the Parties. Unless otherwise expressly agreed in writing, the times of delivery stated by DMCA Solutions shall be approximate and are not guaranteed. Consequently, DMCA Solutions shall be under no liability for direct or consequential loss or damage to the Buyer arising from delay or postponement in delivery.
- 6.2. Regarding quantity deliveries, DMCA Solutions shall be entitled to deliver with a margin of up to 10% both up and down against a similar proportional increase or reduction of the purchase price agreed.
- 6.3. Unless otherwise agreed separately and in writing, delivery shall be made ex works (EXW – Incoterms 2020).
- 6.4. If the Buyer refuses to accept a delivery from DMCA Solutions, DMCA Solutions shall be entitled to store the delivery at the Buyer's expense and risk, and the Buyer shall be obliged to indemnify DMCA Solutions for any related costs. If the Buyer has not within four weeks of having refused to accept delivery collected the delivery from the stocks

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established by DMCA Solutions, DMCA Solutions shall with three days prior written notice to the Buyer be entitled to sell the delivery elsewhere to cover DMCA Solutions' costs. The Buyer accepts that such sale can be made without violation on the part of DMCA Solutions of the Buyer's or a third party's right to the product, and the Buyer accepts that the Buyer cannot make any claim against DMCA Solutions in relation to such sale. If a sale does not cover all of DMCA Solutions' costs, the Buyer shall be obliged to compensate DMCA Solutions for any direct and indirect loss suffered by DMCA Solutions.

- 6.5. In case of force majeure, including war, warlike conditions, hostilities (whether the war be declared or not), riot, rebellion, terrorism, revolution, insurrection, military or usurped power, civil war, fire, acts of governmental agencies, public orders, natural disasters (including earthquakes and tsunamis), strikes, lockout, export or import ban, transport accidents, damage to DMCA Solutions' production facilities, shortage of labour, raw materials, fuel or power or other circumstances beyond DMCA Solutions' control, whether domestic or international, which affects DMCA Solutions, including suppliers or sub-suppliers on whom DMCA Solutions depends for the production of the product(s) ordered by the Buyer, and which will temporarily or finally prevent delivery to the Buyer, DMCA Solutions shall not be responsible and shall be entitled at DMCA Solutions' option to postpone the time of delivery similarly or cancel the delivery without any additional remedies for breach for any of the parties.

7. Reservation of property

- 7.1. Property and ownership in the goods will not pass to the Buyer but will remain in DMCA Solutions until payment in full of the price of goods and/or services and all other amounts owing DMCA Solutions by the Buyer. The goods are to be clearly identified by the Buyer as remaining the property of DMCA Solutions until they are paid for in full. The Buyer must so long as DMCA Solutions is entitled to the property of the goods, store the goods so that they are clearly identifiable as the property of DMCA Solutions. The Buyer shall be obliged to inform any third party immediately who intends to claim a right to the products delivered, regardless of the type of right, of the existence of reservation of property and similarly to inform DMCA Solutions that a third party wants to claim a right.

8. Drawings and other technical documents

- 8.1. All drawings and other technical documents regarding the products or the production thereof which are before or after conclusion of the agreement handed over from one party to the other shall belong to the party handing them over. Drawings, other technical documents, or other technical information received cannot be used without the consent of the other party for any other purpose than the purpose which was the aim of the handing over. Without the consent of the other party, such materials must not be copied, reproduced, handed over to or in any other way be brought to the knowledge of any third party, except when DMCA Solutions has the products made fully or partly by sub-suppliers, in which case DMCA Solutions shall be entitled to carry out such copying, reproduction and handing over for use by the sub-supplier. To the extent that DMCA Solutions uses sub-suppliers abroad, DMCA Solutions shall also be entitled to copy and hand over the material in question to a third party who is to assist with translation into the language which is relevant for the sub-supplier. DMCA Solutions shall not be responsible for a sub-supplier's or a third party's abuse of drawings, documents, etc., handed over.

9. Cancellation of and changes to orders

- 9.1. Orders may not be altered or cancelled without the written consent of DMCA Solutions. If DMCA Solutions agrees to alter or cancel the order, the Buyer shall indemnify DMCA Solutions against any loss, damage and expense incurred by DMCA Solutions in relation to the cancellation or alteration of that order including the cost of return freight, return shipping to the factory of origin, items purchased from third parties for including in goods and/or services and all labour and engineering costs incurred by DMCA Solutions in the execution or part execution of the goods and/or services and including compensation payable to any supplier of DMCA Solutions and loss of profit.

10. Buyer delayed delivery

- 10.1. Should the Buyer delay the delivery of the goods, DMCA Solutions reserves the right to store the goods and to obtain payment as though the goods has been delivered and to recover storage, insurance and handling costs incurred due to the delay. DMCA Solutions shall be entitled to make claims for progress payments then the goods and/or services are required ahead of scheduled delivery dates or when payment in full for the Goods and/or services is delayed.
- 10.2. Extra costs incurred by DMCA Solutions due to cessation of work occasioned by the Buyer's instructions or lack of instructions, by interruptions, by mistakes or work which DMCA Solutions is not responsible shall be reimbursed by the Buyer to DMCA Solutions upon demand.

11. Responsibility for defects

- 11.1. The Buyer shall examine the products delivered on receipt, and complaints about defects which could be determined through such examination shall be made in writing no later than five days after receipt of the products.
- 11.2. In case of defective delivery, DMCA Solutions shall be entitled, but not obliged to remedy, including redelivery free of carriage of replacement parts free of charge. Costs in relation to demounting defective parts and mounting of replacement parts shall not be relevant for DMCA Solutions. Nor shall DMCA Solutions be liable for the Buyer's loss from delay, operating loss or other indirect losses which may relate to the defective delivery.
- 11.3. DMCA Solutions shall not be liable for defects which have not been determined and communicated to DMCA Solutions within six months at the latest from delivery of the products to the Buyer.
- 11.4. DMCA Solutions shall not be liable for defects caused by misuse, neglect, improper installation, incorrect mounting, or defective maintenance on the part of the Buyer, or for changes made without approval by DMCA Solutions or for repairs which the Buyer has had done by a third party. Furthermore, DMCA Solutions shall not be liable for nor obliged to remedy defects caused by normal wear, just as DMCA Solutions shall not be liable for deterioration or damage caused by unusual use or overload.
- 11.5. Where the goods are manufactured by a third party or the goods include products manufactured by a third party, any warranty which

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may be given by DMCA Solutions applies to the extent DMCA Solutions receives the benefit of that third party manufacturer's warranty, except otherwise agreed in writing by DMCA Solutions. If DMCA Solutions provides equipment or repair materials that is covered by the warranty from a third-party manufacturer DMCA Solutions will transfer the benefits of that warranty to the Buyer.

11.6. DMCA Solutions shall in no circumstances be liable for any type of production loss, lost profits, other consequential loss or other types of indirect loss.

12. Liability

12.1. The Buyer acknowledges and agrees that DMCA Solutions shall in no circumstances be liable for any type of operating loss, lost profits, opportunity, revenue, goodwill, bargain, production, contracts, business or anticipated savings, corruption, or destruction of data or for any liquidated, indirect, special or consequential loss or damage whatsoever.

12.2. Intellectual property rights DMCA Solutions Limited Standard Terms of Sale and Delivery Last updated August 14th 2019.

12.3. Any intellectual property right related to the products made by DMCA Solutions for the Buyer shall remain the property of the Buyer.

12.4. The Buyer guarantees towards DMCA Solutions that the Buyer owns all rights, including intellectual property rights, to the product and undertakes to grant DMCA Solutions and DMCA Solutions' possible sub-suppliers any licences which may be necessary for the production.

12.5. If a third party objects to or raises a claim against DMCA Solutions, claiming that products made by DMCA Solutions or which DMCA Solutions has made for the Buyer according to his instructions, violate third-party rights, including intellectual property rights, the Buyer shall be obliged to indemnify DMCA Solutions and DMCA Solutions' sub-suppliers for any cost, fine, compensation, loss, be they direct or indirect, which DMCA Solutions or DMCA Solutions' sub-suppliers may incur in this connection. The Buyer shall also be obliged to intervene to support DMCA Solutions or DMCA Solutions' sub-suppliers in any legal action initiated by a third party against DMCA Solutions regarding such infringement of rights.

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13.3. If a third party objects to or raises a claim against DMCA Solutions, claiming that products made by DMCA Solutions or which DMCA Solutions has made for the Buyer according to his instructions, violate third-party rights, including intellectual property rights, the Buyer shall be obliged to indemnify DMCA Solutions and DMCA Solutions' sub-suppliers for any cost, fine, compensation, loss, be they direct or indirect, which DMCA Solutions or DMCA Solutions' sub-suppliers may incur in this connection. The Buyer shall also be obliged to

intervene to support DMCA Solutions or DMCA Solutions' sub-suppliers in any legal action initiated by a third party against DMCA Solutions regarding such infringement of rights.

14. Default

14.1. If the Buyer defaults on the agreement with DMCA Solutions, and if the default in question has not been included in other items of the present terms of sale and delivery, DMCA Solutions shall with five days' written notice be entitled to cancel the agreement and stop all deliveries to the Buyer. The Buyer shall be obliged to indemnify DMCA Solutions for any cost, direct as well as indirect, incurred by DMCA Solutions because of the Buyer's default.

15. Governing law and venue

15.1. Any dispute between DMCA Solutions and the Buyer arising from an agreement entered into between these parties and the present terms of sale and delivery or legal matters derived therefrom shall be brought before the Hong Kong Courts which shall have exclusive jurisdiction.

16. Invalid stipulations

16.1. If any of the above stipulations are declared to be invalid, the validity of the remaining stipulations shall not be affected. The invalid stipulations shall be replaced by the valid stipulation which is closest to the financial purposes and interest of the parties.

16.2. The present terms of sale and delivery shall cancel and replace all previous terms of sale and delivery.

17. Confidentiality

17.1. The Buyer undertakes that it will not (except in the proper course of its duties under this agreement or as required by law of by DMCA Solutions) disclose to any person any confidential information relating to DMCA Solutions or this agreement of which it has become possessed as a result of this agreement or in the negotiations preceding this agreement including the terms of this agreement.

17.2. The obligations under this clause survive termination of this agreement.

18. Document change history

Initial document author: Admin

Latest revision: 002

Document status: released

Author	Date	Revision	Comments
Legal	January 12 th 2015	000	Reference
Admin	March 11 th 2017	001	Modified IP Terms
Admin	August 14 th 2019	002	Clause 6.3 modified