

Conditions of Contract "Design Supply & Installation"

1. Definitions.
 - 1.1. In these Conditions, the following definitions apply:
 - "Company" means Dust Control Systems Limited
 - "Conditions" these conditions of contract as amended from time to time in accordance with clause 15.4.
 - "Contract" the contract between the Company and the Customer for the supply of Goods and/or Services in accordance with the Order and these Conditions.
 - "Customer" means the person or firm, who purchases Goods from the Company.
 - "Goods" mean the materials, goods, equipment or services (or any part of them) describe in the Order.
 - "Order" the order by the Customer for the supply of Goods and Services as set out in the Order Acknowledgement overleaf.
 - "Services" the services provided by the Company described in the Order.
2. Basis of Contract
 - 2.1. The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions and the Contract comes into existence on the date of issue of this Contract.
 - 2.2. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.
3. Specifications, Designs and supply of Services
 - 3.1. Catalogues, specifications, dimensions, measurements, weights, price lists and other advertising or information material are only an indication of the types of goods offered and the type of work undertaken by the Company. They shall not form part of the Contract or have any contractual force.
 - 3.2. To the extent that the Goods are manufactured in accordance with a specification supplied by the Customer, the Customer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including direct and indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties, and legal and other reasonable professional costs and expenses).
 - 3.3. The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any Order (including any applicable specifications) submitted by the Customer and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
 - 3.4. The Company reserves the right to amend the specification of the Goods or to make changes to the Services if required by any applicable law or safety requirements and the Company shall notify the Customer in such event.
 - 3.5. The Company warrants to the Customer that the Services will be provided using reasonable care and skill.
 - 3.6. Where the Contract relates only to design of facilities the Company's obligations shall be limited to the preparation of such design drawings and all copyright and any other intellectual property right in any design shall rest in the Company unless otherwise agreed in writing.
 - 3.7. Where the Contract relates only to the supply and/or installation of Goods for any design provided by the Customer, the Company shall not be responsible for verifying or checking such design or specification. Where the Company has not designed the facilities or such design has been amended at the Customer's request and it becomes apparent that it will be impossible or impractical for the Company to perform or continue to work in respect of the Contract then the Company will consult with the Customer and all alternative choices will be discussed. During such discussions performance of the Contract will be suspended. The Company reserves the right not to be held accountable for any unforeseen additional works and in the event that all or any part of the Services cannot be carried out, an adjustment to be determined by the Company will be made to the Price
 - 3.8. Where design work is undertaken the Customer shall be responsible for checking the structural state and condition of the premises and its suitability for the layout and equipment proposed by the Company.
4. Delivery
 - 4.1. Stipulated dates or periods for completion of the Services or for the delivery of Goods by the Customer are an approximate estimate only and time shall not be of the essence.
 - 4.2. If by reasons of circumstances beyond the Company's control including without limitation inadequate or lack of instruction from the Customer the design, despatch of Goods and/or commencement or completion of work is delayed for 7 working days after the Company has notified the Customer that they are ready to commence the work and/or that the Goods are ready for despatch then the Company shall be deemed to have completed the work and/or delivered the Goods and shall be entitled to store the Goods at the Customers expense until the Customer collects the same or the Company shall re-sell the same. In such circumstances the Customer shall be liable to pay the price in accordance with clause 6 below together with any additional costs incurred by the Company as a consequence of such delays.
 - 4.3. Delivery will be deemed to have been effected when the Goods leave the premises of the Company or the Company's supplier (in circumstances where the Goods are delivered direct from such suppliers). Delivery of more or less than the quantity of Goods agreed to be sold or inclusion therewith of Goods of a different description not included in the Contract shall not entitle the Customer to reject the whole of the Goods delivered.
 - 4.4. Upon collection of the Goods by or on behalf of the Customer risk in the Goods shall pass to the Customer who shall fully indemnify the Company for any claims or action arising therefrom. If the Company or any of the Company's sub-contractors loads or unloads any of the Goods the Company shall not be liable for any claims or actions arising therefrom.
5. Testing, Erection and Installation
 - 5.1. All testing and inspections reasonably required by the Customer or his agents shall be carried out at the location determined at the Company's discretion and shall be at the Customer's expense. Results of tests which have not been agreed and carried out in accordance with the procedure agreed by the company shall not be regarded for the purpose of any claim against the Company.
 - 5.2. Should the Customer wish to make a claim against the Company on the basis of agreed and carried out tests the Customer shall send to the Company no later than 2 months after the date of delivery of the results of any such testing the goods together with details of the claim. Failure to comply with this condition shall constitute a waiver by the Customer of all claims against or relating to facts revealed by such testing.
 - 5.3. The Customer must:
 - 5.3.1. Carefully examine the Goods immediately upon delivery and in relation to those Goods which are the Company's manufacture must notify the Company in writing within 7 days of delivery of any short delivery, defects or damages reasonably discoverable on careful examination.

- 5.3.2. Notify the Company in writing within 14 days of the date of despatch of the Goods as evidence by the despatch note that such Goods have not been received.
- 5.4. In the absence of notification in accordance with clause 5.3 the Company excludes all liabilities in respect of any short delivery, defect or variance which should reasonably have been discoverable upon careful examination.
- 5.5. Any alleged shortage, delay, damage or defect shall not constitute solid grounds for the Customer to delay payment in respect of the Goods delivered and for the avoidance of doubt the Customer shall be required to pay for all Goods in respect of which there is an alleged claim for damage, delay, defect or variation from the terms of the delivery note or other default in accordance with the provision of the agreement.
6. Prices
- 6.1. The price payable by the Customer for the Services shall be that specified in the Company's Order Acknowledgement. The Company reserves the right to alter the prices for any Services and/or Goods if the Initial Instalment has not been received within 14 days of the date of this Order Acknowledgement.
- 6.2. Packaging, delivery and transport charges and insurance to the point of delivery together with the cost of installation and/or erection on site are included in the Price unless otherwise notified by the Company in writing. All other costs and services including without limitation unloading costs work by builders, joiners or electricians required in installing and/or erecting Goods on site together with work undertaken outside normal working hours (which for these purposes shall mean 8:00a.m. to 6:00p.m. Monday to Friday inclusive) and the cost of commissioning, running or installation tests and of all materials used thereof are not included in the Price and will be charged for by the Company on a time and materials basis in accordance with the Company's current rates. Notification of such rate is available from the Company.
- 6.3. All prices quoted are exclusive of VAT unless stated by the Company as being to the contrary. Upon acceptance of an Order VAT will be added at the appropriate rate to all prices quoted prior to delivery of the Goods and/or completion of the Services.
7. Payment
- 7.1. Payment for the Services and/or Goods delivered by the Company pursuant to an Order shall be as follows:
- 7.1.1. 30% of the Price plus VAT upon acceptance of the Order (**Initial Instalment**).
- 7.1.2. 60% of the price plus VAT upon delivery of the Goods.
- 7.1.3. 10% of the price plus VAT upon completion of installation of the Goods.
- 7.2. Where the Company elects to fulfil the terms of the order in stages such part delivery or instalment of Goods shall be deemed to be performed under a separate contract and no default by the Company in respect of any part delivery or instalment shall entitle the Customer to treat the whole contract as repudiated with regard to any balance remaining and deliverable or instalment remains to be completed.
- 7.3. The Company shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law.
- 7.4. Should the Customer fail to make any payment on the due date then the Company shall be entitled to cancel any subsisting contract with or suspend any further deliveries to or collections by the Customer and also appropriate any payments made by the Customer for such other Goods or Services supplied to the Customer under any contract as the Company may think fit notwithstanding any purported appropriation by the Customer. The Company shall not incur any liability to the Customer in respect of any such cancellation or suspension and this right shall exist without prejudice to any other right of the Company. Time for payment shall be of the essence of the Contract.
- 7.5. If payment has not been made by the Customer in accordance with clause 7.1 the Company shall be entitled to recover from the Customer interest payable at an annual rate of 3% above the base rate from time to time of the Company's bankers on any outstanding balance until the actual date of Payment. This right exists without prejudice to any other right of the Company.
8. Passing of Property and Risk
- 8.1. Notwithstanding that risk in the Goods shall pass to the Customer upon delivery, full legal and equitable title and interest in all and any Goods shall remain in the Company and shall not pass to the Customer until the Company shall have received payment in full of all amounts due and owing from the Customer to the Company for the time being (including interest accruing and owing to the Company) and from time to time in respect of such Goods and all other Goods supplied by the Company to the Customer from time to time.
- 8.2. During such times as title in the Goods remains in the Company, the Customer shall store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Company's property and shall notify the Company immediately if it becomes subject to any of the events listed in clauses 12.1.1 to 12.1.8.
- 8.3. If during such time as title in the Goods remains in the Company any of the Goods are incorporated in or attached or used as material for in the manufacture of other goods the property in the whole of such goods shall vest in and remain with the Company and the Customer shall hold such Goods as bailee of and to the order of the Company (at no cost to the Company) until the Company has received payment in full in respect of the Goods and all the Company's rights in relation to the Goods (including rights under this Agreement) shall extend to such goods.
- 8.4. In the event that the Goods are installed at the Customer's or any other premises, it is acknowledged that it is not the intention that the Goods shall become a fixture but shall remain a chattel and it is expressly agreed that the Company shall have the right to sever the Goods from the premises at which they have been installed (whether or not the Goods have become a fixture) when exercising its rights under clause 8.5 hereof.
- 8.5. If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clauses 12.1.1 to clause 12.1.8, or the Company reasonably believes that any such event is about to happen and notifies the Customer accordingly, then provided the Goods have not been resold, or irrevocably incorporated into any other product, and without limiting any other right or remedy the Company may have, the Company may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stores in order to recover them.
- 8.6. The Customer shall insure and keep insured the Goods to the full Price against "all risks" to the reasonable satisfaction of the Company until the day that the property in the goods passes on to the Customer and shall, whenever requested by the Company, produce a copy of the policy of insurance. Without prejudice to the other rights of the Company, if the Customer fails to do so, all sums whatever owing by the Customer to the Company shall forthwith become due and payable. If the Goods are destroyed by the insured risk before the Customer has paid for the Goods, the Customer shall hold the proceeds as the Company's Trustee.
9. Warranty
- 9.1. For the purposes of this clause 9 Warranty Period shall mean:
- 9.1.1. For new Goods the lesser of 6 months or 1,000 operating hours; and
- 9.1.2. In the case of reconditioned Goods for the lesser of 3 calendar months or 500 operating hours.
- 9.2. Subject to clause 9.5 the Company warrants that on delivery and for the Warranty Period the Goods shall:

- 9.2.1. Conform in all material respects with their description;
- 9.2.2. Be free from material defects in design, material and workmanship;
- 9.2.3. Be fit for any purpose held out by the Company
- 9.3. Subject to clause 9.4; if:
 - 9.3.1. The Customer gives notice in writing during the Warranty Period within a reasonable time of discovery that some or all of the goods do not comply with the warranty set out in clause 9.2;
 - 9.3.2. The Company is given a reasonable opportunity of examining such Goods the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 9.4. The Company shall not be liable for the Goods' failure to comply with the warranty in clause 9.2 if:
 - 9.4.1. The Customer makes any further use of such goods after giving a notice in accordance with clause 9.3;
 - 9.4.2. The defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
 - 9.4.3. The defect arises as a result of the Company following any drawing design or Goods specification supplied by the Customer;
 - 9.4.4. The Customer alters or repairs such Goods without the written consent of the Company;
 - 9.4.5. The defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - 9.4.6. The Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 9.5. The Company shall have no liability whatsoever for failure, defect, errors, damage or shortages in relation to second-hand Goods which have not been reconditioned. Such Goods are sold as seen and purchased at the Customer's own risk.
- 9.6. Except as provided in this clause 9, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 9.2.
- 10. Limitation of Liability
 - 10.1. Nothing in this Contract shall limit or exclude the Company's liability for:
 - 10.1.1. Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 10.1.2. Fraud or fraudulent misrepresentation;
 - 10.1.3. Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 10.1.4. Breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 10.1.5. Defective products under the Consumer Protection Act 1987.
 - 10.2. Subject to clause 10.1:
 - 10.2.1. The Company shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 10.2.2. The Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed [the price payable under this Contract/insurance limit?].
 - 10.3. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
 - 10.4. This clause 10 shall survive termination of the Contract.
- 11. Customer's Obligations
 - 11.1. The Customer shall:
 - 11.1.1. Ensure that the terms of the Order and any specifications submitted by them are complete and accurate;
 - 11.1.2. Co-operate with the Company in all matters relating to the Services;
 - 11.1.3. Provide the Company, its employees, agents, consultants and subcontractors with access to its premises and facilities as reasonably required by the Company to provide the Services;
 - 11.1.4. Prepare the Customer's premises for the supply of Services including without limitation ensuring the suitability, safety and security of the work area; and
 - 11.1.5. Obtain and maintain all necessary licenses, permission and consents which may be required for the Services before the date on which the Services are to start;
 - 11.1.6. Keep and maintain all materials, equipment, document and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation.
 - 11.2. Unless otherwise agreed in writing by the Company the Customer must free of charge:
 - 11.2.1. Erect, maintain, dismantle and move all scaffolding and plant required for the Company's works,
 - 11.2.2. Provide any water supply, artificial lighting and electric power required for the Company's works; and
 - 11.2.3. Unload Goods, plant, materials immediately upon arrival at the prescribed destination and provide secure and dry storage and all reasonable facilities for the installation thereof, including off-loading and positioning.
 - 11.3. If the Company's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
 - 11.3.1. The Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
 - 11.3.2. The Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this clause 11.3; and
 - 11.3.3. The Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.
- 12. Termination
 - 12.1. Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- 12.1.1. The other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 168 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 12.1.2. The other party commences negotiation with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 12.1.3. A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the other party (being a company) other than for a solvent reorganisation or the party (being an individual) is the subject of a bankruptcy petition or order;
- 12.1.4. An application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- 12.1.5. A floating charge holder over the assets of the other party has become entitled to appoint or has appointed an administrative receiver;
- 12.1.6. A person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 12.1.7. The other party suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
- 12.1.8. The other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes patient under any mental health legislation.
- 12.2. Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 12.3. Without limiting its other rights or remedies, the Company shall have the right to suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and the Company if:
 - 12.3.1. The Customer fails to pay any amount due under this contract on the due date for payment; or
 - 12.3.2. The Customer becomes subject to any of the events listed in clause 12.1.1 to clause 12.1.8 or the Company reasonably believes that the Customer is about to become subject to any of them.
13. Consequences of Termination
 - 13.1. On termination of this Contract for any reason:
 - 13.1.1. The Customer shall immediately pay any outstanding unpaid invoices and interest and, in respect of services performed but not yet invoiced the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 13.1.2. The Customer shall return all of the Goods which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - 13.1.3. Accrued rights and remedies of the parties at termination shall not be affected; and
 - 13.1.4. Clauses which expressly or by implication have effect after termination shall continue in full force and effect.
14. Force majeure
 - 14.1. For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Company, including but not limited to strikes, or other industrial disputes, failure of a utility or transport network, act of God, war, riot, civil commotion, breakdown of plant or machinery, or default of suppliers or subcontractors.
 - 14.2. The Company shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
 - 14.3. If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than 12 weeks, the Company shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
15. General
 - 15.1. A waiver of any right under the Contract is only effective if in writing and shall not be a waiver of any subsequent breach of default.
 - 15.2. Any notice given hereunder must be in writing and may be affected by personal delivery fax or by mail posted and shall be deemed to be received when left at that address if personal delivery, if affected by post shall be deemed to be received 48 hours after the date of posting, and if by fax on the of the next Business Day after transmission.
 - 15.3. The Company has the right at any time to assign, transfer, charge, sub-contract or deal in any other manner with this Contract or any part of this Contract.
 - 15.4. Except as set out in this Contract, any variation to the Contract shall only be binding when agreed in writing and signed by the Company.
 - 15.5. If a court or other competent authority finds any provision (of part thereof) of the Contract is invalid, illegal or unenforceable that provision or part thereof shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be effected. If such provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum amount of modification necessary to make it legal, valid and enforceable,
 - 15.6. A person who is not a party to this Contract shall not have any rights under or in connection with it.
 - 15.7. Nothing in this Contract shall establish a partnership or agency between the parties
 - 15.8. This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation shall in all respects be governed by and construed in accordance with English Law and the parties irrevocably agree to submit to the exclusive jurisdiction of the English Courts.