

## **DMG MORI Israel – Terms and Conditions of Sale**

### **1. Interpretation**

In these Conditions:

- 'SELLER' means MORI Seiki Israel Limited (registered in Israel under number 515327260). 'BUYER' means the person/corporation/entity who accepts a quotation of the SELLER for the sale of the Goods or whose order for the Goods is accepted by the Seller.
- 'CONDITIONS' means the conditions set out in this document.
- 'Goods' means any DMG MORI goods (including any instalment of the goods or any parts of them) which the Seller is to supply to the Buyer.

### **2. Basis of the Sale**

- 2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written order of the Buyer, which is accepted by the Seller, subject in either case to these Conditions, which shall govern the transaction to the exclusion of any other terms and conditions agreed upon in writing between the parties.
- 2.2. No variation to these Conditions shall be binding unless agreed in writing between the authorized representatives of the Buyer and the Seller.

### **3. Orders and Specifications**

- 3.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless confirmed in writing by the Seller. The Buyer shall be responsible for ensuring the accuracy of the terms of any order.
- 3.2. The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation.

### **4. Price of the Goods**

- 4.1. The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list applicable at the date of acceptance of the order.
- 4.2. The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller.
- 4.3. Where prices are quoted in foreign currency and paid in local currency, it will be calculated according to the specific exchange rate elected by the Seller. The Seller reserves the right to make an adjustment between the quoted and the actual exchange rate at the time payment is received by the Seller.
- 4.4. The price of the Goods does not include Value Added Tax, which must be paid at the applicable rate.

### **5. Terms of Payment**

- 5.1. The Buyer shall pay the price of the Goods by the date (if any) specified in the Seller's invoice or (in the absence of such date) within 30 days of the date of the invoice, and the Seller shall be entitled to recover the price notwithstanding that the title in the Goods has not passed to the Buyer. Full payment, on time, without any deduction or set off, shall be of the essence of the contract.
- 5.2. If the Buyer fails to make any payment on the due date, then without prejudice to any other right or remedy, the Seller shall be entitled to cancel the contract or suspend any further deliveries to the Buyer and/or to charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the maximum rate applied from time to time by Bank Le'umi of Israel to an unauthorized debit balance.

### **6. Delivery and Acceptance**

- 6.1. Delivery of the Goods shall be made by the Seller delivering them to such place as shall have been agreed with the Buyer.
- 6.2. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless otherwise agreed by the Seller in writing.
- 6.3. If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.4. If the Buyer fails to take delivery of the Goods then, without prejudice to any other right or remedy available to the Seller, the Seller may:
  - 6.4.1. store the Goods until delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
  - 6.4.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the contract or charge the Buyer for any shortfall below the

price under the contract. The Buyer will be deemed to have accepted the Goods on delivery unless he notifies the Seller to the contrary within 7 days after delivery.

## **7. Risk and Property**

- 7.1. In the case of Goods delivered to the Buyer, the risk of damage or loss will pass to the Buyer when the delivery vehicle arrives at the delivery place.
- 7.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due, as well as all other payments due to the Seller under these Conditions and by law.
- 7.3. Until such time as the title in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured and identified as the Seller's property.
- 7.4. Until such time as the title in the Goods passes to the Buyer, the Seller shall be entitled at any time after payment has become due to demand that the Buyer shall deliver the Goods to the Seller and the Seller shall act accordingly.

## **8. Warranty and Liability**

- 8.1. Please note that the factory warranty conditions are as follows:  
In addition to the terms and conditions mentioned above, DMG Mori grants its customers a machine warranty period of 18 months. The warranty period commences on the date installation and commissioning is carried out by our qualified technicians. However, the warranty period will commence no later than 30 days from the date the buyer accepts delivery of the machine, if documented installation and commissioning delays are caused by circumstances beyond the control of DMG Mori. Any damage to the machine incurred as a result of improper use prior to the machine being commissioned, is not covered by the warranty. A warranty claim is only valid if appropriate servicing and maintenance has been carried out as stated in the operating instructions of the respective machines. In addition, all inspections are to be conducted by the manufacturer or by technicians authorized by the manufacturer at the required intervals. All operations must be documented in the logbook supplied with the machine and then confirmed using the 'DMG MORI MACHINE check' facility, if this is included in the product configuration. Otherwise, the same warranty terms apply to the terms and conditions governing the supply of machine tools.
- 8.2. The above warranty is given by the Seller subject to the following conditions:
  - 8.2.1. The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer.
  - 8.2.2. the Seller shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval.
  - 8.2.3. the Seller shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid in full by the due date for payment:
- 8.3. Where any valid claim is made in respect of any of the Goods that they are defective, the Seller shall be entitled to replace them free of charge or, at Seller's discretion, to refund the price of those Goods, but the Seller shall have no further liability to the Buyer.
- 8.4. The Seller shall not be liable to the Buyer for any consequential loss or damage whatsoever.
- 8.5. The Company shall be excused from liability if the performance of the contract is prevented or hindered by any cause whatsoever beyond the Company's control and in particular, but without prejudice to, the generality of the foregoing by act of God, War (whether declared or not) Government control, restrictions or prohibitions by any Government act or mission whether local or national, fire, flood, subsidence, sabotage, acts of strike or lock-out, force majeure, rebellion, enemy action, civil war, riot, acts of sabotage or subversive activity or other cause beyond their control and shall not be liable for any loss or damage resulting from any such circumstances.
- 8.6. The Seller will agree, subject to matters hereinafter set out, to replace goods supplied that are shown to be faulty, subject to the Seller's right, which it hereby reserves, to have the goods inspected by the DMG MORI's Engineering Division at the manufacturing plant, whose decision shall be final and binding save in the case of manifest error. The Buyer agrees that where the DMG MORI's Engineering Division confirms that the part which has failed has been used other than as directed or following modification of the same, or the machine to which the same is fitted, then no warranty will be payable in connection therewith. The Buyer agrees that this provision is fair and reasonable.

## **9. Insolvency of Buyer**

This clause applies if:

- 9.1. The Buyer 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 purpose of amalgamation or reconstruction; or
- 9.2. an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 9.3. the Buyer ceases, or threatens to cease, to carry on business; or

9.4. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

## **10. Cancellation**

10.1. Orders cancelled within one week of order date will be subject to a cancellation fee equal to 10% of the order value.

10.2. Orders cancelled after one week of order date will be subject to a cancellation fee equal to 30% of the order value.

10.3. Any order cancelled within 90 days of planned shipment date from the factory will be subject to a cancellation fee equal to 50% of the order value.

10.4. Any order cancelled within 60 days of the planned shipment date from the factory will be subject to a cancellation fee equal to 75% of the order value.

Any order cancelled within 30 days of planned shipment date from the factory.

## **11. General**

11.1. No waiver by the Seller of any breach of the contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.2. Any transaction between the Buyer and the Seller shall in all respects be governed by, and construed in accordance with, the laws of Israel and both parties hereto shall submit to the exclusive jurisdiction of the Tel Aviv Courts.