

## **DPM Solutions' Trading Terms**

It has become clear that no one-set of Trading Terms will accommodate the various types of business that DPM does with its customers.

A significant proportion of DPM's work is for customers engaged in experimental research. In that sphere of activity researchers are more likely to be looking for innovative solutions, rather than for equipment with a predictable long life. Frequently such equipment may only be used a few times to test a research principle before it needs to be modified or is superseded by an improved design.

Where DPM supplies more "design-firm" equipment to customers we will discuss with those customers specific terms for each item of equipment they purchase. Those terms will be strongly influenced by the terms that DPM is able to agree with its suppliers of materials and components.

As a starting point for arriving at an agreement on Trading Terms, DPM Solutions has put together the following framework which will form the basis on which any agreement with customers will be based.

### **1. SERVICE PROVIDED**

DPM shall design and fabricate (or design only, or fabricate only, as the case may be) its products in a good and workmanlike fashion, in conformance with the requirements of the client as set out in the product description.

DPM shall furnish all of the materials, tools, labour, equipment, services and other items and facilities of every kind necessary to provide products to the client, including any services to be performed by way of subcontract.

### **2. CONTRACT PRICE**

Whilst pricing may vary according to the type of equipment being produced, and the lead-time for delivery, as a principle DPM will require an up-front payment and staged payments.

Any extra costs associated with the cancellation, alteration of the product description, or suspensions of orders or of the conditions contained in this Agreement shall be paid by the client.

Any modifications, alterations, changes or amendments to the description or specifications of the product shall be set out in writing, together with any change to the contract price necessitated by such amendments or changes.

The client agrees to pay for costs associated with changes in specifications made by the client. The client agrees to pay all taxes, duties or government levies resulting from any transaction under this Agreement and should any governmental authority impose any other or additional applicable taxes, the client shall be responsible for paying same.

All transportation and other charges shall be paid by the client unless specified otherwise in writing.

Any cost incurred by DPM in making alterations to design or fabrication necessitated by the furnishing by the client of incorrect data or design or operation requirements, will be paid for by the client.

Any unpaid account or balance shall bear interest at a rate of 1.5% per month, or 18% per annum.

### **3. DELIVERY DATES**

- a) It is anticipated that the delivery date of the design specifications, technical drawings, and the like is \_\_\_\_\_;
- b) It is anticipated that the delivery date of the fabricated product is \_\_\_\_\_.

Delivery dates are estimates and not guarantees and are based on conditions existing at the time of execution of this Agreement.

### **4. ACCEPTANCE/REJECTION OF PRODUCT**

All product claimed to be defective or that does not conform to the specifications shall be held subject to inspection by DPM. DPM shall either replace any product proven defective or allow credit for it.

The client must send email, post or fax notice of rejection of the product within ten (10) days of actual receipt of the product or any prototype.

All products shall be furnished subject to commercial variations in materials and fabrication operations incident to the processes used in fabrication unless otherwise specified.

In the event that any product supplied hereunder fails to conform to the specifications therefore, or DPM's warranties, DPM's liability in respect thereto shall be limited to either supplying additional or other product which conforms to such specifications or refunding the contract price. However, the use or resale of the product by the client will constitute acceptance, and all warranties and obligations of DPM shall be discharged.

DPM shall not be responsible for the performance of the product where the product is fabricated to the client's own design, prints, or specifications.

## **5. FORCE MAJEURE**

DPM's obligations under this Agreement are and shall be subject to war, invasion, insurrection, riot, the order of any civil authority, breakdowns, strikes, lockouts, labour disputes, accidents, fire, delays in transportation or delivery of the product, or any other cause or causes, whether or not similar to any of the foregoing, beyond DPM's reasonable control.

## **6. WARRANTY**

As stated in the opening paragraphs specific terms for each item of equipment may vary but a guiding principle will be the terms that DPM is able to agree with its suppliers of materials and components. Generally a warranty will not be given for more than a 12 month period and it will be limited to the terms outlined below.

DPM Solutions warrants its equipment to be free of defects in materials and workmanship for a period of one (1) year from the date of purchase. Date of purchase is deemed to be the date that the first payment is received. No other warranties apply, either express or implied.

If the equipment, or a defective part, malfunctions it must be returned to DPM Solutions for evaluation. Upon examination by DPM Solutions, if the equipment is found to be defective, it will be repaired or replaced at no charge. DPM Solutions' warranty does not apply to defects resulting from any action of the purchaser, including but not limited to mishandling, operation outside of design limits, improper repair, or unauthorized modification. This warranty is void if the unit shows evidence of having been damaged as a result of excessive corrosion; or current, heat, or moisture; improper specification; misapplication; misuse or other operating conditions outside of DPM Solutions' control. Components subject to ordinary wear are not warranted.

DPM Solutions neither assumes responsibility for any omissions or errors nor assumes liability for any damages that result from the use of its products in accordance with information provided by DPM Solutions, either verbal or written. DPM Solutions warrants only that the parts manufactured by it will

be as specified and free of defects. DPM Solutions makes no other warranties or representations of any kind whatsoever, express or implied, except that of title.

Limitation of liability: The remedies of purchaser set forth herein are exclusive, and the total liability of DPM Solutions with respect to this order, whether based on contract, warranty, negligence, indemnification, strict liability or otherwise, shall not exceed the purchase price of the component upon which liability is based. In no event shall DPM Solutions be liable for consequential, incidental or special damages.

### **Return Requests**

Before returning any product(s) or part(s) to DPM Solutions, purchaser must obtain authorization from DPM Solutions.

For warranty returns first e-mail DPM Solutions to obtain authorization: [dpm solutions@eastlink.ca](mailto:dpm solutions@eastlink.ca)

The purchaser is responsible for shipping charges, freight, insurance and proper packaging to prevent breakage in transit.

### **7. TERMINATION**

If either party is declared or adjudicated bankrupt or makes a general assignment for the benefit of creditors or a proposal or arrangement under the *Bankruptcy Act* or any successor legislation, commits an act of bankruptcy or proposes a compromise or arrangement or institutes proceedings or admits in writing inability to pay debts generally as they become due, or a petition is filed against a party under the *Bankruptcy Act*, or a liquidator, trustee, trustee in bankruptcy, receiver or receiver in manager, or any other officer with similar powers appointed for the party, this Agreement shall be terminated.

### **8. SEVERABILITY**

Any provision hereof which is contrary to the law shall not invalidate any other provision, and such provision shall be severable.

### **9. INTELLECTUAL PROPERTY**

- a) Nothing in this Agreement shall be construed as transferring to the client any right, title or interest in or to any design, copyright, patent, proprietary information, drawing, process or know-how which is the property of DPM;
- b) DPM shall retain all rights to intellectual property relating to the product;

- c) DPM shall and does hereby indemnify the client against any claim that any product as delivered by DPM directly infringes any third parties' patent, copyright, trade secret or other intellectual property right. DPM's obligation to indemnify the client will be subject to the following terms and conditions:
- i) the obligation will arise only if the client gives DPM prompt notice of the infringement claim and grants DPM, in writing, exclusive control over its defence and settlement;
  - ii) the obligation will arise to cover only the product as delivered by DPM to the client and not to any correction, modification or addition made by anyone whomsoever;
  - iii) the obligation will not apply to:
    - A. Any claim based on the use of any product to practice a process, or the furnishing of any information, service or technical support to the client; or
    - B. Any claim that any of the product infringes any third party's rights as used in combination with any products not supplied by DPM if that claim could have been avoided by the use of the product in combination with other products.

## **10. CONFIDENTIALITY**

Each party agrees to keep confidential and not disclose, directly or indirectly, any information concerning the other party's business (except to the extent that such information is available to the general public) or any other information which the other party designates as confidential, except to the extent required by applicable law.

- a) All plans, drawings, designs or specifications supplied by one party to the other shall remain the property of, and shall be returned to, the first party on termination or expiry of this Agreement and shall not be copied without authorization and no information relating to the product or special tooling shall be disclosed to any third party except for the purpose of this Agreement;
- b) Each party shall keep secret and shall not divulge to any third party any information received from the other party in connection with this Agreement which becomes known to the first party through its performance of this Agreement, or use the information other than for the purpose of fulfilling the terms of this Agreement;

- c) Neither party shall mention the other party's name in connection with this Agreement or disclose the existence of this Agreement in any publicity material or other similar communication to third parties without the other party's prior written consent;
- d) The client shall have no right to reproduce, use or disclose without restriction, any design or fabrication, particulars or information belonging to DPM. The client further agrees not to disclose to any person outside of its employ and not authorized by DPM to receive it, any information pertaining to DPM's affairs, particularly its technical developments, and, upon request, will return to DPM all drawings, blueprints, descriptions and other papers and data relating thereto which embodies such information, whether or not originally furnished by DPM.

## **11. AMENDMENTS**

This Agreement may be changed or amended only by a written amendment document signed by both DPM and the client.

## **12. ARBITRATION**

All disputes arising in connection with this Agreement shall be finally settled by arbitration in accordance with the terms and provisions contained in the *Arbitration Act* of Nova Scotia.

## **13. ASSIGNMENT**

Neither party shall assign any of its rights or obligations under this Agreement without the prior written consent of the other party. Any permitted assignment will not relieve the Assignor from its obligations hereunder arising before or after such assignment.

## **14. APPLICABLE LAW**

The laws governing the interpretation and implementation of this Agreement shall be the laws of the Province of Nova Scotia.

## **15. LIMITATION OF LIABILITY**

- a) In providing the services set forth in this Agreement, DPM makes no warranties whatsoever, either express or implied, oral or written, in fact or by operation of law or otherwise, except as expressly stated in this Agreement;

- b) DPM, its officers, agents and servants, shall not be liable to the client, nor to any other party for any liability, including, without limitation, strict liability, including liability for loss or damage due directly or indirectly to occurrences or consequences which the services referred to herein are designed to identify, any losses or damages, including without limitation, economic and consequential losses, or direct or indirect, incidental, exemplary and punitive damages, whether in contract, tort or otherwise, or any other claims or expenses in any manner resulting, including, without limitation, liability, losses or damage directly or indirectly from or connected with the supply of design and fabrication services, whether or not supplied pursuant to this Agreement, or from the discovery or elimination of any and all hazards, or from the failure to so discover or eliminate, or from the failure to provide services or by reason of any action, omission, act of negligence, passive negligence, including gross negligence or any error or omission in the design/fabrication services or any use or application thereof, misrepresentation, misstatement, imprudence, lack of skill or error of judgment of or by DPM or its officers, agents and servants.

**16. WARRANTIES OF CLIENT**

The client represents and warrants to DPM as follows:

- a) The client, if a duly incorporated body corporate, is validly existing and in good standing under the laws of \_\_\_\_\_. If a body corporate, the client has the corporate power and authority and all licenses and permits required by governmental authority to conduct its business as now being conducted and to fulfill, satisfy and perform the obligations and responsibilities of the client set forth herein;
- b) If a corporate entity, the client has the corporate power and authority to execute, deliver and perform this Agreement and the transactions contemplated hereby, and the execution and delivery of this Agreement have been duly authorized by the client.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement the day and year first above written.

Signed, Sealed and Delivered )  
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