



TERMS AND CONDITIONS

Dyna Pro Dynamometers Limited

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1. INTERPRETATION

- 1.1 In these Conditions, the following definitions apply:
Authorised Distributor: any person whom the Supplier may from time to time designate as an authorised distributor of goods sold by the Supplier.
Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.
Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.6.
Contract: the contract between the Supplier and the Purchaser for the sale and purchase of the Goods in accordance with these Conditions.
Country of authorised distribution: any country which is the principal place of business of an Authorised Distributor.
Delivery Details: the details relating to the transportation and delivery of the Goods, including approximate time and date of delivery, in accordance with clause 3 and as set out in clause the Supplier's quotation at Schedule 1.
Force Majeure Event: has the meaning given in clause 11.
Goods: the goods (or any part of them) set out in the Order.
Order: the Purchaser's order for the Goods, as set out in the Supplier's written acceptance of the Purchaser's offer to purchase the Goods in accordance with clause 2.2 of the Contract.
Purchaser: the person or company who purchases the Goods from the Supplier.
Software: (Or "computer program", "program", "code") the instructions executed by a computer, as opposed to the physical device on which they run. (The hardware is not included).
Specification: any specification for the Goods, including any related plans and drawings, supplied to the Supplier by the Purchaser, or produced by the Supplier and agreed in writing by the Purchaser, as set out at Schedule 2.
Supplier: Dyna Pro Dynamometers Limited (registered in England and Wales with company number 06831033).
- 1.2 In these Conditions, the following rules apply:
(a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
(b) A reference to a party includes its personal representatives, successors or permitted assigns.
(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
(d) Any phrase introduced by the terms including, including, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
(e) A reference to writing or written includes faxes and e-mails.

2. BASIS OF CONTRACT

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
2.2 The Order constitutes an offer by the Purchaser to purchase the Goods in accordance with these Conditions. The Purchaser shall ensure that the terms of the Order and any relevant Specification are complete and accurate.
2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
2.4 The Contract constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures or website are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Supplier and the Purchaser for the sale of the Goods.
2.5 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. TRANSPORTATION AND DELIVERY

- 3.1 The Supplier shall ensure that:
(a) the Goods are accompanied by a delivery note which shows the date of the Order, all relevant Purchaser and Supplier reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
(b) if the Supplier requires the Purchaser to return any packaging materials to the Supplier, that fact is clearly stated on the delivery note. The Purchaser shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.
3.2 In the event that the parties have agreed in writing that the Purchaser shall collect the Goods:
(a) the Purchaser shall collect the Goods from the Supplier's premises at Unit 18, Sherrington Way, Lister Road Industrial Estate, Basingstoke, Hampshire, United Kingdom, RG22 4DQ or such other location as may be agreed between the parties prior to delivery (**Delivery Location**) within 14 Business Days of the Supplier notifying the Purchaser that the Goods are ready; and
(b) the Supplier shall not be liable for any loss or damage suffered by the Purchaser as a result of the Purchaser's use of an inappropriate vehicle for the transport of the Goods, poorly secured or unsecured loads, or side weight infringements.
3.3 In the event that the parties have agreed in writing that the Supplier shall deliver the Goods, the Seller shall deliver the Goods in accordance with the Delivery Details as set out in the Supplier's quotation at Schedule 1
3.4 The Delivery Details are approximate only, and the time of delivery is not of the essence unless specifically agreed between the parties in writing in the Order. In the absence of such agreement the Supplier shall not be liable for any loss or damage, including consequential loss, suffered by the Purchaser as a result of any failure by the Supplier to deliver the Goods on or within the approximate delivery times and/or dates stated in the Delivery Details.
3.5 The Supplier shall not be liable for any loss suffered by the Purchaser as a result of a delay in delivery of the Goods that is caused by a Force Majeure event or the Purchaser's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
3.6 If the Purchaser fails to take delivery of the Goods within 14 Business Days of the Supplier notifying the Purchaser that the Goods are ready for delivery, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the fourteenth Business Day following the day on which the Supplier notified the Purchaser that the Goods were ready for delivery; and
(b) the Supplier shall store the Goods until delivery takes place, and charge the Purchaser for all storage costs and expenses (including insurance) at a rate of 0.5% of the total Order value per week.
3.7 If the Purchaser fails to take delivery of the Goods within 30 Business Days following the Supplier's written notification that the Goods are ready for collection or delivery, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Purchaser for any excess over the price of the Goods or charge the Purchaser for any shortfall below the price of the Goods.
3.8 The Supplier may deliver such Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment.
4. **NOTICE OF LOSS OR DAMAGE**
4.1 The Purchaser shall unpack and inspect the Goods immediately upon receipt and shall notify the Supplier in writing of any loss or damage to the Goods recorded upon such receipt within 5 Business Days of receipt of the Goods. The Purchaser shall provide the Supplier with photographs and proper documentation of any such damage or loss.
4.2 The Supplier shall only be liable for loss or damage arising from the use of faulty material or poor workmanship in the production of the Goods. The Supplier's liability for such loss or damage is limited to crediting or replacing the defective Goods, and no such liability shall arise in the event that the Purchaser fails to notify the Supplier thereof in accordance with clause 4.1.

5. QUALITY

- 5.1 The Supplier warrants that on delivery, and for a period of 24 calendar months, unless otherwise specified in writing, or as set out at Schedule 4, from the date of delivery (**Defects Warranty Period**), the Goods shall:
(a) conform in all material respects with their description and any applicable Specification; and
(b) be free from material defects in design, material and workmanship.
5.2 Subject to clause 5.3 and 5.4, if:
(a) the Purchaser gives notice in writing to the Supplier 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 5.1; and
(b) the Supplier is given a reasonable opportunity of examining such Goods; and
(c) the Purchaser (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Purchaser's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
5.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 if:
(a) the Purchaser gives notice of such Goods after giving notice in accordance with clause 5.2; or
(b) the defect arises because the Purchaser failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or good trade practice; or
(c) the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Purchaser; or
(d) the Purchaser alters or repairs such Goods without the written consent of the Supplier; or
(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
(f) replacement of service items, as set out at Schedule 3.
(g) to items which become defective through fair wear and tear.
5.4 Where the Goods are not situated in a Country of Authorised Distribution, the Purchaser shall bear all transportation and delivery costs incurred by the Supplier when the Supplier performs the obligations under clause 5.2.
5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
5.6 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
5.7 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
6. **TITLE AND RISK**
6.1 The risk in the Goods shall pass to the Purchaser on completion of delivery.
6.2 Title to the Goods shall not pass to the Purchaser until the Supplier has received payment in full in cleared funds for:
(a) the Goods; and
(b) any other goods or services that the Supplier has supplied to the Purchaser in respect of which payment has become due.
6.3 Until title to the Goods has passed to the Purchaser, the Purchaser shall:
(a) hold the Goods on a fiduciary basis as the Supplier's bailee;
(b) store the Goods separately from all other goods held by the Purchaser so that they remain readily identifiable as the Supplier's property;
(c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
(d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
(e) notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.2; and
(f) give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Purchaser may resell or use the Goods in the ordinary course of its business.
6.4 If before title to the Goods passes to the Purchaser the Purchaser becomes subject to any of the events listed in clause 9.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Purchaser accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Purchaser to deliver up the Goods and, if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the Goods are stored in order to recover them.

7. PRICE, DEPOSIT AND PAYMENT

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of collection or delivery.
7.2 The Supplier may, by giving written notice to the Purchaser at any time before delivery of the Goods, or any part thereof, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
(a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
(b) any request by the Purchaser to change the delivery date(s), quantities or types of Goods ordered, or the Specification;
(c) any delay caused by any instructions of the Purchaser or failure of the Purchaser to give the Supplier adequate or accurate information or instructions.

- 7.3 The price of the Goods is exclusive of the costs and charges of packaging, tooling, insurance and transport of the Goods, which shall be paid by the Purchaser when it pays for the Goods.
7.4 Any modifications or additions to the Specification carried out by the Supplier at the Purchaser's request at any time following the Supplier's written acceptance of the Purchaser's offer to buy the Goods shall be charged on an hourly rate basis.
7.5 The price of the Goods is exclusive of amounts in respect of value added tax (VAT). The Purchaser shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
7.6 The Supplier shall invoice the Purchaser for the Goods prior to production of the Goods. The Supplier reserves the right, at any time, to amend any invoice issued to the Purchaser in order to correct accidental errors, amend omissions or include additional charges that may have arisen from the date of issue of the invoice.
7.7 The Purchaser shall pay a non-refundable deposit of 50% of the invoice value to the Supplier in cleared funds within 5 Business Days of receipt of the invoice.
7.8 The Supplier shall aim to commence production of the Goods within 30 Business Days of receipt of the deposit monies from the Purchaser.
7.9 The Purchaser shall pay the remaining 50% of the invoice in full and in cleared funds within 20 Business Days of payment of the deposit monies.
7.10 In the event that the Purchaser has opted for the Goods to be produced on a fast-track basis, the Purchaser shall pay the remaining 50% of the invoice in full and in cleared funds a minimum of 5 Business Days prior to the date of dispatch of the Goods, as set out in the Delivery Details.
7.11 Where the Purchaser holds a trade account with the Supplier, the Purchaser shall make payment of the account balance on the 30th day of each calendar month. If the Purchaser fails to make any payment due to the Supplier under this clause 7.11, then the Purchaser shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Purchaser shall pay the interest together with the overdue amount.
7.12 Time of payment is of the essence.
7.13 The Supplier shall only deliver or make the Goods available for collection following receipt of payment of the invoice in full.
7.14 Credit card payments with a total value under £1,500 shall be subject to a 2.8% surcharge.
7.15 Failure by the Purchaser to make any payment due to the Supplier under the Contract by the due date for payment, in accordance with clauses 7.9, 7.10 and 7.11, may result in a delay in the production and subsequent delivery or availability of the Goods for collection, for which the Supplier shall not be held liable.
7.16 The Purchaser shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Purchaser shall not be entitled to assert any credit set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Purchaser against any amount payable by the Supplier to the Purchaser.

8. SOFTWARE

- 8.1 The Supplier shall supply the Software on a "free for life" basis to the original Purchaser only.
8.2 If the Goods have been sold by the original Purchaser to a third party, the Supplier shall, at its option, will supply the Software on an annual fee basis.
8.3 The Software shall expire on an annual basis, following a 60 day countdown to the expiry date clearly displayed on the Dynamometer screen.
8.4 The Supplier shall make the updated Software available to the Purchaser on request at any time during the 60 day expiry countdown period or at any time thereafter.
8.5 In the event that the Purchaser has failed to make payment for the Goods in accordance with the terms of clause 7 above, the Supplier shall not make the updated Software available until such time as the Purchaser has paid all amounts due under the Contract in full within any deductions or withholding except as required by law.

9. PURCHASER'S INSOLVENCY OR INCAPACITY

- 9.1 If the Purchaser becomes subject to any of the events listed in clause 9.2, or the Supplier reasonably believes that the Purchaser is about to become subject to any of them and notifies the Purchaser accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Purchaser and the Supplier without incurring any liability to the Purchaser, and all outstanding sums in respect of Goods delivered to the Purchaser shall become immediately due.
9.2 For the purposes of clause 9.1, the following events apply:
(a) the Purchaser 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 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply; or
(b) the Purchaser commences negotiations 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 (other than (where the Purchaser is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Purchaser with one or more other companies or the solvent reconstruction of the Purchaser); or
(c) (being an individual) the Purchaser is the subject of a bankruptcy petition or order; or
(d) a creditor or encumbrancer of the Purchaser attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days; or
(e) (being a company) 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 Purchaser; or
(f) (being a company) a floating charge holder over the Purchaser's assets has become entitled to appoint or has appointed an administrative receiver; or
(g) a person becomes entitled to appoint a receiver over the Purchaser's assets or a receiver is appointed over the Purchaser's assets; or
(h) any event occurs, or proceeding is taken, with respect to the Purchaser in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.2(a)-(g) (inclusive); or
(i) the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
(j) the Purchaser's financial position deteriorates to such an extent that in the Supplier's opinion the Purchaser's capability adequately to fulfil its obligations under the Contract has been placed in jeopardy.
(k) (being an individual) the Purchaser dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

10. LIMITATION OF LIABILITY

- 10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
(b) fraud or fraudulent misrepresentation; or
(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
(d) defective products under the Consumer Protection Act 1987.
10.2 Subject to clause 10.1:
(a) the Supplier shall not be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract (including a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors); and
(b) the Supplier's total liability to the Purchaser 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, including losses caused by a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors shall not exceed £5000.

11. INDEMNITY

- 11.1 The Purchaser shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Purchaser's breach of any of its obligations under the Contract, including any claims brought against the Supplier alleging that the Goods provided by the Supplier in accordance with the Specification infringe a patent, registered design, copyright or trade secret or other similar right of a third party.

12. FORCE MAJEURE

- 12.1 Force party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of buildings structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

13. GENERAL

- 13.1 **Assignment and subcontracting.**
(a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Purchaser.
(b) The Purchaser may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
13.2 **Notices.**
(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.
(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.2(a); if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
(c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3. Severance.

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.4. Waiver.

- A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

- 13.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.
13.6 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

13.7. Governing law and jurisdiction.

- The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Schedule 1 Order/Quotation

As per written quotation.

Schedule 2 Specification

As per Specification attached to Quotation.

Schedule 3 Service Items

- Brake Pads
- Filters (air / oil / water)
- Pump valves and Diaphragm
- Brake Diaphragm
- Oxygen Sensors (Lambda Sensors)
- Ignition Pick-Up Sensors
- Oils and Grease

Schedule 4 Warranty Period

- | Item | Warranty Period |
|---------------------|-----------------|
| Batteries | 12 Months |
| Starter Motors | 12 Months |
| Gas Analysing Units | 12 Months |