
Diamond Power Machine (Hubei) Co., Inc.

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General Terms and Conditions of Purchase (China)

WR/74/01/08

Diamond Power Machine (Hubei) Co., Inc. welcomes your company as our supplier and we look forward to a long and successful business relationship with you. Any purchase order and resulting purchases for equipment, materials, components, and/or services are conditioned on this General Terms and Conditions of Purchase (**Terms and Conditions**) set forth below.

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1. DEFINITIONS

Buyer shall mean DIAMOND POWER MACHINE (HUBEI) CO., INC..

Seller shall mean the person, firm, corporation or other entity who or which, as the case may be, would supply for the equipment, materials, components, and/or services pursuant to a purchase order and these Terms and Conditions.

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Purchase Order a purchase order, including all terms and conditions thereof and all specifications, drawings, models and samples furnished thereunder.

Product equipment, materials, components, and/or services which is the subject of a Purchase Order.

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- 2. OFFER** A Purchase Order offer to sell, quotation or proposal from Seller. Any reference to such offer to sell, quotation or proposal is solely for the purpose of incorporating the description and specifications of the Products contained therein to the extent that such description and specifications do not conflict with the description and specifications as provided in the Purchase Order.

- 3. PURCHASE PROCESS** - When Buyer intends to purchase any Product from Seller, it will first submit a Purchase Order to Seller, which will clearly list the name, quantity and delivery date of the Product, as well as any related technical specifications. Seller can accept the Purchase Order by signing on it or by shipping the Products called for by the Purchase Order. A Purchase Order is valid for acceptance by Seller within sixty (60) days from the date of the Purchase Order unless otherwise stated in the Purchase Order. In the event that

Seller accepts the Purchase Order by signing on it, Seller shall deliver the signed Purchase Order to Buyer in person or by prepaid post to the Buyer Purchase Order or to any other address stipulated by Buyer; or it may send the signed Purchase Order by fax to a number stipulated by Buyer. By acceptance of the Purchase Order Seller agrees to these Terms and Conditions contained herein.

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4. **PREVAILING TERMS** This Purchase Order, together with these Terms and Conditions, constitute the entire agreement of the parties and supersedes all previous verbal or written representations, agreements and conditions. These Terms and Conditions shall govern a Purchase Order and any resulting purchase. Any additional or different terms or conditions submitted by Seller shall be deemed objected to by Buyer and shall be of no effect nor in any circumstance binding upon Buyer unless accepted by Buyer in writing. If Seller objects to any of these Terms and Conditions, said objection must be specifically brought to the attention of Buyer by Seller by a written instrument separate from any quotation, or other printed form of Seller. Said objections shall be deemed proposals for additional or different terms and conditions and may be accepted only in writing executed by an authorized representative of Buyer.

5. **DELIVERY** Time is of the essence of this Purchase Order. Should Seller fail to deliver the Product called for by a Purchase Order by the delivery date specified in the Purchase Order, Buyer may terminate the Purchase Order, in whole or in part, and may buy elsewhere and charge Seller any additional expense incurred thereby. Seller is obliged to notify Buyer in writing of any delay or anticipated delay immediately upon awareness of the event causing such delay or anticipated delay.

In the event of a late delivery, Buyer may require, and Seller agrees to pay the amount equivalent to 3.5% of the total price for the Product under the Purchase Order as liquidated damages for each week or part thereof that delivery is late. No liquidated damages shall be charged if the delay is less than seven (7) days.

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Unless otherwise agreed, Seller will be responsible for transportation of the Products and all the necessary costs and expenses incurred in connection with transportation. Unless otherwise instructed, the entire Product called

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6. **INSPECTION AND ACCEPTANCE** - The Products furnished under a Purchase Order may, at any time prior to acceptance by Buyer, be rejected for defects revealed by inspection or analysis. Inspection by Buyer shall not relieve the Seller from any responsibility regarding defects or other failures to meet the requirements of the Purchase Order.

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Acceptance of the Products provided hereunder shall occur as soon as practicable after delivery of same to the place and in the manner specified in the Purchase Order. When the results of inspection and testing satisfy Buyer that the Product is completed in accordance with the requirements of the Purchase Order, Buyer shall notify Seller in writing of the completion of inspection and acceptance, upon receipt of which Seller shall issue the invoice to Buyer. Acceptance by Buyer shall not relieve the Seller from any responsibility regarding defects or other failures to meet the requirements of the Purchase Order.

7. **PRICE AND PAYMENT TERMS** - The price for any Product shall be the price specified in a Purchase Order. Unless otherwise indicated in the Purchase Order, value added tax is included. Payment for all orders will be made within sixty (60) days from the date of

Inspection, test acceptance or use of the Product furnished under the Purchase Order obligation under this warranty, and such warranty shall survive inspection, test acceptance and use.

This warranty shall run to Buyer, its successor, assigns and customers and the user of the Products.

10. TERMS OF RETENTION If so indicated in a Purchase Order, a 10% of the total order sum may be held as retention. After one year (1) upon the shipment date of the Product (to a third party carrier or to Buyer or its representative, at the location specified in the Purchase Order) if there is no warranty issue as agreed by both parties, the retention shall be paid within sixty (60) days. The payment shall be made through T/T.

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11. FORCE MAJEURE - Buyer shall not be responsible for any damage, increased costs or loss which Seller may sustain by reason of such a failure or delay of performance, and such failure or delay shall not be deemed a breach of these Terms and Conditions if such failure or delay arises out of an event, which is beyond the reasonable control of Buyer, as a result of which Buyer is unable to perform its obligations hereunder. Such event may include, but are not limited to, acts of God, or of the public enemy; acts of the government; acts, failure to act, or delays in acting on the part of Seller; fires; floods; epidemics; quarantine restrictions; strikes; labor shortages; disputes or disruptions; freight embargoes; lack of or inability to obtain materials, equipment or

prior written authorization of Buyer. No other changes, modification, alteration or waiver of or to the provisions of this Purchase Order shall be effective unless made or accepted in writing by an authorized representative of Buyer.

13. **TERMINATION AND SUSPENSION** Buyer may at any time terminate or suspend performance of a Purchase Order in whole or in part for its convenience upon written notice to Seller. Upon termination, Seller shall be entitled to reasonable termination charges consisting of a percentage of the price of the Purchase Order reflecting the percentage of the work performed prior to termination plus actual direct costs resulting from termination. Upon receipt of notice of termination or suspension, Seller shall immediately discontinue work, and mitigate its costs resulting from such termination, if any. As full compensation for suspension, Seller shall be reimbursed for costs reasonably incurred, without duplication of any item, to the extent that such costs directly result from such suspension of work. IN NO EVENT, SHALL SELLER BE ENTITLED TO LOST OPPORTUNITY COSTS OR ANTICIPATED PROFITS AS A RESULT OF TERMINATION OR SUSPENSION AND IN NO EVENT SHALL TERMINATION OR SUSPENSION CHARGES EXCEED THE AMOUNT OF THIS PURCHASE ORDER.

14. **PATENTS** Seller agrees, at its own expense, to defend any suit or action against Buyer or against those selling or using the Product covered by a Purchase Order for alleged infringement of patent or invention rights arising from the sale or use of such Product and to indemnify and save Buyer harmless from any damages paid or incurred in connection with any such suit or action, whether against Buyer or against those selling or using the Products covered by the Purchase Order.

In case the Product or any part thereof, is held in such claim to constitute an infringement and its use is enjoined, Seller shall, at its own expense, either procure for Buyer the right to continue using said Product; or replace same with non-infringing Product; or modify it so it becomes non-infringing; or remove said Product and refund the purchase price thereof.

15. **TECHNOLOGICAL OWNERSHIP** - The specifications, drawings, designs, manufacturing data and other information transmitted to Seller by Buyer in connection with the performance of a Purchase Order are the proprietary rights of the Buyer and are disclosed in strict confidence on the condition that they are not to be disclosed or transmitted to others in any form directly or indirectly, or reproduced, copied or used for any purpose detrimental to the interest of Buyer. In particular, Seller agrees that Buyer has, without any cost, the right and interest in any invention, improvement or other technology development, whether or not patentable,

which is conceived or reduced to practice in the performance of this Purchase Order or any work thereunder by

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21. **BUSINESS PRACTICES** Seller acknowledges receipt of a copy of the _____ Code of Business Conduct, and Seller represents and warrants that it will adhere to the standards outlined in _____ Conduct in its relations with Buyer and in all _____ activities in connection with this Purchase Order.

Seller acknowledges, and agrees to comply ethically, with integrity, and in full compliance with both the letter and the spirit of the laws and regulations applicable to those activities. This commitment applies, but is not limited, to the award of contracts/subcontracts on an impartial/competitive basis, personal business conduct, internal control systems, the giving/receiving of gifts, and correct documentation and registration of financial accounts. No employee of Buyer is a _____ business-conduct policies. Should Seller ever receive, directly or indirectly from any Buyer representative, a request that Seller believes is contrary to _____ local General Manager.

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Seller represents and warrants that it is familiar with the _____ -Unfair Competition **Anti-Unfair Competition Law** _____ **Criminal Law** _____, the *United States Foreign Corrupt Practices Act, as amended* _____ **FCPA** _____, and U.K. Bribery Act 2010. Seller further represents that, in particular, it is familiar with the prohibitions of the Anti-Unfair Competition Law, Criminal Law and FCPA against paying or giving anything of value, either directly or indirectly, to officials, candidates or political parties for the purpose of securing any improper advantage for a company, including assisting a company in obtaining or retaining business.

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Seller shall not make any offer, payment, promise to pay, gift, or promise to give monies or anything of value; nor authorize any such offer, payment, promise to pay, gift, or promise to give by anyone acting for or on behalf of Seller or Buyer; to any government official, any political party or official thereof, any candidate for political office, any official of a public international organization, or any other person that is contrary to the provisions of the Anti-Unfair Competition Law, Criminal Law and FCPA, as amended.

Seller acknowledges that the _____ award of a Purchase Order to Seller. Buyer may terminate the Purchase Order at any time, without any liability or obligations to Seller, if Buyer believes, in good faith, that Seller has violated any provisions of this clause. Any action by Seller which would or might constitute a violation of the Anti-Unfair Competition Law,

Criminal Law or FCPA, as amended, or a request for such action from or by a representative of Seller shall result in immediate termination of the Purchase Order without further liability or obligation of Buyer.

22. **GOVERNING LAW** These Terms and Conditions, any Purchase Order and resulting purchase shall be governed by all applicable laws, regulations and legal principles of the People's Republic of China.

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23. **SETTLEMENT OF DISPUTE** - Dispute arising in the performance of these Terms and Conditions and any Purchase Order shall be resolved by the parties through friendly consultation. Otherwise, it shall be submitted to China International Economic and Trade Arbitration Commission Shanghai Sub-Commission for arbitration which shall be conducted in accordance with the commission's arbitration rules in effect at the time of applying for arbitration. The arbitral award is final and binding upon both parties.

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24. **SEVERABILITY** - If any provisions of these Terms and Conditions shall be held completely or partially invalid or unenforceable, then the respective terms or conditions shall, to the extent of such invalidity or unenforceability, be deemed to be severed from these Terms and Conditions and the remaining shall not be influenced.

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25. **LANGUAGE** - These Terms and Conditions and any Purchase Order are written both in the Chinese and English language, and both texts are equally authentic.

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