



1 DEFINITIONS:

- "Buyer" DSI Underground Systems Inc., DYWIDAG-Systems International USA Inc. or that member of the DYWIDAG-Systems International group of companies named in or deemed under the Contract or Order to be the purchaser or buyer (or similar) of Goods or Services;
- "Conditions" these terms and conditions for the purchase of Goods and/or Services;
- "Contract" means any contract agreed between Buyer and Supplier for the supply of Goods and/or Services, including, without limitation, call-off contracts lasting for an agreed period of time or one-off orders, and which shall comprise these Conditions and the Order;
- "Goods" goods of any description, as set out in the Order, including but not limited to equipment, machinery, materials (whether raw or partly or wholly manufactured), plant and vehicles, and/or any goods supplied to Buyer in connection with the supply of Services to Buyer;
- "Order" Buyer's written instruction to supply the Goods and/or Services (or Buyer's written acceptance of Supplier's offer to supply the same), including any associated technical specification or other delivery requirements;
- "Price" the price of the Goods and/or Services as set out in the Contract or otherwise agreed in writing;
- "Services" services of any kind described in the Order and all work carried out by Supplier for Buyer;
- "Supplier" the person(s), firm or company named in the Contract or to whom or to which the Order is addressed (including its successors and approved assignees).

2 THE AGREEMENT:

- 2.1 Any conditions sought to be imposed by Supplier (including, without limitation, any terms or conditions which Supplier purports to apply in any quotation, acknowledgement or acceptance of Order, specification or similar document) are excluded, except where otherwise agreed in writing and signed by the parties' authorised representatives.
- 2.2 Receipt of an Order shall be deemed to be acceptance of an Order. Also, any conduct consistent with acceptance of an Order (for example, despatch or delivery of Goods, or commencement of work on the Goods or performance of the Services), shall constitute acceptance by Supplier of the Contract and these Conditions.

3 DELIVERY:

- 3.1 Time of delivery is of the essence. Supplier must comply with the delivery dates and addresses set out in the Contract. Unless otherwise agreed, delivery shall be made to Buyer's site and Supplier shall off-load the Goods. Supplier must notify Buyer promptly if it is unable to so comply, take every possible step to remedy the same, and shall pay any costs incurred in meeting the late or alternate delivery. Buyer may cancel the Order and/or terminate the Contract, without prejudice to any other rights it may have, if any Goods and/or Services are not delivered strictly in accordance with the Order.
- 3.2 All Goods shall be packaged so as to protect them adequately before, during and after delivery and, if required by Buyer, each delivery shall be accompanied by a certificate of analysis and/or up-to-date material safety data sheet in a form acceptable to Buyer.
- 3.3 Supplier must ensure that any export/import licences, certificates of origin and any other governmental authorisations or necessary documentation has been obtained prior to shipment. Supplier agrees to provide all information necessary for Buyer to comply with all applicable laws, regulations and any related legal reporting obligations in the country(ies) of destination, including, but not limited to, customs-related obligations, any local content/origin requirements, and to obtain all tariff and trade program duty avoidance(s) and/or refund benefits, where applicable.
- 3.4 Delivery shall not be effected until the Goods have been unloaded and/or the Services have been performed and in each case accepted in writing by an authorised officer of Buyer.
- 3.5 If the Goods are to be delivered or the Services performed by instalments, the Contract shall be treated as a single contract and not severable.
- 3.6 If either party is prevented or delayed in the performance of any of its obligations by an event absolutely outside its reasonable control ("Force Majeure Event"), that party promptly shall notify the other in writing giving all information regarding the same and take all steps reasonably possible to minimise disruption to the other. The party affected by the Force Majeure Event shall be excused performance, or punctual performance, for so long as the Force Majeure Event continues, provided that it keeps the other party fully informed of progress and, in respect of Supplier's delivery of Goods, it does not reduce quantities supplied by any greater proportion than that by which availability is

reduced to it nor does it give Buyer's requirements any less priority than any other purchaser of Goods (as Supplier shall evidence if so requested).

4 QUALITY AND DESCRIPTION:

- 4.1 Supplier warrants that any Goods supplied shall, when delivered, be: (i) of the quantity and description specified in the Contract or in any advertising or other material published or provided by Supplier; (ii) of satisfactory quality; (iii) fit for their normal purpose and any specific purpose of Buyer made known to Supplier or for any other purpose of Buyer of which Supplier ought reasonably to have been aware; and (iv) free from defects in design, material and workmanship. Supplier, at its own expense, shall perform quality control testing in accordance with its own procedures to ensure that the Goods meet the requirements of the Contract.
- 4.2 Supplier warrants that any Services supplied shall be: (i) performed efficiently, safely, competently and in conformity with any applicable industry code of practice by suitably qualified and experienced personnel; and (ii) of the highest quality which reasonably would be expected from a skilled and experienced operator providing a similar type of services in similar circumstances.
- 4.3 Supplier warrants its expertise and confirms the accuracy of all statements and representations made in respect of the Goods and/or the Services prior to entering into the Contract and acknowledges Buyer's reliance upon the same.
- 4.4 Supplier warrants that any Goods and Services provided shall: (i) comply with all applicable statutory requirements and regulations, including without limitation those relating to the manufacture, packaging, packing, carriage and delivery of the Goods and the performance of the Services, and health and safety and environmental laws for the same; (ii) not infringe the intellectual property rights of any third party; and (iii) conform to any specification or other requirements referred to in the Contract.
- 4.5 Any hazardous material supplied must be marked by Supplier with its international danger symbol(s) and the name displayed in English. Transport and other documents must contain the same, together with emergency information in English. Supplier's attention is drawn to all local and international agreements, regulations and codes of practice in the country of delivery relating to the packing, labelling and carriage of hazardous goods, with which Supplier must ensure that it complies.
- 4.6 Supplier shall permit Buyer or its authorised representative to inspect and test the Goods at any time during the manufacturing, processing or storage stages, and to inspect and test performance of the Services. Supplier shall take any steps reasonably required by Buyer where Buyer deems the steps necessary to ensure compliance with the Contract. For the avoidance of doubt, Buyer's right to inspect and require steps to be taken does not indicate Buyer's acceptance or approval of work done nor does it reduce or remove the obligation of Supplier to comply with the Contract.
- 4.7 On receiving written instructions from Buyer to vary the Goods or Services Supplier shall use its best endeavours to so vary the Goods or Services. Any reasonable costs incurred or savings that could reasonably have been made by Supplier in varying the Contract shall be charged or credited to Buyer. The rates or prices specified in the Order shall form the basis for calculating costs or savings.

5 INDEMNITY:

Supplier shall indemnify Buyer in full against all direct and indirect and consequential liability, loss, damages, costs and expenses (including reasonable legal fees) or other claims (including third party claims) arising from or incurred as a result of: (i) any breach of the Contract; and (ii) any act or omission of Supplier or its employees, agents or sub-contractors in supplying the Goods and/or the Services, except that nothing shall render Supplier liable to indemnify Buyer insofar as and to the extent that the matter in respect of which Buyer seeks indemnity has been caused by the negligence of Buyer or its employees acting in the course of their employment. This indemnification obligation is an ongoing obligation and shall survive any termination or expiration of the Contract or other purported completion of the Services or delivery of Goods.

6 INVOICING, PRICE AND PAYMENT:

- 6.1 Unless stated otherwise in the Order, Supplier may invoice Buyer on or at any time after delivery of the Goods and/or Services. The Price shall be exclusive of sales tax (or any equivalent local tax) (if applicable) and inclusive of all charges for packaging, shipping, carriage, insurance and delivery of any Goods to the delivery address specified in the Order and any other sales and export or import duties or levies.
- 6.2 Invoices, and all other correspondence relating to the Contract, must quote: the date of delivery, Order number, delivery address, product name, quantity and description, and must be sent to the invoice address specified in the Order referencing the appropriate individual contact at

- Buyer. Failure to comply with this requirement shall entitle Buyer to return the invoice, unpaid, to Supplier.
- 6.3 Unless otherwise agreed in writing between the parties, Buyer shall pay the Price within ninety days from the end of the month in which a valid invoice is received by Buyer or, if later, after Buyer has accepted the Goods and/or Services in question. Payment does not constitute acceptance by Buyer of the Goods or Services.
- 6.4 Buyer may set off against the Price any sums due to Buyer from Supplier under the Contract or any other contract between Buyer or any associated company and Supplier.
- 7 TITLE AND RISK:**
- 7.1 Without prejudice to Buyer's rights to reject any Goods, title to and risk in the Goods shall pass to Buyer upon satisfactory delivery. Supplier warrants that Buyer shall receive good and marketable title to the Goods, free of any claims, liens or encumbrances.
- 7.2 Where Buyer provides free issue materials or equipment to Supplier, these shall remain the property of Buyer but shall be at the risk of Supplier while in the Seller's possession or control. Supplier shall maintain all such materials and equipment in good order and condition, shall use the same solely for and strictly in accordance with the Contract, and otherwise shall comply with all Buyer's directions given from time to time in respect of the same. Waste or loss shall be made good at Supplier's expense.
- 7.3 Buyer may inspect and test the Goods and may reject and return (at the risk and expense of Supplier) such Goods as fail to conform exactly to the standards referred to in Article 4 above. Supplier shall either, at Buyer's option, refund the cost of rejected goods, or replace such rejected Goods within a reasonable time (being not more than fifteen days after notice of rejection) with Goods complying with such standards at Supplier's sole cost and expense. Buyer shall not be deemed to have accepted the Goods without its written confirmation until it has had a reasonable time to inspect the Goods, or, within a reasonable time of any latent defect becoming apparent.
- 7.4 Supplier shall promptly make good, at its cost by repair or replacement, defects or any shortfall in the Goods and/or Services occurring within twelve months of delivery/performance, and shall be responsible for any associated costs incurred in making good the same.
- 7.5 Supplier will take out insurance of a level and value sufficient to insure itself against all potential liabilities under the Contract. Supplier shall provide, at Buyer's request, a certificate of insurance detailing insurance policies held by Supplier naming Buyer as an additional named insured.
- 8 CONFIDENTIALITY / INTELLECTUAL PROPERTY:**
- 8.1 Supplier shall not disclose to any other party any confidential information belonging to or relating to Buyer or any associated company (including, without limitation, specifications, formulae, manufacturing processes, know-how and any technical, business or economic information) or use such information for any purpose except as expressly authorised in writing by Buyer. Supplier is responsible for any unauthorised disclosures made by its employees and agents and shall take all reasonable precautions to prevent such disclosures. This obligation of confidence continues during the Contract period and for so long as the information remains confidential thereafter.
- 8.2 Supplier may not use Buyer's name or the names of its associated companies for the purposes of discussions with any third party regarding the supply of Goods or the performance of Services, or for the purposes of any advertisement or publicity, without obtaining the prior written consent of Buyer.
- 8.3 Supplier shall, upon request, assign and transfer free of charge, with full title guarantee, any intellectual property rights (including patents, patent applications and know-how) in documents, specifications, plans, drawings, samples, information or Goods created or prepared by Supplier specifically for Buyer.
- 8.4 Any documents, specifications, plans, drawings, samples, information or Goods supplied by Buyer shall remain Buyer's property and Supplier shall return these and any copies to Buyer, upon Buyer's request, or permit Buyer access to Supplier's premises to recover the same.
- 9 TERMINATION:**
- 9.1 Buyer may cancel any Order in respect of all or any part of the Goods or Services by giving notice to Supplier at any time prior to delivery or performance and shall in such event not be liable to pay the Price for such Goods or Services but shall reimburse Supplier's reasonable administrative costs arising directly from such cancellation.
- 9.2 Notwithstanding any term to the contrary in the Contract, Buyer at its option may unilaterally terminate all or part of the Contract: (i) by ninety days' notice, or (ii) immediately if Supplier becomes bankrupt, unable to pay its debts as they fall due, enters into any composition or arrangement with its creditors or, where Supplier is a company, if any resolution or petition to wind up the company is passed or presented or

- if an administrator or a receiver of the company's undertaking, property or assets or any part thereof is appointed (or anything analogous occurs or arises in any other jurisdiction), or (iii) if Supplier is in breach of contract, and, if the breach can be remedied, Supplier fails to remedy such breach within twenty days of receiving notice to do so.
- 9.3 Termination does not release either party from any liability which at the time of termination has accrued already or which thereafter may accrue nor does it affect the survival of any right, duty or obligation which is expressly or impliedly stated to survive termination.
- 9.4 Upon termination Supplier will refund promptly advance payments made by Buyer to Supplier for Goods and Services not yet supplied.
- 9.5 Supplier agrees that the fact that one or more Orders have been placed by Buyer with Supplier does not entitle Supplier to future Orders or to an entitlement to damages or other relief where Buyer does not place future Orders with Supplier. Any volume indications or estimates given by or on behalf of Buyer to Supplier (whether before or after the formation of the Contract) do not impose any contractual obligations to purchase on Buyer.
- 10 GENERAL:**
- 10.1 Notices shall be in writing addressed to a party at its registered office or principal place of business or such other address as a party may have notified to the other from time to time, in accordance with this clause.
- 10.2 Each right or remedy of Buyer under the Contract is without prejudice to any other right or remedy of Buyer, whether under the Contract or otherwise.
- 10.3 Supplier shall not be entitled to assign or sub-contract any of its rights or obligations under the Contract without obtaining Buyer's prior written permission.
- 10.4 Supplier acts, and shall hold itself out at all times, as an independent contractor. It does not act, nor shall it act, as agent or partner of Buyer.
- 10.5 Failure or delay by Buyer in enforcing or partially enforcing any provision of the Contract will not be a waiver of any of its rights under the Contract.
- 10.6 Supplier shall, and shall procure that its employees, agents and sub-contractors shall, abide by all Buyer's applicable site and safety rules when on a Buyer site, in particular but not limited to, rules regarding arrival and departure and the (un)loading of Goods.
- 10.7 If any provision of the Contract is found by any body of competent jurisdiction to be wholly or partly illegal, invalid, unenforceable or unreasonable, it shall to the extent of such illegality, invalidity, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 11 IMPORTANT NOTICE:**
- THE CONDITIONS ARE SUBJECT TO CHANGE FROM TIME TO TIME WITHOUT NOTICE TO SUPPLIER, AND ANY PERFORMANCE UNDER AN ORDER SHALL BE SUBJECT TO THE CONDITIONS IN EFFECT AS OF THE DATE OF PERFORMANCE, AS POSTED ON BUYER'S WEBSITE AT WWW.DSIAMERICA.COM, WWW.DSIUNDERGROUND.COM OR AS ADVISED. NOTWITHSTANDING THE FOREGOING, NO CHANGE IN THE CONDITIONS SHALL BE APPLICABLE RETROACTIVELY, AND SUPPLIER MAY OBJECT TO ANY CHANGES TO THE CONDITIONS PROVIDED IT GIVES BUYER WRITTEN NOTICE OF SUCH OBJECTION PROMPTLY AFTER IT BECOMES AWARE OF ANY CHANGE. IN THE EVENT OF AN OBJECTION, SUPPLIER MAY TERMINATE PERFORMANCE UNDER AN ORDER WITHOUT FURTHER LIABILITY TO EITHER PARTY IF BUYER REFUSES TO WAIVE THE OBJECTIONABLE CHANGE RAISED BY SUPPLIER.
- 12 LAW AND JURISDICTION:**
- The Order, these Conditions and any Contract shall be governed by the laws of the place in which the Order was generated and the parties submit to the exclusive jurisdiction of the Courts of the place where such order was generated or (at Buyer's election) the place of incorporation of Buyer except that Buyer may also elect to (i) take action or proceedings in any other court(s) having jurisdiction or (ii) elect for binding arbitration in a place of its choice under the rules of the International Chamber of Commerce. Supplier waives any right to apply to any other court(s). The parties exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.