

1 DEFINITIONS

- 1.1 In these conditions
"Seller" means C Dugard Limited registered in London under company number 355588 and whose principal place of business is 75 Old Shoreham Road, Hove, East Sussex.
"Buyer" means the person or customer who accepts a quotation of the Seller for the sale or supply of the Goods or whose order for the Goods is accepted by the Seller. "Order" means the order for Goods either by way of the Seller's quotation or the Buyer's request in which these conditions are incorporated.
"Goods" means the machinery, equipment, materials, components, services and/or supervision which the Seller is to supply in accordance with these conditions. "Writing" includes email, telex, facsimile transmissions and any comparable means of communication and any reference to "Written" shall be construed accordingly. "Conditions" means the terms and conditions set out in this document and includes any special terms and conditions agreed in writing between the Buyer and the Seller. "Contract" means the contract for the purchase and sale of goods and/or services.
- 1.2 The headings in these conditions are for convenience only and shall not affect their interpretation.
- 1.3 Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.4 The Contract shall be governed by the Laws of England.

2 TERMS AND CONDITIONS OF SALE

- 2.1 The Buyer acknowledges; that it purchases the Goods in the course of its business and not for private use; that it purchases the Goods in a competitive market and that the bargaining strength of the Seller was not a relevant factor; that it received no inducement to agree to any term, condition or warranty herein; that it knows and understands the existence, extent and meaning of these terms, conditions and warranties that it knows and understands the restriction or exclusion of any rights given to it in this contract or by any of the implied or express terms, conditions and warranties contained in the Supply of Goods and Services Act 1982, or any other enactment or any other principle in law or equity and that it accepts the restriction or exclusion of those terms, conditions or warranties as being fair and reasonable having regard to all the circumstances of the agreement.
- 2.2 The parties agree that these terms, conditions and warranties (together with any other terms, conditions and warranties expressly incorporated into this contract) represent the entire agreement between the parties relating to the sale and purchase of the Goods and that no statement or representation made by either party has been relied upon by the other in agreeing to enter into this contract.
- 2.3 The Seller's employees or agents are not authorised to make any representation concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely upon any such representation which is not so confirmed.
- 2.4 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the goods which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5 Quotations issued by the Seller are given subject to these conditions and are not offers capable of acceptance so as to make a legally binding contract. All orders (by whatever name called) placed with the Seller require the Seller's acceptance before any Contract arises. The Seller reserves the right to refuse any order.
- 2.6 These conditions exclude any other terms, conditions or warranties in any form of contract or Order or similar which are inconsistent with these conditions which the Buyer may seek to impose, even if such purports to exclude or supersede any terms and conditions inconsistent with them. The Buyer accepts that any Goods accepted by him or any contract between the Seller and Buyer, shall be deemed to be acceptance of these conditions.
- 2.7 Any variations to these conditions shall have no effect unless expressly agreed in writing and signed by the Seller and Buyer.
- 2.8 Any typographical, clerical or other error or omission in any written or printed document or information issued by the Seller shall be subject to correction or alteration at any time without any liability on the part of the Seller.

3 ORDERS AND SPECIFICATIONS

- 3.1 The Buyer shall promptly furnish and ensure the accuracy of all designs, equipment, information, specifications, data or instructions necessary for the Seller to perform the Contract and the Buyer shall compensate the Seller for all loss and expenses incurred by the Seller by reason of any error, defect or omission therein or by any reason of any other act, omission or delay on the part of the Buyer.
- 3.2 Unless otherwise agreed by the Seller in writing the quantity, quality and description of any specification for the Goods shall be those set out in the Seller's quotation.
- 3.3 Drawings, dimensions, capacities, indications of performance, weights and all other data submitted or supplied or printed in catalogues, prospectuses, circulars, advertisements, illustrated matters or price lists by or on behalf of the Seller must be taken as approximate only and do not form part of the Contract and the Seller shall not be liable for any deviation therefrom.
- 3.4 The Seller reserves the right to make any reasonable changes in the specification of the goods which do not materially affect their quality or performance.
- 3.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on the terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profits), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.6 All extras and accessories ordered but not specified in the Seller's quotation will be charged for separately as will the costs of all tests, alterations, additions and other work undertaken at the Buyer's request.

4 PRICES

- 4.1 The price of the Goods shall be the Seller's quoted price or where no price has been quoted, the price in the Seller's published price list current at the date of the Contract. All prices quoted may be reasonably altered by the Seller.
- 4.2 The Seller reserves the right to increase the contracted price of the Goods to reflect any increase in the cost to the Seller which is due to any matter out of the control of the Seller such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increases in the costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer or any delay caused by the instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Except as agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex-works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for packaging, transport, insurances, installation, erection at the Buyer's premises, starting up, demonstration, training and or commissioning.
- 4.4 If the Seller has accepted the order and thereafter agrees to any alteration or modification of Goods which the Buyer has requested, the Buyer shall be responsible for all additional costs and expenses occasioned thereby.
- 4.5 The price (and any other sum) is exclusive of any applicable Value Added Tax which the Buyer shall be additionally liable to pay to the Seller. The Buyer also agrees to pay an amount equal to any other taxes paid or payable by the Seller charged on the supply of the Goods under the Contract excluding taxes assessed on profits.

5 TERMS OF PAYMENT

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer or any finance company acting on the Buyer's behalf for the price of the Goods and all other applicable monies before, on or at any time after delivery of the Goods.
- 5.2 Unless otherwise agreed in writing by the Seller, the Buyer shall be liable to pay the price of the Goods and all other applicable monies forthwith, notwithstanding that delivery of the Goods may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price and other relative monies shall be of the essence of the Contract. The Seller may, at its discretion, allow the Buyer to make payment of all relative invoices within 30 days of any such invoice.
- 5.3 If the Buyer fails to make payment in full on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to; cancel the Contract (or outstanding part thereof); suspend any further deliveries or services to be rendered to the Buyer; appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and/or charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of eight per cent per annum above HSBC Bank plc base rate from time to time. Until payment in full is made, such interest is to accrue on a daily basis. If it be held that the Seller is not entitled to rely upon this provision, the Seller will rely upon the statutory provision in respect of interest, pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.4 In the case of export contracts, unless otherwise agreed in writing, the Buyer shall have made payment in full, or for any agreed unpaid monies raise an irrevocable letter of credit for payment of the balance of the price and of other relevant monies, and present to the Seller all shipping documents and invoices before the Seller shall release the Goods to the Buyer or his agent carrier. If by reason of the Buyer's act or omission in export contracts the Seller is unable to ship the Goods when ready upon presentation of the documents above and a notification from the Seller that the Goods are ready for release, then interest at a rate of 10% per annum may be charged on any accounts unpaid on the due date such interest to accrue on a daily basis. The Seller reserves the right in such circumstance to put the Goods in storage and/or sell the Goods, pursuant to paragraph 7.5 herein.

6 SUBSTITUTION

- 6.1 Should any materials or parts specified or required for completion of the Contract be unavailable, the Seller is entitled to supply a suitable substitute and this shall be accepted by the Buyer in full satisfaction and performance of the Seller's obligations in that regard.

7 DELIVERY

- 7.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection, or if some other place for delivery is agreed in writing by the Seller delivering the Goods to that place. The Buyer shall be responsible for off-loading the Goods as directed by the Seller. Delivery to a third party carrier is to be treated as delivery to the Buyer.
- 7.2 If the Seller has agreed some other place at which to deliver the Goods, any dates quoted for delivery are approximate only and the Seller shall not be liable for any delay or failure in delivery of the Goods howsoever caused or for any loss, damage, injury or expense which may be suffered by the Buyer or any third party by reason of late or failed delivery. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Buyer shall not restrict the time of delivery to normal working hours. The Goods may be delivered by the Seller in advance of the delivery date upon giving reasonable notice to the Buyer.
- 7.3 If the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more instalment shall not entitle the Buyer to treat the Contracts as a whole as repudiated.
- 7.4 The Seller shall have the right to tender delivery of any portion of the Goods separately and to invoice the Buyer therefore. Each portion so tendered shall be for the purposes of payment to be deemed to be a separate Contract and may be invoiced separately.
- 7.5 The Seller reserves the right to put the Goods or any portion or part thereof into storage at the Buyer's risk and expense if for any reason the Seller is unable to make delivery or install any equipment or the Buyer does not collect the goods. The Seller may in any such circumstances at such time as it determines sell the Goods at the best price readily obtainable and the Buyer shall be responsible to the Seller for any shortfall between that price and the relative price under the Contract.
- 7.6 The Seller shall be entitled to exercise a right of suspension of the delivery of the Goods at any time and in the event of any such suspension the Seller may at its discretion require such security as it thinks fit or pre-payment of the price and all other monies outstanding and the payment of the price of any further delivery or deliveries.
- 7.7 Where the Seller has agreed in writing to deliver the Goods to the Buyer's premises, the Seller shall be entitled to repair or replace free of charge or allow credit for any Goods lost or damaged in transit.

8 INSTALLATION AND COMMISSIONING

- 8.1 Should the Seller have agreed in writing to install and/or commission and/or service the Goods at the premises of the Buyer or elsewhere, it shall be under no liability for any direct or indirect loss or damage howsoever arising caused to the Buyer or to any third party as a result of or in connection with such installation, commissioning or servicing.
- 8.2 If the Goods are to be installed or commissioned by the Seller at the Buyer's premises then the Buyer shall not use the goods pending such installation or commissioning.

9 RISK AND TITLE

- 9.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time when the Seller notifies the Buyer that the Goods are available for delivery.
- 9.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the legal and beneficial titles shall not pass to the Buyer until the Seller has received 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, together with all other monies payable in relation thereto by the Buyer to the Seller.
- 9.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and baillie, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected, insured, clearly marked and identified as the Seller's property and shall not annex the Goods to any premises without the Seller's written permission. Should the Buyer resell or otherwise dispose of the Goods but not have accounted to the Seller for the price of the Goods and all other Goods agreed to be sold by the Seller to the Buyer and all other relevant monies, the Buyer shall keep such proceeds of sale or other monies that are due and payable to the Seller in a separate bank account and separate from any other monies or properties of the Buyer and third parties.
- 9.4 Until such time as the property in the Goods passes to the Buyer the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and shall have irrevocable licence to enter upon the premises of the Buyer or of any third party where the Goods are stored and inspect or repossess the Goods. The Buyer shall in any relevant contract with a third party protect this right of the Seller.
- 9.5 The Buyer shall not be entitled to pledge or in any way charge by way of security or any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall forthwith become due and payable without prejudice to any other right or remedy of the Seller.
- 9.6 The Seller is entitled to maintain an action or claim for the price of the Goods even though the property in them may not have passed to the Buyer.

10 GUARANTEE AND LIABILITIES

- 10.1 Goods other than those deemed by the Seller to be used or second hand Goods are sold entirely subject to the terms and conditions of any relevant manufacturers or importers own guarantee and the Buyer shall in no circumstances be entitled to make any claim against the Seller in respect of any defect in any terms of any such guarantee. The Seller assigns to the Buyer the benefit of any such guarantee so far as it is capable of assignment.
- 10.2 Unless otherwise agreed Goods deemed by the Seller as used, second hand or re-engineered Goods are sold "as seen" and no guarantee is given or implied as to their age, suitability, capacity, quality, fitness, condition, performance or compliance with the Health and Safety at Work Act 1974 or other statute or regulation or otherwise.
- 10.3 The Seller warrants that any equipment supplied will perform in accordance with its specification save that the Seller shall be under no liability in respect of any defect in the Goods, components, materials or parts arising from any fault or defect in any drawing, design, information or specification supplied by the Buyer nor in respect of any fault or defect arising from fair wear and tear, wilful damage, negligence by the Buyer or a third party, abnormal working conditions, failure to follow the Seller's instructions, misuse or alteration or repair of the Goods without the Seller's approval and the Buyer shall indemnify the Seller against any such loss or damage howsoever arising whether any such loss or damage was suffered by the Buyer or any third party.
- 10.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days of the date of delivery, or where the defect or failure was not apparent on reasonable inspection within 7 days after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 10.5 Where any claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or part thereof or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall at its discretion be entitled to replace or repair the Goods (or the part in question) free of charge or refund to the Buyer the price of the Goods (or a proportionate part of the price) and the Buyer shall accept the replacement, repair or refund in full and final satisfaction and the Seller shall have no further liability to the Buyer.
- 10.6 Except in respect of death or personal injury neither the Seller nor the Buyer shall be liable to the other for any claim for direct, indirect or consequential economic or other losses, damages or liabilities such as (without limitation) lost profits, revenue, costs including legal and other professional costs, removal, storage or other expenses, or other claims to any consequential compensation whatsoever, arising from or in connection with any representation or any express or implied warranty, condition or other contract term or any duty at common law or pursuant to statute which arises out of or in connection with the supply of the Goods or their use or resale by the Buyer except as expressly provided in these Terms and Conditions. The Seller will use its best endeavours in allocating resources to minimise any such losses.
- 10.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract or any part thereof by reason of any delay in performing or any failure to perform, any of the Seller's obligations in relation to the Goods if the delay or failure was due either directly or indirectly to any cause beyond the Seller's reasonable control including but not exclusively; act of God, explosion, flood, earthquake, subsidence, tempest, fire or accident; war or threat of war or preparation for war, sabotage, collapse of structure, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measure of any kind on the part of any governmental, parliamentary or local authority, import or export regulation or embargo; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); unexpected difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or unforeseeable breakdown in machinery.

11 INSURANCE

- 11.1 Unless otherwise agreed in writing, the Buyer warrants that it shall have an effective policy of insurance in respect of the Goods to their full replacement value and against all other risk and liability (including but not limited to direct, indirect and consequential losses). The Buyer further warrants that there are no circumstances which could lead to such insurance being revoked, vitiated or not renewed in the ordinary course.

12 INSOLVENCY OF BUYER

- 12.1 These clauses apply if the Buyer enters a voluntary arrangement with its creditors, or has or had a petition for an administration order with its creditors presented against it, or becomes subject to an administration order, or becomes insolvent; goes into compulsory or voluntary liquidation or a provisional liquidator or a receiver and/or manager or administrative receiver is appointed, an encumbrancer takes possession of any of the property or assets of the Buyer or if the Buyer ceases, or threatens to cease, to carry on any business, fails to or refuses to pay in full any sum due and payable by the Buyer to the Seller on the due date for payment, fails to take delivery of the Goods or any part thereof otherwise than in accordance with the Buyer's contractual rights under the Contract, or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer.
- 12.2 If clause 12.1 applies then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to immediately cancel the Contract or any part thereof or suspend any further deliveries under the Contract without any liability to the Buyer, or require a cash payment before any delivery is made. If the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary or other remedy available to the Seller.
- 12.3 The Seller shall at any time prior to the price being paid, be entitled to enquire of the Buyer the Buyer's financial position and the Buyer shall provide such information forthwith as the Seller shall reasonably require.

13 CONFIDENTIALITY AND COPYRIGHT INDEMNITY

- 13.1 All designs, drawings, specifications and information supplied in connection with the Goods are confidential and their use must be strictly confined to the Buyer's work and to the process of this Contract.
- 13.2 The copyright, design rights or any other form of intellectual property rights in all drawings, specifications, data and Goods supplied by the Seller to the Buyer shall at all times be and remain the exclusive property of the Seller and shall not be used by the Buyer otherwise than as authorised by the Seller in writing.
- 13.3 The Buyer will fully and effectively indemnify the Seller against all actions, costs, claims, damages and demands whensoever made arising from any breach or alleged breach of copyright, patent, design, trademark or other intellectual property rights resulting from the Seller reproducing any drawings, designs or plans supplied by the Buyer in connection with the Goods and this clause shall remain in full force and effect notwithstanding delivery of the Goods and completion of the contract.

14 HEALTH AND SAFETY

- 14.1 The Buyer shall be responsible for ensuring that all statutory, government, E.C. or local authority requirement or direction is complied with in relation to the use of any Goods provided by the Seller and the Seller gives no warranty that the Goods, or any instructions for their use, comply with any such requirement or direction or in particular with any requirement of the Health and Safety at Work Act 1974 and the Buyer shall indemnify the Seller in respect of any liability, monetary penalty or fine howsoever arising.
- 14.2 The Buyer shall use cautionary notices, warnings, information or advices which may be supplied to him by the Seller or otherwise available to him from third parties.
- 14.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements.

15 ANTI-BRIBERY

- 15.1 The Buyer undertakes that neither it nor its employees, servants, advisers or agents shall receive or agree to receive from any person, or offer or agree to give to, or procure for, any person, any gift or consideration of any kind, as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the obtaining or the execution of the Contract or any other contract to which the Seller is a party.
- 15.2 In the event of a breach of Clause 15.1, or the Buyer or any person employed by it or acting on its behalf (with or without its knowledge), committing any offence under the Bribery Act 2010 in relation to the Contract or any other contract to which the Seller is party, the Seller shall be entitled to terminate the Contract and to recover from the Buyer the amount or value of any gift or consideration received, or paid or procured by the Buyer, its employees, representatives or on its behalf.
- 15.3 The Buyer shall not conspire with any person to do any of the acts mentioned in this Clause.

16 GENERAL

- 16.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its principal place of business or such other address as may at the relevant time have been notified to the other party pursuant to this provision.
- 16.2 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. If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the remainder of the provision in question and any other provision of these conditions shall not be affected thereby.
- 16.3 If any dispute arises out of this agreement the parties will initially attempt to settle it by mediation in accordance with the Centre for Dispute Resolution (CEDR) model mediation procedure in such form as is recommended by CEDR. No party may commence any arbitration or court proceedings in respect of any dispute arising out of this agreement until the parties have attempted to settle it by mediation and that mediation has terminated.
- 16.4 Any dispute arising under or in connection with these Conditions or the sale of the Goods not resolved by mediation shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Chartered Institute of Arbitrators in accordance with the Arbitration Act 1975.