

CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions:

"Buyer" means the person firm company or organisation who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller

"Goods" means the Goods (including any instalment of the Goods or any part of them) which the Seller is to supply in accordance with these conditions

"Seller" means Duvine Limited (company number 5941429) of Sturmer Road, Haverhill, Suffolk, CB9 7UU, England

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller and a reference to a numbered Condition shall be a reference to the relevant numbered Condition set out in this document

"Contract" means the contract for the purchase and sale of the Goods

"Writing" includes letter telex cable facsimile transmission and comparable means of communication

1.2 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

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation

2. Basis of the Sale

2.1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Seller which is accepted by the Buyer or any written order of the Buyer which is accepted by the Seller subject in either case to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted or any such order is made or purported to be made by the Buyer

2.2. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller

2.3. The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are 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 accordingly the Seller shall not be liable for

any such advice or recommendation which is not so confirmed

2.5. Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller

3. Orders and Specifications

3.1. No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative

3.2. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms

3.3. The quantity quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). In the event of a conflict between the two the Seller's quotation will prevail

3.4. If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer the Buyer shall indemnify the Seller against all loss damages costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent copyright design trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification

3.5. 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 or where the Goods are to be supplied to the Seller's specification, which in any case do not materially affect their quality or performance

3.6. 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 terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses incurred by the Seller as a result of cancellation including any consequential loss and (by way of example and without limitation) any damages which the Seller must pay to suppliers with whom the Seller has contracted in furtherance of the performance of the Contract

4. Price of the Goods

4.1. The price of the Goods shall be the Seller's quoted price or where no price has been quoted (or a quoted price is no longer valid) the price list in the

Seller's published price list current at the date of acceptance of the order. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the Buyer

4.2. The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation any foreign exchange fluctuation currency regulation alteration of duties significant increase 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 any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions

4.3. Except as otherwise stated under the terms of any quotation or in any price list of the Seller and unless otherwise 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 transport packaging and insurance and for the cost of packing cases.

4.4. The price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller and any other applicable tax which is from time to time in force

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 for the price of the Goods on or at any time after the delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods

5.2. The Buyer shall pay the price of the Goods within 30 days of the date of the Seller's invoice notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request

5.3. No payment may be withheld by the Buyer for any reason whatsoever nor may any counterclaim of the Buyer be set-off against any payment due to the Seller without the prior written consent of the Seller

5.4. The Seller shall have a general and particular lien over any property of the Buyer in its possession in respect of any monies due to the Seller from the Buyer from time to time

5.5. If the Buyer fails to make any payment on the due date then without prejudice to any other right or

remedy available to the Seller the Seller shall be entitled to:

5.5.1. cancel the Contract or suspend any further deliveries to the Buyer;

5.5.2. 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

5.5.3. charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 4 per centum per annum above Barclays Bank plc's base rate from time to time until payment in full is made calculated on a daily rate basis, as well before as after any judgement.

5.6. The Seller may from time to time notify the Buyer of a credit limit and without prejudice to the remainder of these Conditions shall be entitled to take one of the following steps whenever the Buyer has exceeded the credit limit notified to it:

5.6.1. to revoke its acceptance of any order placed by the Buyer

5.6.2. to require the Buyer to pay in advance of delivery for outstanding orders for Goods notwithstanding any credit terms agreed between the parties

5.6.3. to suspend deliveries of Goods.

5.7. The credit limit referred to in Condition 5.6 may be adjusted up or down or withdrawn as the Seller may consider reasonable in the circumstances.

6. Delivery

6.1. 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 by the Seller by the Seller delivering the Goods to that place

6.2. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date (and by one or more deliveries) upon giving reasonable notice to the Buyer

6.3. Where the Goods are to be or are delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated

6.4. If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods

6.5. If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.5.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable costs and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract provided that until such time as the Goods are either delivered in accordance with clause 6.5.1 or sold in accordance with clause 6.5.2 they shall be stored by the Seller at the Buyer's risk.

7. Risk and Property

7.1. Risk of damage to or loss of the Goods shall pass to the Buyer:

7.1.1. in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection; or

7.1.2. in the case of Goods to be delivered otherwise than at the Seller's premises at the time of delivery or if the Buyer wrongfully fails to take delivery of the Goods at the time when the Seller has tendered delivery of the Goods

7.2. Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Seller has received in cash or 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 ("Other Goods")

7.3. 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 bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled, subject to Condition 7.6, to resell or use the Goods in the ordinary course of its business (as principal and not as agent of the Seller) but shall account to the Seller for the proceeds of the sale or otherwise of the Goods whether tangible or intangible including insurance proceeds (up to the aggregate amount due to the Seller from the Buyer in respect of the Goods and Other Goods) and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and in the case of tangible proceeds properly protected and insured

7.4. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so

forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored or thought by the Seller to be stored and repossess the Goods

7.5. The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable

7.6. The entitlement of the Buyer to resell the Goods shall cease forthwith on any of the events set out in Conditions 9.1.1, 9.1.2 or 9.1.3 occurring or on notification by the Seller to the Buyer under Condition 9.4, whichever shall first occur

7.7. If the Goods have been joined or connected in any way to other chattels in such a way that the Goods are nevertheless readily identifiable and removable the Seller shall be entitled to remove and repossess the Goods pursuant to Condition 7.4 regardless of the practical difficulty of so doing or the damage caused to such other chattels or any other property or assets in the course of taking all reasonable steps to effect such removal (whether such chattels, property or assets belong to the Buyer or to third parties) and the Buyer waives any claim it may have against the Seller for any damage caused to its chattels or other property as a result of taking such reasonable steps and shall indemnify the Seller in full against any claim made against the Seller by any third party arising out of or in connection with such reasonable steps being taken by the Seller

7.8. If the Buyer incorporates the Goods with other equipment or products ("the New Goods") in such a way that the Goods are not a readily identifiable and removable part of the New Goods the Buyer shall store such New Goods separately and shall notify the Seller of the precise location and position thereof and the ownership of such New Goods and the property therein shall vest in the Seller

7.9. Upon any sale of any Goods falling within the scope of the Condition 7.8 by the Seller, then if the proceeds of sale exceed the price or the balance of the price of the Goods due to the Seller from the Buyer, the Seller shall apply the balance of the proceeds of sale as follows:

7.9.1. first, reimbursing the Seller the cost and expense of the taking of possession and the sale of the New Goods and any damages which the Seller has suffered as a result of any repudiation of the contract by the Buyer;

7.9.2. secondly, paying any sums due and owing to other creditors of the Buyer in respect of other items and materials used in connection with the manufacture of the New Goods where the property in such items and materials has remained vested in such other creditors by reason of effective reservation of title clauses and the claims of such other creditors pursuant to such reservation of title clauses have been notified to the Seller by the Buyer or its liquidator, administrator or receiver or by such other creditors

8. Warranties and Liability

8.1. Subject to the conditions set out below the Seller warrants that the Goods will correspond with the specifications (if any) referred to in Condition 3.3 at the time of delivery and will be free from defects in material and workmanship for a period of twelve months from the date of their delivery

8.2. The above warranty is given by the Seller subject to the following conditions:

8.2.1. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer;

8.2.2. the Seller shall be under no liability in respect of any defect arising from fair wear and tear wilful damage negligence abnormal working conditions failure to follow the Seller's instructions (whether oral or in writing) accidents which the Goods cannot reasonably be expected to withstand misuse or inadequate storage or alteration or repair of the Goods without the Seller's approval;

8.2.3. the Seller shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;

8.2.4. the above warranty does not extend to parts materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller

8.2.5. the above warranty does not extend to any descriptions, illustrations, specifications, figures as to performance, drawings and particulars of weights and dimensions submitted by the Seller contained in the Seller's catalogues, price lists or elsewhere since they are intended to represent a general idea of the Goods and not to form part of the Contract or to be treated as representations.

8.3. Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law

8.4. The Buyer shall check the Goods thoroughly forthwith upon delivery and 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 from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defects 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

8.5. Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions the Seller shall be entitled to repair or replace the Goods (or the part in question) free of charge or at the Seller's sole discretion refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer whatsoever. The cost of returning the good to the Seller to be borne by the Buyer

8.6. Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller its employees or agents or otherwise) which arise 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 Conditions

8.7. The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract 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 to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control:

8.7.1. Act of God explosion flood tempest fire or accident;

8.7.2. war or threat of war sabotage insurrection civil disturbance or requisition;

8.7.3. acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;

8.7.4. import or export regulations or embargoes;

8.7.5. strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

8.8.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;

8.8.7. power failure or breakdown in machinery;

8.8.8. failure by the Buyer to correctly store, protect, handle or otherwise deal with the Goods

9. Insolvency of Buyer

9.1. This Condition applies if:

9.1.1. the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of a bona-fide solvent amalgamation or reconstruction); or

9.1.2. an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer; or

9.1.3. the Buyer ceases or threatens to cease to carry on business; or

9.1.4. the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly

If this Condition applies then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and 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

10. Export Terms

10.1. In these Conditions "Incoterms" means the international rules for the interpretation of credit terms at the International Chamber of Commerce as in force at the date when the contract is made, the current version thereof being Incoterms 2000. Unless the context otherwise requires, any term or expression which is defined here or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

10.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply, notwithstanding any other provisions of these Conditions.

10.3. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.

10.4. Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered f.o.b. by air or sea port shipment and the Seller should be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.

10.5. The Buyer shall be responsible for arranging the testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any defect in the Goods which would be apparent on inspection and in respect of which notification is made after shipment, or in respect of any damage during transit.

10.6. Payment of all amounts due to the Seller shall be made by irrevocable letter of credit ordered by the Buyer in favour of the Seller and confirmed by a bank in the United Kingdom acceptable to the Seller.

11. Installation

11.1. If the Seller has agreed to install the Goods at the Buyer's premises for the payment of an additional installation fee as set out in the Contract, then the provisions of this clause 11 shall apply to the provision of such installation services by the Buyer.

11.2. The Seller shall use all reasonable endeavours to install the Goods by the estimated installation date given in the Contract, but time for installation shall not be of the essence of the Contract.

11.3. On the estimated installation date (or on such revised installation date as may have been notified by the Seller to the Buyer on not less than 2 days prior notice) the Buyer shall allow the Seller access to its premises during normal working hours so as to enable the Seller to effect the installation and the Buyer shall comply with the Seller's reasonable requests as to the opening up of its premises as so as to enable such installation to take place.

11.4. The provisions of clause 6 of this contract shall continue to apply as to the passing of risk and title to the Goods.

The provisions of clause 8.4 shall be modified so that the Buyer shall have a period of 7 days from the completion of the installation to notify the Seller of any defects in the Goods or of any failure in the provision of the installation services.

The technical detail of the installation services to be provided, and the specifications for such installation, commissioning, testing and approval shall be as set out in the Seller's general installation details which are attached either to the Seller's quotation or to the Seller's acceptance of any order.

12. General

12.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice

12.2. 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 other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby

12.4 The Contract shall be governed by the laws of England and the Buyer shall submit to the non-exclusive jurisdiction of the English courts.

13. Entire Agreement

13.1 It is accepted by the Buyer that these Terms and Conditions and any other documents required hereby ("Documents") contains the entire agreement and understanding of the parties in connection with the subject matter hereof and supersede and extinguish all previous agreements between the parties relating to the subject matter hereof and all and any representations and warranties previously given and/or made (other than those expressly set forth in any such Documents and any misrepresentation or breach of warranty which constitutes fraud).

13.2 In particular (but without prejudice to the general provisions of this clause) each party acknowledges to the other (to the extent that the other shall execute the Documents in reliance upon such acknowledgement) that it has not been induced to enter into the Documents by nor relied upon any representation or warranty other than the representations and/or warranties expressly set forth in the Documents. This acknowledgement shall not apply to any misrepresentations and/or breach of warranty which constitute fraud.

Without prejudice to the generality of the provisions of this clause each party hereby irrevocably and unconditionally waives any right it may have to claim damages or to rescind any Documents by reason of any misrepresentation and/or warranty not set forth in the Documents (unless such misrepresentation and/or breach of warranty constitutes fraud).

14. Third Party Rights

14.1 A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.