

The buyer's attention is in particular drawn to the provisions of condition 9.4.

## 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

“**Buyer**” the person, firm or company who purchases the Goods from the Company.

“**Company**” Duo Equipment Limited (Company No. 05436235)

“**Contract**” the Company’s purchase order incorporating these terms and conditions

“**Delivery Point**” the place where delivery of the Goods is to take place under condition 4.

“**Goods**” any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

**Intellectual Property** all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

“**Manufacturer**” means the manufacturer of the Goods

1.2 Words in the singular include the plural and in the plural include the singular.

1.3 A reference to one gender includes a reference to the other gender.

1.4 Condition headings do not affect the interpretation of these conditions.

## 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms of conditions endorsed on, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such documentation being referred to in the Contract.

2.3 These conditions apply to all the Company’s sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company’s liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until the Contract is signed by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company signs the Contract. Any quotation, purchase order or Contract unsigned by the Company is valid for a period of 30 days only from its date, provided that the Contract has not previously withdrawn it.

2.8 The Contract once signed by the Buyer and the Company may be cancelled by the Buyer giving written notice to the Company together with full payment of the price to the Company.

## 3. DESCRIPTION

3.1 The quantity and description of the Goods shall be as set out in the Contract.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company’s or any Manufacturer’s catalogues or brochures or websites are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample or description.

## 4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer’s place of business identified in the Contract. The Company shall not be obliged to make delivery until the first two payments in accordance with Clause 7.1 have been made in full.

4.2 The Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. If payment of any part of the Price is late the Company may entirely at its own discretion choose to accept late payment but the date of delivery shall be delayed but an amount at least equal to and possibly longer than the commensurate delay in payment.

4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company’s negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate payment of instalments, instructions, documents, licences or authorisations or the Delivery Point is not ready for delivery of the Goods:

(a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company’s negligence);

(b) the Goods shall be deemed to have been delivered; and

(c) the Company may at its sole discretion either store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance) or require the Buyer at its own expense to arrange storage (including but not limited to insurance) of the Goods. If the storage charges are not paid promptly or the Goods are stored for 3 calendar months or more the Company shall be entitled to sell the Goods at such price as it can obtain (acting reasonably) and either charge the Buyer for any shortfall or account to the Buyer for any profit made; and

(d) the balance of the Price outstanding shall be immediately paid by the Buyer to the Company notwithstanding the provisions of clause 7.1; and

(e) the Company shall be entitled to recover reasonable charges from the Buyer in respect of the need to “double handle” the Goods.

Any sums due pursuant to this Clause 4.(5) shall be paid in full to the Company before the Company shall be required to deliver the Goods.

## 5. RISK/TITLE

5.1 The Goods are at the risk of the Buyer from the time of delivery or deemed delivery.

5.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

(a) the Goods; and

(b) all other sums which are or which become due to the Company from the Buyer on any account.

5.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

(a) hold the Goods on a fiduciary basis as the Company’s bailee;

(b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company’s property;

(c) not destroy, deface or obscure any identifying mark on or relating to the Goods; and

(d) maintain the Goods in satisfactory condition and keep them insured on the Company’s behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

5.4 The Buyer may use the Goods before ownership has passed to it solely on the following conditions:

(a) the Goods are used only for the purpose that they were manufactured for; and

(b) the Goods are used only in accordance with the Company’s or the Manufacturer’s instructions and operator/maintenance manuals; and

(c) the Goods are fully and adequately serviced and maintained in accordance with the Manufacturer’s instructions; and

(d) the Goods are only used at the Delivery Point.

5.5 The Buyer’s right to possession of the Goods shall terminate immediately if:

(a) the Buyer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a resolution is passed or a court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

(b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

(c) the Buyer encumbers or in any way charges any of the Goods.

5.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

5.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer’s right to possession has terminated, to recover them.

5.8 On termination of the Contract, howsoever caused, the Company’s (but not the Buyer’s) rights contained in this condition 5 shall remain in effect.

## 6. PRICE

6.1 Save as set out in Clause 6.3 below unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Purchase Order (“the Price”).

6.2 Unless otherwise agreed in writing the Price shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

6.3 The Company may vary the Price for the Goods at any time between the date of the sales order and delivery to reflect any increase in the cost to the Company of providing the Goods.

## 7. PAYMENT

7.1 Subject to conditions 4.5(d) and 7.4, payment of the Price is due in pounds sterling unless otherwise agreed in writing and the Price shall be payable as follows:-

7.1.1 30% of the Price is due on the date the Purchase Order is signed by the Buyer; and

7.1.2 60% of the Price is due within 7 days of the Company notifying the Buyer that the Goods are ready for delivery; and

7.1.3 10% of the Price is due immediately on completion of Commissioning

7.2 Time for payment shall be of the essence.

7.3 No payment shall be deemed to have been received until the Company has received cleared funds.

7.4 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

7.5 The Buyer and/or its Bank (as defined below) shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

7.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract or its termination, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of National Westminster Bank Plc, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## 8. WARRANTY AND QUALITY

8.1 Where the Company is not the Manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given by the Manufacturer of the Goods subject to any specific amendments set out in the Contract (“the Warranty”).

8.2 Save as advised to the Buyer in writing the Warranty shall include parts and labour costs for the relevant warranty period only but shall exclude the cost of wear parts and consumables (including but not limited to belts, bearings and oil) and any other equipment necessary for the replacement of the parts.

8.3 No parts or labour will be supplied under the Warranty until the Price has been paid in full.

8.4 The Warranty is limited to the replacement of the parts recognised as defective by either the Company or the Manufacturer.

8.5 The Warranty Period shall be for 12 months or such shorter period as the Buyer shall be advised (“the Warranty Period”). The Warranty Period shall begin when initial commissioning of the Goods begins.

8.6 The Warranty shall be void unless, during this Warranty Period the Goods are used solely for the purpose that the Manufacturer intended, the Goods are not modified or altered in any way and they are serviced and maintained by the Company at the Buyer’s expense using only genuine parts (including genuine wear parts and consumables) in accordance with the Manufacturer’s maintenance guidelines.

8.7 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall:

(a) be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

(b) be reasonably fit for the purpose that the Manufacturer intended them to be used

8.8 The Company shall not be liable for a breach of the warranty in condition 8.7 unless:

(a) the Buyer gives written notice of the defect to the Company within the Warranty Period, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and

(b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company’s place of business at the Buyer’s cost for the examination to take place there; and

(c) unless otherwise agreed by the Company the Buyer ceases to use the Goods immediately upon giving notice to the Company pursuant to clause 8.9(a).

8.9 The Company shall not be liable for a breach of any of the warranties in condition 8.7 if:

(a) the Buyer makes any further use of such Goods after giving such notice; or

(b) the defect arises because the Buyer failed to follow the Company’s or Manufacturer’s oral or written instructions as to the storage, installation, commissioning, operation, use or maintenance of the Goods or (if there are none) good trade practice; or

(c) the Buyer alters or repairs such Goods without the written consent of the Company; or

(d) the Buyer fails to comply with the provisions of clause 8.2.

(e) the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer

(f) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions

(g) the Goods differ from the Buyer’s specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

8.10 Subject to condition 8.8 and condition 8.9, if any of the Goods do not conform with any of the warranties in condition 8.7 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of the whole of the defective Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company’s expense, return the Goods or the part of such Goods which is defective to the Company.

8.11 If the Company complies with condition 8.10 it shall have no further liability for a breach of the warranty in condition 8.7 in respect of such Goods.

8.12 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the Warranty Period.

8.13 Warranty cover is limited to the Buyer and is not assignable or otherwise transferable unless agreed in writing with the Company.

## 9. LIMITATION OF LIABILITY AND INDEMNITY

9.1 Subject to clause 4.4 and clause 8, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

(a) any breach of these conditions;

(b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

(c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these conditions excludes or limits the liability of the Company:

(a) for death or personal injury caused by the Company’s negligence; or

(b) under section 2(3), Consumer Protection Act 1987; or

(c) for any fraud which it would be illegal for the Company to exclude or attempt to exclude its liability; or

(d) for matter or fraudulent misrepresentation.

9.4 Subject to condition 9.2 and condition 9.3:

(a) the Company’s total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price or that part of the Price actually received by the Company from the Buyer; and

(b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

9.5 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Buyer the Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party’s intellectual property rights arising out of or in connection with the Company’s use of the Buyer’s Specification. This clause 9.5 shall survive termination of the Contract.

## 10. COMMISSIONING

The Goods shall be deemed to have been successfully commissioned on the earlier of successful completion of any commissioning tests agreed between the parties in writing prior to the date of this Contract, the Buyer using the Goods (save in respect of the said Commissioning Tests) (if any) or the Goods being able to process and/or produce material regardless of whether there are any snagging items outstanding (“Commissioned”).

## 11. ASSIGNMENT

11.1 The Company may assign the Contract or any part of it to any person, firm or company.

11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

11.3 The Buyer confirms that it is acting as principal and not agent for the purposes of the Contract.

11.4 Notwithstanding the provisions of clause 10.2 the Company may at the request of the Buyer but at its sole discretion invoice any finance company or other such institution (“the Bank”) in respect of the Price for the Goods. Any such action by the Company shall not constitute an assignment or consent to assign the Contract.

11.5 Neither the Company’s agreement to invoice the Bank pursuant to clause 10.4 above nor its acceptance of payment(s) from the Bank shall release the Buyer from any of its duties obligations or liabilities pursuant to the Contract save for the need to pay any part of the Price actually paid by the Bank.

11.6 The Buyer hereby irrevocably represents and warrants to the Company that notwithstanding payment of the Price by the Bank the Buyer is the purchaser of the Goods and the Buyer hereby undertakes to the Company that if, in breach of the terms of this Contract it purports to have agreed that the Bank is the owner of the Goods, in the event of non payment (whether in whole or in part) of the Price the Buyer shall act as the agent for the Company and recover the Goods from the Bank and return the Goods immediately to the Buyer.

## 12. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or vary the type of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 13. INTELLECTUAL PROPERTY RIGHTS

13.1 All Intellectual Property Rights in or arising out of or in connection with the Goods or their configuration or construction are acknowledged as the property of the Company (including, without limitation, any designs of the Goods).

13.2 The Buyer acknowledges that, in respect of the Company's Intellectual Property Rights in the Goods, the Buyer's use of any such Intellectual Property Rights is subject to a non-exclusive non-transferable revocable licence allowing use of the Goods solely in accordance with the terms of this Contract.

13.3

## 14. CONFIDENTIAL INFORMATION

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 14 shall survive termination of the Contract.

## 15. GENERAL

15.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, 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.

15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

15.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

## 16. EXCLUSIONS

16.1 Unless expressly set out in the Contract the Company does not warrant the tonnage of material that the Goods will process. If any warranty is given it is only in respect of the processing of material identical to the sample material provided to the Company or the grade advised to the Company by the Buyer prior to the formation of the Contract.

16.2 If on installation additional parts or equipment not listed in the Purchase Order are required either to make the Goods function or to ensure that a certain throughput tonnage of material can be processed by the Goods or to link the Goods to the Buyers' existing equipment at the Delivery Point or any other site at which the Buyer intends to use the Goods then the Company shall use its reasonable endeavours to source, at the Buyer's cost, the additional parts and equipment required.

16.3 If during the course of installation the paint work or finish of the Goods are damaged (notwithstanding the fact that the damage is caused by the Company's employees or agents) or there are variations in the shade of paint on different parts or sections of the Goods unless the damage is sufficiently material to render the Goods unusable or is reasonably likely to give rise to a health and safety issue then the Company shall not be required to rectify the said damage.

16.4 The Buyer shall be responsible for all costs associated with supplying power and water (including but not limited to installation, attaching and running costs) to the relevant connection point of the Goods and the safe and adequate removal of all waste and effluent products produced by the Goods.

16.5 Notwithstanding any inspection by the Company or the Manufacturer or their employees agents or representatives no warranty or representation is made by the Company that the Goods will be capable of installation at the Buyer's Delivery Point or elsewhere and the cost of any amendments adjustments additional equipment or labour to allow installation of the Goods at the Delivery Point or elsewhere shall be at the sole cost of the Buyer and the Buyer hereby warrants to the Seller that the Delivery Point or such other site as it intends to install the Goods complies with all CDM and Health and Safety requirements for the purposes of installation and use of the Goods.

## 17. COMMUNICATIONS

17.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post:

(a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

(b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.

17.2 Communications shall be deemed to have been received:

(a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

(b) if delivered by hand, on the day of delivery;

## 18. LAW AND JURISDICTION

18.1 The Contract, its formation, existence, construction, performance, validity and all aspects of the contract including any dispute arising out of it or the provision or use of the Goods shall be governed by and construed in accordance with English Law.

18.2 The parties irrevocably submitted to the non-exclusive jurisdiction of the English Courts in respect of any dispute arising from or issues of interpretation of this Contract.