

**Parties:**

**Dudley Industries Limited** (company number 00375137) having its registered office at Riverbank, Meadows Business Park, Camberley, Surrey, GU17 9AB (“**Supplier**”); and (“**Customer**”)

**1. INTERPRETATION**

**1.1 Definitions.** In this Agreement, the following definitions shall apply:

**Agreement:** these conditions and any appendices or schedules attached to them

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in the Agreement.

**Contract:** a contract between the Supplier and the Customer for the sale and purchase of the Products in accordance with these Conditions and made when an Order is placed by the Customer with the Supplier for Products.

**Development Volume Target:**

**Force Majeure Event:** has the meaning given in clause 11.

**Order:** the Customer's order for the Products, as set out in the Customer's written purchase order and **Ordered** shall have a corollary meaning.

**Product(s):** the products (or any part of them) set out in the Order.

**Recovery Period:**

**Review Dates:** .

**Specification:** any specification for the Products as set out in Schedule [1 ].

**1.2 Construction.** In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal

representatives, successors or permitted assigns.

(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

(d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

(e) A reference to **writing** or **written** includes faxes and e-mails.

**2. BASIS OF CONTRACT**

**2.1** This Agreement shall apply to each Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.2** Each Order shall constitute an offer by the Customer to purchase the Products in accordance with this Agreement. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

**2.3** The Contract constitutes the entire agreement between the parties for the Order to which it relates. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.

**2.4** A quotation for the Products given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 3 months from its date of issue.

### 3. PRODUCTS

- 3.1 The Products are described in the Specification.
- 3.2 To the extent that the Products are to be manufactured in accordance with a Specification approved by the Customer, the Customer shall indemnify the Supplier 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 reasonable professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

### 4. DELIVERY

- 4.1 The Supplier shall ensure that each delivery of Products is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable) and special storage instructions (if any).
- 4.2 The Supplier shall deliver the Products to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Products are ready. Delivery costs are at the Customer's expense.
- 4.3 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location. Delivery documents

must be signed by the Customer immediately upon receipt of the Products.

- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Products which is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or other instructions which are relevant to the Supplier of the Products.
- 4.5 The Customer shall not be entitled to reject the Products if the Supplier delivers up to and including 10% more or less than the quantity of Products ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Products was delivered.
- 4.6 The Supplier may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

### 5. QUALITY

The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Products shall:

- (a) conform in all material respects with their description and any applicable Specification;
- (b) be free from material defects in design, material and workmanship; and
- (c) be of satisfactory quality (within the meaning of the Sale of Products Act 1979); and
- (d) be fit for any purpose held out by the Supplier.

- 5.1 Subject to clause 5.3, if:
- (a) the Customer gives notice in writing to the Supplier during the warranty period within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 5.1;
  - (b) the Supplier is given a reasonable opportunity of examining such Products; and
  - (c) the Customer (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Suppliers cost,

the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full.

- 5.2 The Supplier shall not be liable for Products' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Products after giving notice in accordance with clause 5.2;
  - (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Products or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;
  - (d) the Customer alters or repairs such Products without the written consent of the Supplier;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Products differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

- 5.3 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set

out in clause 5.1.

- 5.4 Except as set out in this Agreement, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

- 5.5 This Agreement shall apply to any repaired or replacement Products supplied by the Supplier.

## 6. TITLE AND RISK

- 6.1 The risk in the Products shall pass to the Customer on completion of delivery.

- 6.2 Title to the Products shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:

- (a) the Products; and
- (b) any other Products or services that the Supplier has supplied to the Customer in respect of which payment has become due.

- 6.3 Until title to the Products has passed to the Customer, the Customer shall:

- (a) hold the Products on a fiduciary basis as the Supplier's bailee;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
- (c) maintain the Products in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) Notify the Supplier immediately if it becomes subject to any of the events listed in clause 9.1; and
- (e) give the Supplier such information relating to the Products as the Supplier may require from time to time, but the Customer may resell the Products in the ordinary course of its business.

- 6.4 If before title to the Products passes to the Customer the Customer becomes

subject to any of the events listed in clause 9.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Products or any of them have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Products and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

## 7. PRICE AND PAYMENT

7.1 The price of the Products shall be the price set out in the Order. The price at the commencement of the agreement is set out in Schedule 2 and shall be fixed until the first Review Date.

7.2 The parties shall meet at least 2 Months before each Review Date to review and, where appropriate, agree changes to the prices for the Products. Agreed changes shall take effect on the relevant Review Date. In agreeing Product Prices for the following Year, the parties shall have regard to the following factors:

- Changes to the Suppliers costs of manufacturing the Products;
- The volumes of Products ordered by, and supplied to, the Customer;
- Costs of Raw Materials and energy costs;
- The prices at which comparable products are supplied by other contractors in the open market.

7.3 The price of the Products is exclusive of amounts in respect of value added tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Products.

7.4 The Supplier may invoice the Customer for the Products on or at any time after the completion of delivery.

7.5 The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by the Supplier.

8. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part.

## 9. CUSTOMER'S INSOLVENCY OR INCAPACITY

9.1 If the Customer becomes subject to any of the events listed in clause 9.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries without incurring any liability to the Customer, and all outstanding sums in respect of Products delivered to the Customer shall become immediately due.

For the purposes of clause 9.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (e) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (f) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (h) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(a) to clause 9.1(h) (inclusive);
- (i) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;

9.2 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 10 LIMITATION OF LIABILITY

10.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:

10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

10.1.2 fraud or fraudulent misrepresentation;

10.1.3 breach of the terms implied by section 12 of the Sale of Products Act 1979;

10.1.4 defective products under the Consumer Protection Act 1987; or

10.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

10.2 Subject to clause 10.1:

10.2.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with this Agreement; and

10.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with any Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, including losses caused by a deliberate breach of the Contract by the Supplier, its employees, agents or subcontractors shall not exceed the price of the

Products supplied under that Contract.

referred to Senior Managers who shall attempt in good faith to resolve it; and

## 11 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss

at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

## 12 DISPUTE RESOLUTION PROCEDURE

If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it, except as expressly provided in this agreement, the parties shall follow the dispute resolution procedure set out in this clause:

- 12.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documentation. On serving of the Dispute Notice the Authorised Representatives shall attempt in good faith to resolve the Dispute;
- 12.1.2 if the Authorised Representatives are for any reason unable to resolve the dispute within 30 days of serving of the Dispute Notice, the dispute shall be

- 12.1.3 if the Senior Managers are for any reason unable to resolve the dispute within 30 days of it being referred to them, the parties will attempt to settle it by mediation in accordance to the CEDR mediation procedure, unless otherwise agreed between the parties, the mediator shall be nominated by CEDR in accordance with its Mediation Procedure. To initiate the mediation, a party must first serve notice in writing (Request for Mediation) to the other party.

No party may commence any court proceedings in relation to any dispute arising out of this agreement until 30 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

## 13 GENERAL

### 13.1 Assignment and subcontracting.

- 13.1.1 Neither party may assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the other party.

### 13.2 Notices.

- 13.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

13.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by by fax or e-mail, one Business Day after transmission.

13.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 13.3 Severance.

13.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

13.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

### 13.4 Waiver.

A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

### 13.5 Third party rights. A person who is not a

party to the Contract shall not have any rights under or in connection with it.

13.6 **Variation.** Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

13.7 **Governing law and jurisdiction.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**Schedule 1 -Specification**

**Schedule 2 - Pricing and Investment**

Any further changes to the pricing of the product are to be conducted as outlined in Clause 7 of this agreement.

**Schedule - 3 Parts List**
