

**DUSAN LIMITED**  
**STANDARD TERMS AND CONDITIONS OF SALE**

**1. General**

1.1 These Conditions are the only conditions upon which we Dusan Limited of 16 Queen Street, Ilkeston, Derbyshire DE7 5GT (“the Supplier”) are prepared to deal with you, the Customer and they shall govern the contract between us to the entire exclusion of any other express or implied conditions.

1.2 In these Conditions:

- “Goods” means equipment and other goods (including any instalment of the goods or any parts for them) which the Supplier is to supply;  
“Services” means the services which the Supplier is to provide;  
“Specification” means the specification agreed between the Supplier and the Customer.  
“Contract” means the contract for the sale and purchase of the Goods and/or supply of the Services.

1.3 These Conditions may only be modified by a variation in writing signed by a Director of the Supplier and no other action on the part of the Supplier (whether delivery of the Goods, supply of the Services or otherwise) shall be construed as an acceptance of any other conditions.

1.4 These Conditions (as modified in accordance with condition 1.3 and together with the matters referred to in the Specification and in the Supplier’s quotation and/or acceptance of order) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications. This condition shall not exclude any liability in respect of any statement made fraudulently by either party prior to the date of the Contract.

1.5 The employees and agents of the Supplier are not authorised to make any representations concerning the Goods or Services unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed.

1.6 A contract is only concluded when the Supplier despatches an acceptance of order to the Customer. Any quotation in whatever form given to the Customer is given subject to these Conditions and does not constitute an offer to sell or supply.

**2. Performance**

2.1 Subject to condition 2.3 the Supplier warrants that the Goods shall at the time of delivery and for a period of 12 months thereafter be free from defects in workmanship and materials and/or the Services will be carried out with reasonable care and skill. If any Goods or Services do not conform to this warranty the Supplier will at its option: -

- 2.1.1 replace the Goods or repeat the Services found not to conform to the warranty;  
2.1.2 take such steps as the Supplier thinks necessary to bring the Goods into a state where they are free from such defects; or  
2.1.3 take back the Goods found not to conform to the warranty and refund the appropriate part of the purchase price; or  
2.1.4 refund the appropriate part of the charge for the Services;

provided that the Supplier’s liability shall in no event exceed the price of the Goods or Services and performance of any one of the above options shall constitute an entire discharge of the Supplier’s liability under this warranty.

2.2 The above warranty is subject to the following conditions: -

- 2.2.1 the Customer must give written notice to the Supplier of the alleged defect in the Goods or Services within seven days of the time when the Customer discovers or ought to have discovered the defect; and  
2.2.2 the Customer must give the Supplier a reasonable opportunity to inspect the Goods and, if requested by the Supplier, returns the allegedly defective Goods to the Supplier’s works, carriage pre-paid, for inspection to take place there; and  
2.2.3 the Customer must follow the Supplier’s servicing recommendations in relation to any Goods; and  
2.2.4 the Customer must follow any safety procedures in relation to any Goods as recommended by the Supplier; and  
2.2.5 the Goods have not been altered or modified in any way whatsoever and have not been subjected to misuse or unauthorised repair; and  
2.2.6 the Goods have been properly installed and connected; and  
2.2.7 the Customer has complied with its obligations under this or any other contract made with the Supplier.

2.3 The Supplier gives no warranty in respect of any goods manufactured by a third party and re-sold by the Supplier to the Customer save that the Supplier shall make all reasonable endeavours to pass on to the Customer the benefit of any warranties given by such third party manufacturer.

2.4 Except as provided in condition 2.1 and in Section 12 of the Sale of Goods Act 1979 and Section 2 of the Supply of Goods and Services Act 1982:-

- 2.4.1 all conditions and warranties, express or implied, as to the quality or fitness for any purpose of the Goods or as to the provision of the Services are expressly excluded; and  
2.4.2 the Supplier shall not under any circumstances be liable in contract, tort, statute or otherwise for any direct, indirect or consequential loss or for increased costs or expenses, or loss of profit, business, contracts, revenues or savings howsoever arising which may be suffered by the Customer (except in respect of death or personal injury caused by the Supplier’s negligence).

2.5 If, notwithstanding the above provisions of this Condition, the Supplier is found liable for any loss or damage suffered by the Customer, that liability shall in no event exceed the price of the Goods or Services.

2.6 The Supplier reserves the right to make any changes to the Specification of the Goods or to the components within the Goods provided that these do not materially affect the quality or performance of the Goods.

**3. Price**

3.1 Unless otherwise stated by the Seller in writing, prices quoted for complete machines are exclusive of charges for delivery to premises in Great Britain, starting up and basic tuition of one operator, but are exclusive of all other delivery, installation and other ancillary expenses and of VAT and other sales taxes when these are properly chargeable. Replacement parts, attachments and supplies are quoted on an ex works basis. Packing, delivery and services are chargeable extra on an hourly rate as published from time to time by the Supplier as also are VAT and other sales taxes when these are properly chargeable.

3.2 The Supplier reserves the right, by giving notice to the Customer at any time before delivery, to increase the price of the Goods or Services to reflect any increase in the cost to the Supplier which is due to any factor beyond its control (such as without limitation, foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) any changes in delivery dates, quantities or the Specifications for the Goods or Services which is requested by the Customer or any delay caused by any of the Customer’s instructions or his failure to give the Supplier adequate information or instructions.

**4. Payment**

4.1 Unless otherwise agreed in writing, the Customer shall pay the price for the Goods and Services on order or within 30 days of the date of the Supplier’s invoice.

4.2 If any payment that is to be made by the Customer to the Supplier is overdue, interest will be chargeable on the sum due before and after judgment on a day to day basis at an annual rate of 8 per cent above the Bank of England base rate from time to time applicable, until the sum due is paid.

4.3 Where any sum owed by the Customer to the Supplier under this or any other contract is overdue the Supplier may withhold any deliveries or supply of Goods or Services due to be made under this contract until arrangements as to payment or credit have been established which are satisfactory to the Supplier.

**5. Risk and Property**

5.1 The risk in the Goods shall pass to the Customer upon delivery of the Goods to the Customer or any carrier acting on its behalf. If the Customer fails to take delivery or the Supplier is unable to despatch the Goods because of the Customer’s acts or omissions, the risk in the Goods shall still pass to the Customer at the time when it should have collected the Goods or taken delivery.

5.2 The property in the Goods shall not pass to the Customer until the full price of the Goods, and goods which are the subject of any other contract between the Supplier for which payment is due, is paid.

5.3 Until such time as the property in the Goods passes to the Customer: -

- 5.3.1 they shall be held by the Customer in a fiduciary capacity and stored by the Customer at its premises in such a manner that they are clearly identifiable as the Supplier’s Goods including by reference to the relevant serial numbers and shall be kept separate from any other goods, whether or not supplied by the Supplier, but the Customer shall be entitled to resell or use the Goods in the ordinary course of its business; and  
5.3.2 the Customer shall insure the Goods to the full replacement value of the Goods and shall note the Supplier’s interest on the policy; and

- 5.3.3 the Customer shall not pledge or charge the Goods and if the Customer breaches this condition 5.3.3 the Price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary; and
- 5.3.4 they shall be handed over to the Supplier on demand and the Supplier shall be entitled to re-take possession of them without prejudice to any of its other rights against the Customer, and the Supplier is granted a licence to enter into the Customer's premises for the purpose of recovering the Goods.
- 5.4 If the Customer fails to pay for the Goods in accordance with these terms the Supplier will have the right to bring an action against the Customer for the price of the Goods at any time notwithstanding that property in the Goods has not passed to the Customer.

## **6. Delivery**

- 6.1 Delivery of each consignment of Goods shall be made to the place designated by the Customer when placing the order.
- 6.2 The Services shall be supplied at the place designated by the Customer when placing the order.
- 6.3 Unless otherwise agreed in writing, the price quoted by the Supplier for the Goods shall be exclusive of the costs of delivery for which the Customer will be invoiced separately. Such delivery charges shall include the costs of freight and insurance and the Supplier's handling charge.
- 6.4 Any dates quoted for delivery of the Goods or supply of the Services are business estimates only and the Supplier will not be liable for any loss or damage (whether direct, indirect or consequential) or loss of profit, business, contracts, revenues, or savings howsoever arising sustained by the Customer as a result of the Supplier's failure to comply with such delivery or supply times. Time for delivery or supply shall not be of the essence.
- 6.5 Where the Goods or Services are to be delivered or supplied in instalments, each delivery or supply shall constitute a separate contract and failure by the Supplier to deliver or supply any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.6 If the Customer fails to take delivery of the Goods without good cause then the Supplier (without prejudice to any other rights or remedy it may have) may either: -
- 6.6.1 store the Goods as set out in condition 9; or
- 6.6.2 sell the Goods and after deduction of the Supplier's reasonable storage and sale expenses charge the Customer for any shortfall below the Price due under the Contract.

## **7. Installation**

Unless otherwise agreed in writing, the contract shall be a supply contract and the Customer alone shall be responsible for the correct installation and operation of the Goods supplied by the Supplier in accordance with such safety procedures and operating instructions provided by the Supplier from time to time. The Customer shall provide lifting gear and manual labour at the installation site and shall undertake electrical wiring from the mains supply to the Goods. Provision by the Supplier of the services of a specialist acting in an advisory capacity during installation and/or start up of the Goods in no way implies that the Supplier accepts responsibility for its correct installation and operation or for any oral advice given by the specialist and by any other employee of the Supplier, and the Supplier shall not be liable for any loss or damage arising directly or indirectly therefrom, or attributable thereto unless expressly agreed in writing by the Supplier. It is the Customer's responsibility and not the Supplier's to ensure that the Goods are fit for the Customer's purpose and in particular that the Goods are compatible with other machines and equipment which it is intended they be used.

## **8. Safety**

The Customer must comply with any user instructions and safety recommendations issued by the Supplier and must install, commission and maintain the Goods in accordance with good engineering practice. In particular the Customer must ensure that the Goods (or any equipment in which they are installed) are properly ventilated when in use and the Customer must install at its own expense suitable air extraction systems in accordance with the Supplier's recommendations. The Supplier shall not be liable to the Customer for any loss suffered as a result of the Customer's breach of the terms of this condition 8.

## **9. Storage**

- 9.1 The Supplier shall be entitled to store the Goods (or any of them) at the Customer's expense at the Supplier's premises or elsewhere if: -
- 9.1.1 where the Customer is required to collect the Goods from the Seller's works, it fails to take delivery at the time specified;
- 9.1.2 where the arrangement is for the Goods to be delivered by the Supplier, either it is unable to despatch the Goods by reason of the acts or omissions of the Customer, or the Seller has despatched the Goods but the Customer fails to take delivery;
- 9.1.3 the Supplier withholds delivery of the Goods pursuant to condition 4.3.
- 9.2 The expenses that the Supplier may re-claim from the Customer include all reasonable costs incurred by the Supplier (whether by way of storage, insurance or otherwise) in respect of the Goods. It is expressly declared that it shall be reasonable for the Supplier to take out insurance in respect of the Goods notwithstanding that the risk in the Goods has passed to the Customer.

## **10. Intellectual Property**

The Customer acknowledges that the Supplier retains ownership of any intellectual property rights in the Goods or Services, and in any goods, products or materials made available or produced as part of the Services.

## **11. Cancellation**

- 11.1 Orders which have been accepted by the Supplier can only be cancelled by the Customer with the prior written agreement of the Supplier and any payment received relating to the order are non refundable and on condition that the Customer shall indemnify the Supplier 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 it as a result of cancellation.
- 11.2 If the Customer enters into any voluntary arrangement with its creditors, becomes subject to an administration order, has a petition presented or an order made for its winding-up, has a receiver, administrator or administrative receiver appointed over all or any part of its undertaking or assets, goes into liquidation or ceases or threatens to cease to trade, then without prejudice to any other remedy available to the Supplier, the Supplier shall have the right to cancel the Contract or suspend further deliveries under the Contract without any liability to the Customer. If the Goods or Services have been delivered or supplied but not paid for, the price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary; if such payment is not made immediately then the Customer grants to the Supplier an irrevocable licence to enter upon any premises where the Goods are stored or where they may reasonably be thought to be stored to exercise their right to repossess the Goods.

## **12. Force Majeure**

The Supplier shall have the right to cancel or to reduce the volume of the Goods delivered or Services supplied if the Supplier is prevented from or hindered in delivery of the Goods or supply of the Services through any circumstances beyond its control (including, but not limited to, strike, lock-out or other industrial action, war, fire, Act of God, or prohibition or enactment of any kind), without incurring any liability whatsoever.

## **13. Set-Off**

The Customer will have no right of set-off statutory or otherwise.

## **14. Governing Law**

The contract is governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.

## **15. Third party rights**

This Agreement does not create any right enforceable by any person not a party to it except that a person who is the permitted successor to or assignee of the rights of a party is deemed to be a party to this Agreement.

Note : The Supplier's prices are calculated on the basis that the above Conditions will apply. If the Customer requires prices to be quoted on any other basis it should inform the Supplier.