

TERMS AND CONDITIONS OF SALE AND SUPPLY OF SERVICE

1. Definitions

In this document the following words shall have the following meanings:

"Agreement" means these Terms and Conditions together with the terms of any applicable Specification Document and any other document stated as being part of the contract but, for the avoidance of doubt, excluding any terms and conditions contained in any document issued by the Customer from time-to-time;

"Customer" means the organisation or person who purchases Goods and/ or Service from the Supplier;

"Goods" means the goods being supplied by the Supplier to the Customer under these Terms and Conditions

"Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property (including all designs, illustrations, drawings, plans and computations) in each case whether registered or unregistered wherever in the world enforceable and including all applications for and renewals or extensions of such rights and all similar or equivalent rights or forms of protection;

"Service" means the Service being supplied by the Supplier to the Customer under these terms and conditions;

"Specification Document" means a statement of work, quotation, Supplier's Sales Order Acknowledgement or other similar document provided by the Supplier to the Customer describing the Goods and/ or Service to be provided by the Supplier;

"Supplier" means Asgard Engineering Limited, Alexandra Street, Hyde, UK, SK14 1DX, or from such other registered office from time-to-time.

2. General

2.1 These Terms and Conditions and any amendments or additions stated in the Specification Document shall apply to all contracts for the supply of Goods and/ or Service 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 at any time. To the extent that any amendments or additions so made conflict with the Agreement, the amendments or additions shall take precedence.

2.2 Before the commencement of the Service the Supplier shall submit to the Customer a Specification Document which shall specify the Goods and Service to be supplied and the price payable. The Customer shall immediately notify the Supplier if the Customer does not agree with the contents of the Specification Document. All Specification Documents shall be subject to these Terms and Conditions.

2.3 The Supplier shall use all reasonable endeavours to complete the Service within estimated timeframes, but time shall not be of the essence in the performance of any Service.

2.4 Any quotation given by the Supplier shall not constitute an offer and, unless previously withdrawn, is only valid for a period of 30 days from its date of issue.

2.5 A purchase order constitutes an offer by the Customer to purchase the Goods and/ or Service in accordance with these Terms and Conditions. The order shall only be deemed accepted when the Supplier issues written acceptance of the order in the form of the Supplier's Sales Order Acknowledgement, at which point the contract shall come into existence.

2.6 Orders for Goods may be cancelled only with the written consent of the Supplier. No consent will be given where Goods which have to be made especially or which are not normally held in stock or where manufacturing of or the process of obtaining such Goods has commenced.

3. Force Majeure

3.1 For the purposes of this Agreement, a Force Majeure Event includes but is not limited to, acts of God, strikes, lock outs, or other industrial disputes (whether involving the workforce of the Supplier or any third party), fire, flood, storm or other accidents, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, the act or omission of government, breakdown of plant or machinery, failure of a utility Service or transport network, or the delay or failure in manufacture, production, or supply by third parties of equipment or Service.

3.2 The Supplier undertakes to take reasonable steps to overcome difficulties arising from a Force Majeure Event. However, the Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Agreement as a result of a Force Majeure Event.

3.3 If the Force Majeure Event prevents, frustrates or impedes the Supplier from fulfilling its obligations for more than 12 weeks, then either party shall, without limiting its other rights or remedies, have the right to terminate this Agreement immediately by giving written notice to the other party.

4. Price and Payment

4.1 The prices for the supply of Goods and Service shall be set out in the Specification Document. Unless stated to the contrary, prices are exclusive of VAT, packaging, insurance and transportation of the Goods. The Supplier shall invoice the Customer on the date of despatch of the Goods. The Supplier reserves the right to vary the price of the Goods and/ or Service without notice to the Customer any time before despatch.

4.2 All invoices are payable strictly within 30 days after the date of invoice, unless stated otherwise in the Specification Document or otherwise agreed in writing or provided below:

(a) the Supplier reserves the right to demand payment on other terms where the Customer has failed to make payments on time;

(b) new Customers shall pay on pro-forma unless the Supplier notifies them that an acceptable credit rating and bank references have been received.

4.3 Time for payment in cleared funds shall be of the essence of the Agreement. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due until the date of payment at a rate of 4 per cent per annum in excess of the base lending rate of the Bank of England from time-to-time.

4.4 In the event that the Customer's procedures require that an invoice be submitted against a purchase order to payment, the Customer shall be responsible for issuing such purchase order before the Goods and Service are supplied. The Customer accepts that any terms and conditions contained within its purchase order shall not apply to vary the Agreement.

4.5 The Supplier may deliver the Goods 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.

4.6 Any increase in Value Added Tax or any similar taxes, levies or duties at the date of actual supply of the Goods and/ or Service shall be added to the prices stated in the Specification Document.

4.7 If the Goods to be supplied are exported and if the rate of exchange between the £ Sterling and the currency of the country to which the Goods are to be exported changes between the date of invoice and the date on which the entire purchase price (or in the event of payment by instalment any instalment) becomes payable, the Supplier shall be entitled reasonably to increase the price of the Goods concerned.

4.8 The Supplier may make a search of any new Customer with a credit reference agency which will keep a record of that search and will share that information with other businesses. The Supplier may also make enquiries about the principal directors with a credit reference agency.

4.9 The Customer shall pay all amounts due under the Agreement in full without any deduction, discount, set-off or abatement 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.

4.10 The Supplier may, without limiting its other rights or remedies, set-off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

5. Specification, Selecting and Testing of the Goods

5.1 All specifications, descriptions, drawings and other particulars contained in any catalogue, price list or other marketing materials issued by the Supplier are approximate only and do not form part of any contract.

5.2 All Goods are sold subject to the reasonable availability to the Supplier of material. The Supplier reserves the right without notice to substitute materials, components and units other than those mentioned in the Specification Document or elsewhere in the Agreement.

5.3 Final product selection is ultimately the Customer's responsibility. The Supplier makes no representation, warranty or recommendation to the Customer as to the suitability of any product for any particular use. It is the responsibility of the Customer to ascertain the product's suitability for each individual application.

5.4 Any product testing to be carried out in the presence of the Customer or his representative shall require prior agreement with the Supplier. The Supplier reserves the right to charge the Customer for any agreed product testing.

6. Delivery, Carriage and Transit

6.1 The Supplier shall use reasonable endeavours to meet any delivery date notified to the Customer, however any delivery date is approximate and given for information only. Time for delivery shall not be of the essence. Failure by the Company to comply with a stated delivery date shall not constitute a breach of contract and shall not entitle the Customer to treat the contract as terminated or to any other remedy against the Company.

6.2 All risks in the Goods including risks in the supply of Goods, shall pass on the delivery to the Customer (where delivery is made by the Supplier) or on the delivery to the Customer's agent or to any carrier who shall in each case be deemed to be the Customer's agent/ carrier, whoever pays its charges.

- 6.3 The Supplier shall deliver the Goods to the location set out in the Specification Document or such other location as the parties may agree in writing from time-to-time.
- 6.4 The Supplier will only entertain a claim by the Customer in respect of loss or damage in transit if the Supplier has effected delivery directly, rather than via a courier or the Customer's agent.
- 6.5 Goods will be despatched by the most convenient means, usually the quickest. All Goods are priced Ex-Works plus packaging and carriage. Goods to be exported are subject to carriage charges as extra. Express and urgent deliveries at the specific request of the Customer may be subject to additional charges.
- 6.6 The Supplier will despatch Goods with a Delivery Note. The Delivery Note will show the date of the order, all relevant Customer and Supplier reference numbers, the type and quantity of Goods and, if the order is being delivered in instalments, the outstanding balance of the Goods remaining to be delivered. The Customer should check and sign the Delivery Note at the time of delivery.
- 6.7 If the Customer fails to accept or take delivery of the Goods, the Supplier shall store the Goods at the Customer's risk. The Supplier shall be entitled to charge the Customer for reasonable costs and expenses relating to any such storage. If within 14 days of the Customer failing to accept or take delivery of the Goods, the Customer has not collected them, the Supplier may resell part or all of the Goods and charge the Customer for reasonable storage and selling costs.
7. **Title**
- 7.1 Legal and beneficial title in the Goods shall not pass to the Customer until the Supplier has received payment in full in cleared funds for the Goods and any other Goods which the Supplier has supplied to the Customer.
- 7.2 Until title to the Goods passes to the Customer, the Customer shall:
- hold the Goods as bailee for the Supplier;
 - store or mark the Goods so that they can at all times be readily identified as the property of the Supplier;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery,
- but the Customer may resell or use the Goods in the ordinary course of its business.
- 7.3 The Company may at any time before title passes and without any liability to the Customer:
- require the Customer to deliver up, at its own expense, the Goods; or
 - enter any premises owned or occupied by the Customer to recover the Goods and the Customer will give all reasonable assistance to facilitate the Supplier's access.
8. **Supply of Service**
- 8.1 The Supplier shall provide the Service to the Customer in accordance with the Specification Document in all material respects.
- 8.2 The Supplier shall use all reasonable endeavours to meet any requested performance dates, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Service.
- 8.3 The Supplier warrants to the Customer that the Service will be provided using reasonable care and skill.
9. **Customer's Obligations**
- 9.1 The Customer shall provide all reasonable co-operation to the Supplier in all matters relating to the Goods and/ or Service and comply with such other requirements as may be set out in the Specification Document or otherwise agreed between the parties
- 9.2 The Customer shall be liable to compensate the Supplier for any reasonable costs and expenses incurred by the Supplier directly or indirectly as a result of the Customer's failure to comply with clause 9.1.
- 9.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels a contract for the supply of Goods or Service, the Customer shall pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has paid or is obliged to pay.
- 9.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:
- the Supplier shall have no liability in respect of any delay to the completion of any project;
 - if applicable, the timetable for the project will be modified accordingly; and
 - the Supplier shall notify the Customer at the same time if it intends to make any claim for additional costs.
10. **Alterations to the Specification Document**
- 10.1 Any alterations agreed between the parties in the scope of the Goods and/ or Service to be provided under this Agreement must be set out in a revised Specification Document, which shall reflect the changed Goods and/ or Service and price and any other terms agreed between the parties.
- 10.2 The Customer may at any time request alterations to the Specification Document by written notice to the Supplier. On receipt of such written notice the Supplier shall within 7 days (or such other period as may be agreed between the parties) notify the Customer in writing of the effect of such alterations, if any, on the price and any other terms already agreed between the parties.
- 10.3 Where the Supplier gives written notice to the Customer agreeing to perform any alterations on terms different to those already agreed between the parties, the Customer shall, within 7 days of receipt of such notice or such other period as may be agreed between the parties, advise the Supplier by notice in writing whether or not it wishes the alterations to proceed.
- 10.4 Where the Supplier gives written notice to the Customer agreeing to perform alterations on terms different to those already agreed between the parties, and the Customer confirms in writing that it wishes the alterations to proceed on those terms, the Specification Document shall be amended to reflect such alterations and thereafter the Supplier shall perform this Agreement upon the basis of such amended terms.
11. **Supplier's Warranty**
- 11.1 The Supplier warrants that:
- on the date of delivery and for a period of 12 months thereafter (**Warranty Period**) the Goods and all their component parts, where applicable,
 - conform in all material respects with their description in the Specification Document; and
 - are free from any material defects in design, workmanship, construction or materials,
 - the Service performed under this Agreement shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.
- 11.2 Subject to clause 11.3, if
- the Customer gives notice in writing during the Warranty Period within 21 days of discovery that some or all of the Goods do not comply with the warranty set out in clause 11.1;
 - the Supplier is given a reasonable opportunity of examining such Goods; and
 - the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,
- the Supplier shall, at its option, repair or replace the defective Goods free of charge, or refund the price paid for the defective Goods in full.
- 11.3 The Supplier shall not be liable for the failure of the Goods to comply with the warranty in clause 11.1 if:
- the Customer makes any further use of such Goods after giving notice to the Supplier in accordance with clause 11.2;
 - the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, use or maintenance of the Goods or (if there are none) good trade practice;
 - the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
 - the Customer alters or repairs such Goods without the prior written consent of the Supplier;
 - the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - where any Goods the price of which is Ex-Works are lost or damaged or deteriorate in transit.
- 11.4 The Supplier's warranty is invalidated if the Customer does not pay for the Goods and/ or Service by the due date.
- 11.5 Except as expressly stated in this Agreement, all warranties whether express or implied, by operation of law or otherwise, are hereby excluded to the extent possible in relation to the Goods and Service to be provided by the Supplier.
- 11.6 The terms of the Agreement shall apply to any repaired or replacement Goods supplied by the Supplier under clause 11.2.

12. **Indemnity**

12.1 The Customer shall indemnify the Supplier against all liabilities, claims, costs and expenses and damages which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any Goods and/ or Service provided by the Supplier in accordance with the Specification Document infringes a patent, copyright or trade secret or other similar right of a third party.

13. **Limitation of Liability**

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

13.1 Nothing in these terms and conditions shall limit or exclude the Supplier's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Service Act 1982 and section 12 of the Sale of Goods Act 1979, in each case in relation to title and quiet possession.

13.2 Subject to clause 13.1 the Supplier shall not be liable to the Customer, under any circumstance, whether in contract, tort (including negligence), breach of statutory duty, or otherwise

- (a) for any loss of profit, loss of business or loss of opportunity; or
- (b) for any indirect or consequential loss or damage arising under or in connection with the Agreement

13.3 The Supplier has obtained insurance cover in respect of its own legal liability for individual claims not exceeding £2 million per claim. The Supplier's total liability to the Customer in respect of all other losses arising under or in connection with this Agreement shall not exceed this amount. The Customer is responsible for making its own arrangements for the insurance of any excess loss.

13.4 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 Agreement.

13.5 This clause 13 shall survive termination of the Agreement

14. **Termination**

14.1 Without limiting its other rights or remedies, each party may terminate this Agreement with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of this Agreement and, in the case of a breach capable of being remedied, fails to remedy it within 30 days of being given written notice from the other party to do so;
- (b) the other party commits a material breach of this Agreement which cannot be remedied under any circumstances;
- (c) the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
- (d) the other party ceases to carry on its business or substantially the whole of its business; or
- (e) the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets.

14.2 Without limiting its other rights or remedies, the Supplier may:

- (a) terminate the Agreement with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Agreement on the due date for payment; or
- (b) suspend the supply of Service or all further deliveries of Goods under the Agreement or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Agreement or any other contract between the Customer and the Supplier on the due date for payment

14.3 On termination of the Agreement for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest;
- (b) in respect of Service or Goods supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (c) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of the termination or expiry; and

(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15. **Intellectual Property Rights**

15.1 All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier. The Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.

15.2 The Customer shall not copy, use or pass to a third party any Intellectual Property Rights or documentation containing the Intellectual Property Rights without the prior written consent of the Supplier.

16. **Independent Contractors**

16.1 The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties.

16.2 The Supplier may, at its discretion, engage sub-contractors to provide all or part of the Goods and/ or Service being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement or any applicable Specification Document.

17. **Assignment and Subcontracting**

17.1 The Customer shall not assign, transfer, charge, subcontract, or deal with in any other manner, its rights or obligations or delegate its duties under this Agreement in whole or in part to any third party without the prior written consent of the Supplier.

18. **Severability**

18.1 If any provision or part thereof of this Agreement is held invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction or other competent authority such provision or part thereof shall be severed and deemed deleted and the remainder of the provisions herein shall continue in full force and effect with the minimum modification necessary to make it legal, valid and enforceable.

19. **Waiver**

19.1 A waiver of any right under this Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay either a party in exercising any right or remedy under the agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. 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.

20. **Notices**

20.1 Any notice or other communication to be given by either party to the other in connection with this Agreement shall be in writing and may be served by email, fax, personal Service or by pre-paid first class or recorded delivery post to the address of the other party given in the Specification Document, a party's registered office address or such other address as such party may from time-to-time have communicated to the other in writing.

20.2 If sent by email such notice shall unless the contrary is proved be deemed to be received on the day it was sent, if sent by fax shall be deemed to be served on receipt of an error free transmission report, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by pre-paid first class post or recorded delivery shall be deemed to have been delivered on the second business day after posting.

21. **Entire Agreement**

21.1 This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by both parties. 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 this Agreement.

22. **No Third Parties**

22.1 Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.

23. **Governing Law and Jurisdiction**

23.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English law and the English courts shall have exclusive jurisdiction.