

# CONDITIONS OF PURCHASE

## 1 DEFINITIONS

In these conditions 'The Company' means the Company upon whose document these conditions are endorsed. 'The Seller' means the person, firm, company or other body to whom this document is addressed. 'The Goods' means the goods referred to overleaf.

## 2 CONDITIONS

These conditions shall form the basis of the contract between the Company and the Seller. Notwithstanding anything to the contrary in the Seller's standard conditions of sale, these conditions shall apply except so far and expressly agreed in writing by an authorised officer of the Company. The execution and part performance of the Company's order by the Seller shall be deemed to be an acceptance of such order and of these conditions by the Seller.

## 3 ACCEPTANCE

- (a) The Company shall not be bound to accept or make payment for the goods unless the same comply in all respects with the Company's purchase order and are fit and sufficient for the purpose stated in the Company's specifications and are of merchantable quality and are free from defects in material or workmanship. The Goods shall be subject to inspection and approval by the Company and if rejected by the Company within a reasonable time will be held by the Company at the Seller's risk and will be returnable to the Seller at the Seller's expense.
- (b) The Company shall only accept responsibility for such quantities as are specifically set out in the purchase order.
- (c) Acceptance of the Goods by the Company or payment for such Goods shall not prejudice the Company's right of rejection of all Goods found to be defective. Furthermore the Company reserves the right to claim from the Seller the cost of labour and materials incurred upon making good such defects without prejudice to and in addition to all other rights which the Company may have in respect of such defective Goods.

## 4 NON-CONFORMING PRODUCT

Any item or documentation that does not conform to the purchase order and drawing requirements shall be notified to the Company. A concession to deliver may be considered.

## 5 TIME FOR DELIVERY

- (a) Delivery shall be at such times and such manner as the Company shall stipulate and for this purpose time shall be of the essence. The Company reserves the right to cancel the order or part thereof if delivery has not been made at the specified time.
- (b) If delivery of the Goods is by instalments the failure of the Seller to despatch any one instalment at the time specified for such despatch shall entitle the Company to treat the contract as wholly repudiated by the same.

## 6 PRICE OF THE GOODS

- (a) The price of the goods shall be as stated in the order and, unless otherwise so stated, shall be exclusive of any applicable value added tax (which shall be payable by the Company subject to receipt of a VAT invoice).
- (b) No increase in the price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Company in writing.

## 7 TERMS OF PAYMENT

- (a) The Seller shall be entitled to invoice the Company on or at any time after delivery of the goods, and each invoice shall quote the number of the order.
- (b) Unless otherwise stated in the order, the Company shall pay the price of the goods within 90 days from the date of the invoice.
- (c) The Company shall be entitled to set off against the price any sums owed to the Company by the Seller.

## 8 RISK AND PROPERTY

- (a) Risk of damage to or loss of the Goods shall pass to the Company upon delivery to the Company in accordance with the Contract.
- (b) In cases where goods are collected from the Seller by the Company or its agents, the property in such cases passes to the Company at the time of collection. In all other cases the property in the Goods to be purchased does not pass to the Company until delivered to the premises nominated by the Company. Loss or damage prior to the passing of

property is to be at the risk of the Seller. The passing of property and risk is without prejudice to any right of rejection which may be exercisable by the Buyer.

## 9 WARRANTY

- (a) The Seller warrants that the Goods supplied comply with statutory requirements, are of British Standard and do not infringe any third party's patents, trademarks or copyright. Where appropriate test certificates / Certificates of Conformity, written in English, will be delivered to the Company at the time of the delivery of the Goods.
- (b) In addition to all the Company's rights implied or imposed by law the Seller shall indemnify the Company against all costs, claims and demands (including contingent, financial and other losses) occasioned as a result of any defect in the Goods supplied and no exclusion or limitation of such liability is permitted. All consequential losses are to be indemnified by the Seller.
- (c) The Seller warrants to the Company that the Goods:
  - (i) will be of merchantable quality and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the order is placed.
  - (ii) will be free from defects in design, material and workmanship
  - (iii) will correspond with any relevant specification or sample: and
  - (iv) will comply with all statutory requirements and regulations relating to the sale of the Goods.
- (d) Without prejudice to any other remedy, if any Goods are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
  - (i) to require the Seller to repair the Goods or to supply replacement Goods in accordance with the Contract within 7 days; or
  - (ii) at the Company's sole option, and whether or not the Company has previously required the Seller to repair the Goods or to supply any replacement Goods, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the price which has been paid.
- (e) The Seller shall indemnify the Company in full against all liability, loss, damages, costs and expenses (including legal expenses) against or incurred or paid by the Company as a result of or in relation with:
  - (i) breach of any warranty given by the Seller in relation to the Goods
  - (ii) any claim that the Goods infringe, or their importation, use or resale infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any specification supplied by the Buyer

## 10 PRODUCT LIABILITY

The Seller shall indemnify the Company against all loss arising from any liability incurred by the Company in respect of any claim or claims which may be brought against the Company under Part 1 of the Consumer Protection Act 1987 by virtue of any defect in the Goods.

## 11 HEALTH AND SAFETY

The Seller warrants to the Company that the Seller has complied in all respects with The Health & Safety at Work Act 1974 and all statutory instruments pursuant thereto and other relevant legislation and shall indemnify the Company against all loss arising by or in respect or in breach or non-compliance therewith.

## 12 TERMINATION

- (a) The Company has the right to terminate the Contract by notice taking immediate effect at any time after an appointment of a receiver, liquidator or equivalent, to handle the affairs of the Seller's business.
- (b) If the Seller is in breach of contract or becomes unable to pay his debts day by day as they become due, the Buyer may terminate the contract and may elect to keep all or some of the Goods already delivered or to take all or some of the Goods still being manufactured or otherwise undelivered.
- (c) In addition to his rights under clause 10 the Company may reject any goods which are not in accordance with clause 3 or any express or implied condition warranty or other term relating to them.
- (d) If the Company terminates the Contract the Seller shall return to the Company all payments already made and if the Company rejects any of the Goods, the Seller shall return to the Company all payments already made for the rejected Goods. Where upon termination the Company has elected to keep or take some of the Goods, the

## CONDITIONS OF PURCHASE

Company shall account to the Seller for them at a proportion of the contract price or at their value to the Company, whichever is the lower but otherwise no compensation shall be payable to the Seller on termination or rejection.

- (e) The rights and remedies set out in clauses 3, 6, 8 and 10 are in addition to any other rights and remedies of the Company and obligations of the Seller.

### 13 CONFIDENTIALITY

The order, the Contract and all tools, materials, documents and information issued by the Company in connection therewith are confidential and their use and disclosure must be strictly confined to the Seller himself and his employees properly engaged thereon (except in so far as confidential disclosure to sub-contractors or suppliers is agreed by the Company to be necessary) and to the purpose of the Contract. In particular the Seller shall not use the Contract for the purpose of advertisement nor shall take or allow his employees to take any photographs.

### 14 THE COMPANY'S MATERIALS

- (a) In conditions 14 and 15 "Company's Materials" means all drawings, materials, equipment, patterns, castings, tools, dies, moulds, specifications, software, codes, calculations and other items which are:
  - (i) supplied by the Company to the Seller;
  - (ii) not so supplied but used or created or developed by the Seller specifically for the purposes of the manufacture of Goods or the provision of Services to the Company or its affiliates; or
  - (iii) delivered to the Company pursuant to this condition 14.
- (b) The Company's Materials, for which the Company has provided the whole or a part of the cost to enable the Seller to execute this purchase order, shall become and/or remain the property of the Company, shall be kept in good condition and be returned to the Company on demand at the Seller's risk (in the case of items for which the Company has provided a part only of the cost, upon payment of the remainder of such cost) and shall not be used by the Seller without the agreement in writing of the Company for any purpose other than the supply of Goods to the Company. The Seller agrees to insure and indemnify the Company against any loss or damage to such items whilst they are in the custody of the Seller and to procure that the interest of the Company is noted in any policy covering such items.
- (c) In addition, the Seller shall ensure that all such tooling is maintained in good condition and shall replace any such tooling, or part thereof, lost or damaged and shall adequately insure against loss or damage thereof.
- (d) The Seller waives any lien which it might otherwise have whether at the date hereof or subsequently on any of the Company's property for work done thereon or otherwise. The paragraph shall not be construed as a waiver of any other right of recovery of any other charges that may be due to the Seller for such work.
- (e) The Seller will not without the prior written authority of the Company sell, hire, use or otherwise dispose of, to or for any other person, any goods manufactured by the Seller to the Company's designs, drawings or specifications or based upon them, or any tooling designed for use in their manufacture and the Seller shall refer to the Company all enquiries received for such goods or tools.
- (f) The Company shall have an option which shall be exercised by written notice to pay not more than the balance of the replacement cost for the outright ownership of any materials, samples, jigs, patterns, tooling or any other item essential to the manufacture of the Goods to a design, drawing or specification supplied by the Company. At the request and cost of the Company the Seller shall deliver any such essential item to the Company at such place and time as the Company shall stipulate. Within 30 days of receipt of the option notice the Supplier will notify the Company of the amount claimed as the said unrecovered balance and the Company will within 1 month pay the amount agreed or if it is not agreed the amount fixed by an independent Chartered Accountant acting as an expert and selected by the President for the time being of the Institute of Chartered Accountants in England and Wales.

### 15 INTELLECTUAL PROPERTY

- (a) The Company retains any and all intellectual property rights in the Company's Materials and the Company grants a non-transferable, non-exclusive, royalty free licence to the Seller to use such intellectual property rights only to the extent necessary to provide the Goods and such licence shall terminate immediately upon termination of the Contract or upon earlier return of the Company's Materials to the Company.

- (b) Pursuant to condition 14 to the extent that such intellectual property rights do not automatically vest in the Company, the Seller assigns to the Company all intellectual property rights which have been used, created or developed for the purposes of the Contract.
- (c) The Seller grants to the Company (and to the extent the Seller is not able to grant the licence itself, shall procure the grant of) a non-transferable, non-exclusive, royalty free licence (with the right to sub-license) of such intellectual property rights to enable the Company to use and enjoy the Goods or the Services including without limitation to allow the Company freely to utilise the delivered Goods and enjoy the benefit of the Services, to allow the Goods to perform those functions which they are designed for and to repair the delivered Goods (or to have those Goods repaired) and manufacture (or have manufactured) spare parts and replacements. The Contract price includes the full licence fee.
- (d) The Seller declares that the manufacture, delivery, use and/or repair of the Goods to be supplied and of each of the parts thereof and the application of the associated functions and the performance of the Services do not infringe any industrial and intellectual property rights held by third parties and the Seller shall indemnify the Company against any loss without limit arising out of claims, liabilities, and expenses (including loss of profits) resulting from any claim or action made by third parties against the Company alleging infringement of this condition 15(d).
- (e) Where the Company is notified by a third party of an alleged infringement it shall inform the Seller forthwith of such notification. The Seller shall promptly take such steps as may be necessary to secure to the Company the rights granted in conditions 15(b) and 15(c) above. If the Seller fails to take such steps within a reasonable period of time (and not more than one month after notification) the Company shall have the right to take such action itself whereupon the Seller shall indemnify the Company without limit against any costs or liability incurred by the Company in so doing. Such action shall include litigation arrangements or compromises with any rightful claimants and making changes in the delivered Goods without impairing the good quality and usability of the Goods as will cause them to become non-infringing.
- (f) The Company shall be entitled to apply for and hold such patent or other registered protection for any Company's Material as the Company thinks fit.

### 16 EXPORT COMPLIANCE

The Seller shall notify the Company in writing if any of the Goods, software or technical documentation on the purchase order is subject to ITAR or EAR regulations.

### 17 RIGHT OF ACCESS

This order may be in aid of a Ministry of Defence contract or other Defence Contractor and may be subject to Quality Assurance activities by their respective representatives. Upon the Company providing reasonable written notice to the Seller, the Seller (and those of its sub-contractors) shall allow the Company, its customers and regulatory authorities access to inspect, audit the facilities, processes and procedures used in the manufacture of goods.

### 18 RETENTION OF RECORDS

Records shall be retained for a minimum of three years unless otherwise specified within the Purchase order.

### 19 APPROVAL STATUS

The Seller shall notify the Company of any changes that may affect their approval status or the requirements of the contract, and shall seek approval for any such changes.

### 20 PROPER LAW

The law applicable to these conditions shall be that applicable in England and Wales and no other.