

**AIR AND GROUND AVIATION LIMITED**

**TERMS AND CONDITIONS OF PURCHASE**

**1. INTERPRETATION**

1.1 The definitions and rules of interpretation shall have the following meanings and apply in these conditions.

- Purchaser:** means Air and Ground Aviation Limited (registered number 3161248) whose name appears on the Purchaser Order and having a registered office is at: Aviation House, London Road, Shirleywich, Staffordshire, ST18 0PN United Kingdom.
- Order:** means the Purchaser's written instruction to the Supplier to supply the Goods and Services incorporating these Conditions.
- Contract:** means the Purchaser's written instruction, "the Order", and any special conditions to supply the Goods and Services, incorporating these Conditions.
- Acceptance** means the Supplier is deemed to have accepted these Terms and Conditions and the Purchaser will not be bound by any additional terms proposed by the Supplier on the Supplier order acknowledgment. Furthermore, the Purchaser will not be bound by any conditions on the Supplier order acknowledgement which are in conflict with these Terms and Conditions of purchase; further explained in Clause 2 below.
- Goods:** means those raw materials or finished goods defined and agreed in the Contract to be provided by the Supplier to the Purchaser (including any part or parts of them).
- Services** means those services defined and agreed in the Contract to be provided by the Supplier to the Purchaser.
- Supplier:** means the person, firm or company stated on the Order who accepts the Purchaser's Order and who is to provide the goods or services.
- Critical Part** means a product that if the technical requirements (dimension, chemical, physical and/or performance characteristic) are not controlled and achieved could cause a catastrophic failure in aircraft, vehicles and machinery resulting in serious injury and/or loss of life.
- Language** Except as the parties may otherwise agree, this Contract, data, notices, shipping invoices, correspondence and other communications in writing shall be written in the English language. In the event of any inconsistency between any terms of this Contract and any translation thereof into another language, the English language meaning shall have primacy.
- Third-Party.** means any individual, entity or corporation other than the Supplier and the Purchaser.
- Notices** shall mean any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by recorded delivery service or transmitted by telex, facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown on the Order, or to such other address as the party may give by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

**Law** The Contract and all matters pertaining thereto shall be governed by the law of England and the Supplier agrees to submit to the non-exclusive jurisdiction of the English Courts

**Date** Relevant dates will be shown in the European convention: day/month/year.

1.2 A reference to a law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

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

**2. APPLICATION OF TERMS**

2.1 Subject to any variation under condition 2.4, these conditions are the only conditions upon which the Purchaser is prepared to transact with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods by the Purchaser to be provided from the Supplier shall be deemed to be an offer by the Purchaser to purchase the Goods and Services subject to these conditions and no Order shall be accepted until the Supplier either expressly by giving notice of acceptance, or by implication in fulfilling the Order, in whole or in part accepts the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.4 These conditions apply to the purchases made by the Purchaser as described on the Order and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by a director of the Purchaser.

2.5 **Severability.** Each paragraph and provision of this Contract is severable, and if one or more paragraphs or provisions are declared invalid it shall be given no effect and shall be deemed to be excluded from this Contract, but the remaining provisions of this Contract will remain in full force and effect. The Parties shall use all reasonable endeavours to replace the invalid or unenforceable provision by a valid provision, the effect of which is as close as possible to the intended effect of the invalid provision.

2.6 **Offer.** This offer constitutes an offer on the part of the Purchaser to purchase the Goods or Services which must be accepted in writing by the Supplier or by actual execution of the Order. Each order for Goods or Services must be made on the Purchaser's printed official Purchase Order form and signed on behalf of the Purchaser by an authorised person.

2.7 **Supplier Default.** Should the Purchaser consider that the Supplier is not executing the Order in accordance with or as stipulated in the Contract; or the Supplier has not made sufficient progress to ensure delivery of the Goods by the time stated in the Order, or that such time has already expired; or the Supplier has refused to carry out the reasonable instruction of the Purchaser for the execution of Order or is otherwise in breach of its obligations under the Contract. The Purchaser may give notice to the Supplier specifying the default and requiring the Supplier to remedy it within seven days or such longer period as the Purchaser may specify. If the Supplier fails so to remedy its default then the Purchaser may terminate the Order in whole or in part by notice to the Supplier with immediate effect. Thereupon the Purchaser may itself complete performance or secure such performance by others of that part of the Order which the Supplier has failed to perform using for that purpose (making a fair and proper allowance therefor in any payment subsequently made to the Supplier) any materials, plant and equipment on the Purchaser's premises belonging to the Supplier. The Purchaser shall not be liable to make any further payment to the Supplier until the Order has been completed in accordance with the requirements of the Contract, and shall be entitled to deduct from any amount due to the Supplier the costs thereof incurred by the Purchaser if the total cost to the Company exceeds the amount (if any) due to the Supplier, the difference shall be recoverable by the Purchaser from the Supplier. The Purchaser shall not be liable for any loss whatsoever suffered by the Supplier as a result of the Purchaser's action.

### 3. QUALITY AND WARRANTY

#### 3.1 Quality

3.1.1 **Quality Management System Accreditations.** Where the Supplier operates a third party approved Quality Management System (QMS), this Order shall be carried out in accordance with the scope of the Supplier's current registration (e.g. ISO 9001, AS9100). On request, evidence of Certification (Certificate and Scope of Approval) will be supplied to the Purchaser.

3.1.2 **Material Traceability.** Goods and Services supplied against this Order require full traceability of parts and constituent materials from the time of receipt at the Supplier through to delivery of the finished article. Raw material traceability is required to the physical and chemical analysis. If the Supplier is not the original manufacturer of the Goods or Services, the Supplier shall also provide with the delivery of each consignment, copies of the original manufacturer's certificate of conformity /release note together with test results etc., where applicable.

3.1.3 **Configuration Control.** The Supplier will establish and control the configuration of their documents such as drawings, specifications, plans and procedures necessary to design, manufacture, test, inspect and deliver Goods to the configuration package required by the Purchaser. Where the Supplier is designing or supplying systems or sub-systems a Configuration Management Plan may be required by the Purchaser. There shall be no changes or deviations to the contractually agreed Configuration Management Plan without written approval by means of an Order Amendment issued by the Purchaser.

3.1.4 **Supply Chain Control of Sub-tier Suppliers.** Suppliers using sub-tier Suppliers shall either have their systems to control sub-tier Suppliers approved by the Purchaser or by an external certification body. Approval of sub-tier Suppliers by the Purchaser does not relieve the Supplier of the responsibility for assuring that work performed by sub-tier Supplier is in accordance with specification requirements recorded on the Order. Suppliers are to take the necessary action to flow down quality and inspection requirements to their Sub-tier Supplier.

3.1.5 **New Material.** Unless specified differently on the Order, the condition of the Goods to be delivered shall consist of new materials, not used, reconditioned, remanufactured or be of such age as to impair its usefulness or safety.

3.1.6 **Advice Notes and Release Certificates (Certificates of Conformance / Compliance).** The Supplier shall provide certification that the Goods and Services delivered under this Order have been tested and inspected and conform to all drawings, technical instructions and/or the Order requirements. The Supplier must have objective evidence on file to substantiate the Certificate of Conformity / Compliance and such evidence must be available to the Purchaser for review. As a minimum Certificates of Conformity must contain the following information;

- The Purchaser's part number, Item number, description and revision.
- Cross reference to the Suppliers Part Number, if applicable
- The Purchaser's Order Number
- Quantity of Goods supplied
- Date of Manufacture and Batch details for goods with a definitive shelf life.
- For pre-owned goods a statement confirming that the goods have not been subject to extreme stress, exposed to excessive heat or fire or been in contact with water.
- Signature of authorised Supplier's quality representative.

3.1.7 **Retention of Records.** The Supplier shall generate and maintain records and data for all inspections and tests performed. The records and data generated shall be appropriate to the inspection and test operations performed and in sufficient detail to provide for complete verification and evaluation of operations. On request, the records

will be supplied to the Purchaser and no records will be destroyed without prior permission of the Purchaser (see Condition 3.4 below). These records may include, but are not limited to;

- Product Release certification
- Records of testing or inspection such as test certificates, route cards, or batch records that detail product serial numbers and are required for traceability purposes

3.1.8 The Supplier shall retain records for a minimum of seven years unless otherwise agreed in writing by the Purchaser. This time period shall be valid from the date of acceptance of the Goods by the Purchaser.

3.1.9 **Critical Parts.** Design and qualification data, inspection and production records for Critical Parts shall be kept by the Supplier for the life of the system/product, unless previously approved in writing by the Purchaser.

#### 3.2 Deviations/Concessions

3.2.1 All deviations from drawings/specifications/requirements/statements of work or other documents incorporated into the Order by reference, are to be referred to the Purchaser's Procurement Department for approval, and shall be authorised by the Purchaser in the form of an Order amendment prior to delivery of the Goods or Services. Suppliers must demonstrate the requirements for managing Product Non - Conformances (this includes all hardware and software items where the produced item does not conform to the specified requirements) of the Order. It is essential that pre-approved Deviations/Concessions are recorded on all delivery paperwork.

#### 3.3 Surveillance Audits

3.3.1 It is a condition of this Order/contract that where appropriate, the Purchaser, the Purchaser's Customer and regulatory authority reserves the right to conduct Surveillance Assessments/Audits of the Supplier and to inspect any airworthiness approvals / certificates / log cards and Purchaser's work in progress. This will be applied by agreement in the following instances, but not limited to, the following:

- The Suppliers performance is giving the Purchaser cause for concern
- Relocation to another plant or facility.
- Changes to Critical processes.
- Transferring process operations to another plant or sub tier Supplier.
- Changes at senior management level.
- Changes in ownership
- Employing a new workforce.
- Suspension of a Quality System or Capability approval.

#### 3.4 Warranty

3.4.1 The Supplier warrants to the Purchaser that the Goods or Services supplied pursuant to this Contract:

3.4.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for purpose or as made known to the Purchaser by the Seller at the time the Order is placed and specifically;

- 3.4.1.2 will be free from defects in design, material, and workmanship;
  - 3.4.1.3 will correspond with any relevant specification or sample;
  - 3.4.1.4 will comply with all statutory requirements and regulations relating to the sale of the particular Goods or Service.
  - 3.4.1.5 will be provided with due care and diligence and using appropriately qualified personnel for the supply of the Goods and/or proper execution of the Services.
  - 3.4.1.6 that Counterfeit Goods have not been supplied to the Purchaser or installed in the Purchaser's Goods by the Supplier.
- 3.4.2 The Supplier shall ensure that the Purchaser receives the benefit of any manufacturer's guarantees in respect of Goods purchased. For newly manufactured goods the minimum warranty period is 18-months; for post-production manufactured goods in the Supplier's inventory the period is 12-months; the warranty shall start on delivery to the Purchaser's customer. Any waiver on these periods is to be agreed with the Purchaser.
- 3.4.3 Unless otherwise agreed in writing by the Supplier and the Purchaser, the Goods shall be delivered and the Services performed duty free of all taxes and liens or other charges of whatever kind and all Goods shall be supplied free from any reservations of title.
- 3.5 Counterfeit Goods**
- 3.5 For the purposes of this condition 3.5:
- 3.5.1 Suspect Counterfeit Goods means material, component, part, assembly, sub-assembly, product and any other item forming part of the Goods (together referred to as "Items" and separately as "Item") in which there is an indication by visual inspection, testing, or other information that it may have been misrepresented by the Supplier or manufacturer and may meet the definition of Counterfeit Goods below.
- 3.5.2 Counterfeit Goods means Suspect Counterfeit Goods that is a copy or substitute made without legal right or authority or one whose material, performance, Identity (as defined below) or characteristics are misrepresented by a supplier in the Supplier's supply chain.
- 3.5.3 Identity means information, including but not limited to, the original manufacturer, trademark or other intellectual property, part number, date code, lot number, applied testing methods and the results, inspection performed, documentation, warranty, origin, alterations, tampering, salvage, recycling, ownership history, packaging, physical condition and previous use or rejection.
- 3.5.4 Unless otherwise approved in writing by the Purchaser, the Supplier may only purchase Items from a source which the Supplier can show comply with a recognised international standard relating to combatting of Counterfeit Goods and which ensures that the Items purchased from such source are new, unused and authentic Items.
- 3.5.5 The Supplier shall maintain a method of traceability that ensures tracking of the supply chain back to the manufacturer or source of all Items included in the Goods being supplied.
- 3.5.6 If Counterfeit Goods or Suspect Counterfeit Goods are furnished under the Contract, such Goods shall be impounded. The Supplier shall promptly replace such Goods with Goods acceptable to the Purchaser and the Supplier shall be liable for all costs relating to impoundment, removal and replacement. The Purchaser may notify and turn such Counterfeit Goods over to regulatory or Government authorities for investigation and the Purchaser reserves the right to withhold payment pending the results of the investigation.

- 3.5.7 The Supplier is reminded that any knowing and wilful act to falsify, conceal or alter a material fact, or any false, fraudulent or fictitious statement or representation in connection with the performance of work under the Contract may be punishable in accordance with applicable statutes and laws of the UK and other jurisdictions.
- 3.5.8 In the event that Counterfeit Goods or Suspect Counterfeit Goods have been supplied, the Supplier shall inform the Purchaser's Quality representative as soon as practicable in writing or by e-mail to: quality@airandground.com

**3.6 Inducement and Ethics**

- 3.6.1 The Supplier shall inform its employees engaged in the performance of work under the Contract in writing prior to performance of work that there is a risk of criminal penalties in the UK and other jurisdictions associated with any falsification, concealment, fraud or misrepresentation in connection with work performed under the Contract and its associated purchase order.
- 3.6.2 The Purchaser maintains an ethics programme that includes a written code of conduct, training and awareness for all employees. The Purchaser requests that all Suppliers indicate that they have an effective anti-bribery programme in place and reserves the right to terminate contracts in the event that a Supplier is prosecuted for bribery under the UK Bribery Act 2010 or any similar legislation in other countries.
- 3.6.3 Notwithstanding the foregoing, in the event the Seller pays, offers or agrees to pay any such fee, commission, loan, gift, donation, political contribution or other payment with respect of the Goods, Seller shall provide to the Buyer, in a timely manner and not later than 20-days after such an event, full disclosure of all information necessary for the Purchaser.

**4 HEALTH, SAFETY AND ENVIRONMENTAL MATTERS**

- 4.1 Supplier represents, warrants, certifies and covenants that it shall perform all activities required under this Contract in compliance with all applicable national, EU, state/provincial and local environmental, health and safety laws and regulations.
- 4.2 Supplier represents, warrants, certifies and covenants that it will take appropriate actions to provide a safe and healthy workplace, and to protect local environmental quality in all of its activities.

When the Supplier is operating on the Purchasers premises, the Supplier will notify the Purchaser of any Health, Safety or Environmental hazards that may arise in connection with performance of the Contract prior to work taking place. Likewise the Purchaser will take all reasonably practicable steps to suitably and promptly notify the Supplier of any such hazards that may exist or arise in performance of the Contract.

While on the Purchasers premises, the Supplier will be provided with a copies of the Purchasers Environment Policy, Health and Safety Policy and any other relevant operating procedures or documentation and will at all times operate within compliance of these. In the event that the Supplier identifies either a potential or actual breach of such requirements it will immediately cease work and notify the Purchaser. Likewise the Purchaser reserves the right to order the Supplier to cease work immediately if there has been or it believes there has been a breach of such requirements. At no time shall the Purchaser be liable for any cost the Supplier may have incurred as a result of downtime resulting from breaches of Health, Safety and Environment Requirements.

The Supplier will notify the Purchaser and cease work immediately in event of any incident occurring on the Purchasers premises. For the purposes of this Contract, an incident is defined as "any occurrence or event that interrupts normal procedure that causes or has the potential to cause, injury, adverse environmental impact or damage to property."

Throughout the term of the Contract, the Supplier shall inform the Purchaser of and provide information relating to new or improved environmentally preferable products when they become available. If requested by the Purchaser, the Supplier will provide samples of such products free of charge for evaluation by the Purchaser. Such products will not be used until the Supplier has received written agreement from the Purchaser. In addition to any legal

- requirements, the Supplier shall at all times perform their services and operations with a view to minimising where reasonably practicable the use of resources and production of waste.
- In the event that the Supplier maintains either an Environmental or Health and Safety Management System, it will notify the Purchaser and provide details of the system if requested in writing by the Purchaser.
- 4.2.1 **COSHH.** The Supplier will provide the Purchaser with all relevant information relating to any hazardous or potentially hazardous properties of the Goods, that the Purchaser will need in order to satisfy his duties under the Control of Substances Hazardous to Health Regulations 2002. This includes the provision of up to date Material Safety Data Sheets, to be received at the very latest upon delivery of the goods to which they relate.
- 4.2.2 **Radioactive Items.** The Supplier will notify the Purchaser prior to delivery of goods of whether the goods contain any radioactive material. In addition, the Supplier will provide information regarding such products including, the radioactive nuclide and the activity in Becquerel's.
- 4.3 **REACH.** Supplier represents, warrants, certifies and covenants that each chemical substance constituting or contained in goods sold or otherwise transferred to the Purchaser is preregistered if required, and registered if required, under Regulation (EC) No 1907/2006 ("REACH"), is not restricted under Annex XVII of REACH and if subject to authorisation under REACH is authorised for the Purchaser's use. Supplier shall notify Purchaser if it decides not to Preregister or Register substances that will be subject to Preregistration or Registration under REACH and constitute or contained in goods supplied to the Purchaser at least 12 months before their Preregistration or Registration deadline.
- 4.4 **Montreal Protocol Products.** Supplier represents, warrants, certifies and covenants that none of the Goods to be supplied to the Purchaser is manufactured by the Supplier or Sub-Supplier with, or contains an ozone depleting substance officially proposed for listing on the list of chemicals and derivatives banned under the Montreal Protocol.
- 4.5 Supplier represents, warrants, certifies and covenants that none of the goods supplied under the Contract contains any prohibited goods, including but not limited to:
- lead, mercury, cadmium, hexavalent chromium, arsenic, asbestos, benzene, or any other hazardous substances of which the use is barred under any relevant legal restrictions in the goods sold or transferred to the Purchaser.
- 4.6 **Conflict Diamonds.** Supplier represents, warrants, certifies and covenants that as far as they are aware, no tooling or manufacturing process involves the use and/or application of Conflict Diamonds.
- 4.7 **Safety Standards.** For all Goods which by law must bear a "CE" mark, the Supplier shall unless stated otherwise, provide a declaration of conformity, material and test certification which shall accompany delivery of the Goods. The Supplier shall grant to the Purchaser reasonable access to the Supplier's technical files relating to the Goods.
- 5 CONTRACT PRICE**
- 5.1 The price stated on the face of the Contract shall remain fixed and firm (non-revisable) and is inclusive of all other taxes, imposts and fees for the duration of the Contract unless otherwise agreed in writing between the Parties.
- 6 PACKING AND TRANSPORTATION**
- 6.1 Unless otherwise specified and agreed, the Goods will be:
- 6.2 **Packing.** Goods are to be packed in accordance with good commercial practice to prevent damage in transit and meet storage under normal environmental conditions. The Purchaser may direct specific terms or requirements for packaging.
- 6.3 **Documentation.** The Supplier is to enclose with the shipment a complete packing list and the Certificate of Conformance/Release Note. Supporting documents (e.g., engineering logs cards) are to be securely attached to the Goods.
- 6.4 The Supplier shall mark containers or packages with labels or signs showing the necessary lifting, loading, and the shipping information to include: the Purchaser's Contract number, item number, and the names and addresses of the Supplier (consignor) and the Purchaser (consignee).
- 6.5 **Delivery** The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 28-days of the Order. The Supplier shall ensure that each delivery is accompanied by a delivery note which should show the following minimum information; the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 6.6 Unless otherwise stipulated on the face of the Order, the Goods shall be delivered in accordance with the agreed terms to the Purchaser's place of business or to such other place of delivery as is agreed by the Purchaser in writing prior to delivery of the Goods. Where the Supplier's own delivery method is used, the Supplier shall off-load the Goods at its own risk as directed by the Purchaser.
- 6.7 Unless otherwise stipulated on the face of the Order, delivery shall be consigned using the Purchaser's nominated freight agent and deliveries shall only be accepted by the Purchaser during normal business hours unless prior arrangements have been made and agreed with the Purchaser.
- 6.8 Time shall be of the essence of the Contract, unless otherwise stated. The definitions and rules of interpretation of INCOTERMS (to current edition) will apply and as shown Purchaser's Order.
- 6.9 **Trade Controlled Items.** For items/goods supplied, which may contain material, including software and drawings, that is subject to US ITAR/EAR control, the Supplier must ensure that a statement to this effect is recorded on the advice note/despatch documentation. This is required to maintain the Purchaser's compliance with the ITAR/EAR and enable the details to be passed to the Purchaser's customer. The Supplier is to record on the advice note/despatch documentation a reference to the DSP-05 or release authority.
- 6.10 **Return any packaging material.** If the Supplier requires the Purchaser to return any packaging material to the Supplier, instructions to this effect are to be shown on the face of advice note/despatch documentation. Such return packaging material shall be returned at the cost of the Supplier and if clearly identified as returnable, will be retained by the Purchaser for a period of 14-days after receipt, or such other period as may be agreed between the Purchaser and the Supplier and confirmed in writing by the Purchaser. At the expiration of such period, the packaging and any other packaging will become the property of the Purchaser which may dispose of it as the Purchaser sees fit.
- 6.11 Where the Purchaser agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless, failure by the Supplier to deliver any one instalment shall entitle the Purchaser at its option to treat the whole Contract as frustrated and may result in cancellation.
- 6.12 Unless a revised or amended delivery date has been agreed in writing, if the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, the Purchaser reserves the right to:
- 6.12.1 cancel the Contract in whole or in part;
- 6.12.2 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 6.12.3 recover from the Supplier any expenditure reasonably incurred by the Purchaser in obtaining the Goods in substitution from another supplier; and
- 6.12.4 claim damages for any additional costs, loss or expenses incurred by the Purchaser which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.

6.13 **Over shipment.** If the Goods delivered to the Purchaser are in excess of the quantities ordered, the Purchaser shall not be bound to pay for the excess. Any excess shall be and shall remain at the Supplier's risk and shall be returned at the Supplier's expense.

6.14 **Under-shipment.** No under shipments or shortfalls will be accepted unless they form part of an instalment delivery plan or as agreed in writing with the Purchaser.

6.15 The Goods shall remain at the risk of the Supplier until delivery to the Purchaser is complete.

## 7 ACCEPTANCE

7.1 Unless otherwise specified and agreed in writing, the Goods and Services will be accepted as follows:

7.1.2 Performed pursuant to these terms and conditions and shall be subject to inspection and test by the Purchaser and its Customer at all times and places. No such inspection shall relieve the Supplier of its obligations to furnish all Goods and Services in accordance with the requirements of this Contract or impose liabilities on Purchaser. The inspection or test of any Work by the Buyer shall not relieve the Seller from any responsibility regarding defects or other failures to meet Contract requirements, which may be discovered subsequently.

7.1.2 The final inspection and acceptance shall be at a place specified by the Purchaser and acceptance shall take place after the Purchaser has had a reasonable time to test and examine the Goods and Services. The Purchaser shall have the right to reject the Goods and Services at the end of the receipt inspection process or before being installed.

7.4 **Defective Goods.** If the results of such inspection or testing cause the Purchaser to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by the Purchaser to the Supplier, the Purchaser shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition, the Purchaser shall have the right to require and witness further testing and inspection.

7.4.1 If during inspection by the Purchaser or its Customer it is discovered that the Goods or Services or any part thereof are defective in any way, the Supplier shall promptly and at its own expense repair, rectify or replace the defective Goods or Services.

7.4.2 Repair and/or rectification activity shall be effected at the Supplier's place of business or approved facility, unless the Parties agree that the remedial action can be carried out at the Purchaser's place of business or selected location.

7.4.3. The Supplier shall be obliged to carry out and bear the costs of dismantling and re-installation of defective Goods. These costs will include, but not limited to:  
Transport of parts, plant, equipment, materials and labour.

7.4.4 Defective Goods which have been replaced by the Supplier shall be placed at the disposal of the Supplier and shall be his property.

7.4.5 Should the defect be of such nature that its repair or rectification cannot be delayed and the Supplier has failed to remedy the defect, the Purchaser may undertake the repair or rectification itself or engage a third party to do so on its behalf. Any such activity undertaken by the Purchaser or a third party shall not affect the Supplier's liability under the Contract and shall be undertaken at the Supplier's cost.

## 8 LICENCES FOR SOFTWARE/FIRMWARE/DATABASES

8.1 Where applicable, the Purchaser shall acquire a non-exclusive licence to use the software, firmware and databases (including new versions and releases) furnished by the Supplier under the terms of an agreement, for an indefinite period of time with effect from the time of delivery of the Goods. Without prejudice to this licence, the right to use

the goods may be transferred to the Purchaser's customer. The Supplier agrees that the Purchaser is, and shall remain, entitled to pledge this licence. The licence shall, in any event, be understood to include loading, displaying on screen, copying, executing, transmitting and storing. In certain cases, the licence shall also be understood to include the right to issue sub-licences and all activities required in that context.

## 9 CONFIDENTIALITY

9.1 The Supplier 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 Supplier by the Purchaser or its agents and any other confidential information concerning the Purchaser's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Purchaser and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

## 10. PAYMENT

10.1 The Purchaser will pay the Supplier for Goods and Services on the Contract that are properly delivered and completed after submission of a valid invoice within 30 days of the end of the month in which the invoice is delivered. If any invoice is disputed, only the undisputed part will be paid by the Purchaser until the dispute is resolved. Unless otherwise agreed in writing between the Parties no progress payments will be made. Time for payment shall not be of the essence of the Contract.

10.2 The Supplier may charge interest on all overdue amounts not disputed by the Purchaser at the rate of 3% above the Bank of England base rate applicable at the end of the day that payment falls due, such interest accruing from the first day on which payment is overdue until payment has been received in full by the Supplier.

10.3 Without prejudice to any other right or remedy, the Purchaser reserves the right to set off any amount owing at any time from the Supplier to the Purchaser against any amount payable by the Purchaser to the Supplier under the Contract.

## 11. LIABILITY

11.1 The Supplier shall be liable to the Purchaser for all losses, liabilities, actions, claims, costs and expenses (including legal costs and expenses) of whatever nature suffered by the Purchaser resulting from the negligence, breach of contract or breach of statutory duty caused by the acts or omissions of the Supplier, its employees, sub-contractors or agents in their performance of the Contract or in connection with any defect in the Goods or Services. This condition shall continue in force notwithstanding termination for any reason of the Contract

## 12 PURCHASER'S PROPERTY

12.1. Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Purchaser to the Supplier or not so supplied but used by the Supplier specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Purchaser but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Purchaser and shall not be disposed of other than in accordance with the Purchaser's written instructions, nor shall such items be used otherwise than as authorised by the Purchaser in writing.

12.2 The Supplier shall indemnify the Company against any loss or damage to the items mentioned in Condition 12.1 above arising while such items are in the Supplier's possession or before re-delivery to the Company. The Supplier shall insure the aforesaid items against all risks and) note the Company's interests on its policy, if necessary.

## 13. TERMINATION

13.1 The Purchaser shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Purchaser shall

- pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 13.2 The Purchaser shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith if:
- 13.2.1 The Supplier commits a material breach of any of the terms and conditions of the Contract; or
- 13.2.2 Any lien, distress, execution or other process is levied upon any of the assets of the Supplier; or
- 13.2.3 The Supplier has a bankruptcy order made against him or makes an arrangement or composition with his 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 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 Supplier or notice of intention to appoint an administrator is given by the Supplier 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 petition presented to any court for the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier; or
- 13.2.4 The Supplier ceases or threatens to cease to carry on its business; or
- 13.2.5 The financial position of the Supplier deteriorates to such an extent that in the opinion of the Purchaser, the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- 13.2.6 The Supplier provides a service that breaches health and safety and environmental requirements; or
- 13.2.7 The Supplier fails to comply with more than 3 default or improvement notices issued by the Purchaser.
- 13.3 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the Purchaser accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.
- 14. REMEDIES**
- 14.1 Without prejudice to any other right or remedy which the Purchaser may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract, the Purchaser shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Purchaser:
- 14.1.1 to rescind the Order;
- 14.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
- 14.1.3 at the Purchaser's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
- 14.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
- 14.1.5 to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and
- 14.1.6 to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.
- 14.2 Failure or delay by the Purchaser 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.
- 14.3 Any waiver by the Purchaser of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 14.4 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.
- 14.5 **Liquidated Damages.** The Purchaser shall have the right as deemed appropriate to levy Liquidated Damages from the Supplier for late deliveries. Late deliveries shall be deemed as deliveries not received against the negotiated delivery date and delivery acceptance or deliveries that on initial receipt are deemed not to be fit for purpose. Liquidated Damages shall be incurred at a rate of 1 % (1percent) per week of the value of the Goods or Services outstanding to a maximum value of 10%.
- 15. FORCE MAJEURE**
- 15.1 The Purchaser reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Purchaser including,
- 15.2 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.
- 16 GENERAL**
- 16.1 Specific instructions, including requirements notified by the Purchaser's Customer will be advised on the Contract or under separate cover; any such documents issued will form part of the Contract.
- 16.2 Any typographical or other error in any Contract, acceptance of offer or other document or information issued by the Purchaser shall be subject to correction without any liability on the part of Purchaser.
- 16.3 **Entire Agreement.** This contract is the entire agreement between the parties regarding the Purchase of the Goods or Services and supersedes all prior arrangements, commitments, representations, writings and other communications between the Parties. No representation, undertaking or promise shall be given or implied from anything said or written in negotiations between the parties except where expressly stated in the Contract.