

# AERO CONSULTANTS (UK) LIMITED

## CONDITIONS OF SALE / SUPPLY (GOODS AND SERVICES)

Revision Date 23 August 2015



### 1. INTERPRETATION

In these Conditions:

"**Company**" means Aero Consultants (UK) Limited its assignees and successors in title.

"**Contract**" means the terms of this document (including any documents referred to herein) together with any variation hereof agreed in writing between the parties once the Customer's offer to purchase the Goods and/or Services has been accepted by the Company.

"**Customer**" means the person firm or corporation with whom the Contract is made.

"**Goods**" means the goods and/or materials or any part of them to be supplied to the Customer by the Company under the Contract.

"**Services**" means the services or any of them to be supplied to the Customer by the Company under the Contract.

### 2. GENERAL

2.1 All quotations given and all contracts made by the Company for the supply of goods and/or services by the Company are subject to these Conditions and all terms and conditions referred to by the Customer or contained in any order or otherwise brought to the notice of the Company or implied by trade custom practice or course of dealing are hereby excluded. These Conditions may be varied only by agreement in writing between the parties in accordance with Clause 2.3 below.

2.2 Quotations issued by the Company are not offers capable of acceptance so as to make a binding contract and in any event will cease to apply if not acted upon by the Customer within 30 days unless re-confirmed in writing by the Company.

2.3 No servant or agent of the Company has any authority to agree to any variation or addition to the Contract unless that servant or agent is duly authorised by the Company so to do and unless such variation or addition is expressed in writing.

2.4 These Conditions together with any other documents incorporated in the Contract constitute the whole agreement between the parties and supersede any prior promises representations undertakings or implications (whether oral or in writing) and for the avoidance of doubt the Customer hereby acknowledges that it has not entered into the Contract in reliance upon any representation other than those which have been reduced to writing and included in the Contract.

2.5 The Company will endeavour to meet the conditions of order unless unforeseen circumstances occur beyond our control. If this arises the Company will keep Customer informed of situation.

### 3. SEPARABILITY

Each order placed by the Customer or each consignment where an order calls for consignments at different dates shall be treated as a separate contract. If there shall at any time be more than one contract in the course of performance between the Company and the Customer any claim which may arise in respect of any one contract or the terms on which it may be settled, shall not (subject to Clause 5) affect in any way the performance of the other contracts.

### 4. PRICES

4.1 Prices quoted by the Company or contained in the Contract (whether for Goods or Services) are unless otherwise agreed in writing by the Company exclusive of Value Added Tax and other sales taxes, import or export duties or charges, packaging, transport and delivery charges (and the Customer shall pay all such costs and charges in addition to such prices) and where the Company issues a certificate of conformity the Company will charge the Customer for such certificate (in addition to such prices) at the Company's standard rate then in force.

4.2 If for any reason (including but not limited to a rise in the cost of manufacture, transport of the Goods or the cost of making the Goods conform to any Act of Parliament, or to any other regulation or bye-law, industrial troubles, labour awards or otherwise) the cost to the Company of supplying the Goods and/or Services is increased for such cost at the time this document was sent by the Company to the Customer the amount of such increase may be passed on to the Customer by way of supplementary invoice.

### 5. PAYMENT

5.1 The Company shall be entitled to submit invoices in respect of Goods and/or Services at any time and the Customer shall (unless otherwise agreed in writing by the Company) pay each invoice in full within 30 days of the invoice date.

5.2 Time shall be of the essence and failure by the Customer to make any payment to the Company when due as above shall entitle the Company at its option:

5.2.1 to treat the Contract as repudiated and act accordingly, including retaining any monies already paid by the Customer to the Company without any obligation in respect thereof to the Customer and (without prejudice to any other right of the Company) to cease forthwith to supply further Goods and/or Services to the Customer whether or not such deliveries are due under the Contract or other contracts; or 5.2.2 to charge the Customer interest (both before and after any judgement) on all overdue sums at a rate of 1.25% per month or part month by which such sums are overdue until the same have been

paid in full together with such interest (but without prejudice to the Company's right subsequently to treat the Contract as repudiated in accordance with Clause 5.2.1).

## **6. DELIVERY/PERFORMANCE/CUSTOMER'S OBLIGATIONS**

6.1 Where the Company is to deliver or to procure delivery of Goods, the Company shall use its reasonable endeavours to deliver or to procure delivery of such Goods to the location specified in its quotation or confirmation of order when so specified and (where the Company is to perform Services) to perform all Services when so specified or by any date so specified but any date or period for such delivery of Goods and / or performance of Services specified or agreed to by the Company is a business estimate only and the Company shall be under no liability for any failure to meet such date or period (whether for any cause or reason within or without its control).

6.2 The Company shall be entitled to deliver Goods together or separately and in any order and accordingly the Customer shall be obliged to accept split deliveries of Goods.

6.3 The Customer shall ensure that all reasonably necessary facilities and/or personnel are available to enable the Company or any carrier through whom delivery is made to effect delivery of the Goods as above. Without prejudice to the generality of the foregoing the Customer shall ensure that it or its agent or carrier (as the case may be) is available with all such reasonably necessary facilities and/or personnel to take delivery of Goods at the agreed time and place.

## **7. RISK AND TITLE**

7.1 Risk in the Goods shall pass to the Customer upon delivery of the Goods to the Customer or the Customer's agent or carrier or to the place from which the Customer or its agent or carrier is to collect the Goods so that the Customer shall on and from the passing of risk in the Goods bear all risk of loss or damage to or deterioration in the Goods.

7.2 Until the Company has received full payment from the Customer of all sums due under the Contract the following terms shall apply:

7.2.1 the ownership of the Goods shall remain with the Company which reserves the right to dispose of the Goods and the Customer shall be entitled to possession of the Goods only which shall be held by the Customer as a bailee on behalf of the Company and the Customer shall store the goods in such a way as to be identifiable as the property of the Company.

7.2.2 the Customer shall keep the Goods insured against all risks in their full replacement value and if request by the Company shall execute an assignment in favour of the Company of all rights of the Customer to claim against the insurers in respect of the Goods covered by such insurance and shall join the Company in notifying such insurers of the Company's interest in any policy effected hereunder.

7.2.3 notwithstanding the provisions of Clause 7.2.1 the Customer shall have a licence to sell the Goods bona fide to a third party at full market value which licence (without prejudice to any other right of the Company) may be immediately terminated by the Company at any time upon giving the Customer written notice thereof provided that such licence shall automatically terminate if the Customer (being a company) passes a resolution for its winding up (unless the same be part of a reconstruction or amalgamation) or if any petition is presented for the appointment of an administrator or a receiver or to wind up the company or an administrative receiver is appointed in respect of any part of the Customer's undertaking or assets or if the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (or any re-enactment or further enactment thereof) or upon the happening of any similar or analogous event under any foreign jurisdiction unless the Company otherwise agrees in writing to the continuation of such licence.

7.2.4 pursuant to the fiduciary duties which the Customer owes to the Company and which the Customer acknowledges the proceeds of any such sale and the benefit of any such contract of sale shall (to the extent of sums referred to above owing to the Company by the Customer) be held in trust for the Company absolutely and the Customer shall forthwith pay such proceeds of such sales (but only to the extent of sums referred to above owing to the Company by the Customer) into a bank account in its own name separate from all other monies of the Customer and shall notify the Company thereof and the bank of the Company's interest in such account. The proceeds of such sales paid into such bank account by the Customer shall not be used by the Customer but shall immediately be paid to the Company and notwithstanding that any period of credit extended to the Customer by the Company (under this or any other contract) shall not have expired.

7.2.5 the Company may at any time after the termination of the above licence (and without prejudice to its other rights) repossess the goods and for this purpose the Customer hereby grants to the Company an irrevocable licence to enter upon any premises of the Customer and to use such measures as may be reasonably necessary to gain access to such premises and recover possession of the Goods.

7.3 Each of the foregoing sub-clauses of this Clause 7 is to be construed as a separate provision applying and surviving even if for any reason one or other of the said sub-clauses is held void or unenforceable (for whatever reason) in any circumstances.

## **8. WARRANTY AND EXCLUSION**

8.1 The Company warrants that:

8.1.1 at the time at which the risk in the Goods passes to the Customer under Clause 7.1 the Goods will comply in all material respects with the specification agreed in writing by the Company; and

8.1.2 the Company will provide the Services with reasonable care and skill and that the Services will comply in all materials respects with the specification agreed in writing by the Company;

PROVIDED THAT if any Goods and / or Services do not conform to any of the above warranties the Customer shall so notify the Company within 7 days of (as the case may be) the delivery of such Goods or the completion of the performance of

such Services (and the Company shall not be liable for additional loss damage or further defects arising as a direct or indirect result of undue delay by the Customer in so notifying the Company) and the Customer shall afford the Company all such access information and co-operation as the Company may request to enable the Company at its option to repair replace supplement or make good any such Goods and/or Services and/or make a price adjustment which is fair to both parties AND PROVIDED ALSO THAT such warranties shall be conditional upon the Customer complying with all instructions (if any) given by the Company in connection with the transportation storage installation or use of any Goods.

8.2 The Company does not exclude or restrict its liability:

8.2.1 for death or personal injury resulting from negligence of the Company its servants or agents (but not independent contractors) while acting in the course of their employment; or

8.2.2 for breach by the Company of any undertaking as to title implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; or 8.2.3 insofar as any exclusion or limitation of the Company's liability hereunder is otherwise prohibited void or unenforceable by law.

8.3 Subject to Clause 8.2 hereof the warranties referred to in Clause 8.1 hereof are in substitution for and shall replace all conditions and warranties on the part of the Company implied by statute common law or otherwise all of which are expressly excluded and the Company does not make or give nor has any servant or agent of the Company authority to make or give any representation or undertaking as to the standard to which the Services will be performed or as to the quality of the Goods or their correspondence with description or their fitness for any particular purpose or the accuracy to which any Services will be performed or Goods made.

8.4 Subject to Clause 8.2 in the event that notwithstanding Clause 8.1 and 8.3 the Company is found liable for any loss suffered by the Customer that liability shall in no event exceed the price of the Goods and Services under the Contract.

8.5 Subject to Clause 8.2 but notwithstanding anything else contained in this Contract in no circumstances shall the Company be liable to the Customer in contract in tort or otherwise for any indirect incidental or consequential loss suffered by the Customer on account of any act or omission on the part of the Company. "Consequential loss" shall include (without limitation) loss of profit or goodwill or any other financial loss any payment made or due to a third party and any loss or damage caused to any property belonging to the Customer or any third party.

## **9. FORCE MAJEURE**

The Company shall not be liable or responsible for any loss or damage caused by delay in the performance or non performance of any of its obligations hereunder where the same is directly or indirectly caused by any circumstance whatsoever that is beyond the Company's reasonable control including but not limited to any government legislation, strike, lock-out or trade dispute (whether involving its own employees or those of any other person). Should any such event occur the Company may in its discretion cancel or suspend or initially suspend and then cancel this Contract wholly or in part without incurring any liability whatsoever for any loss of damage thereby occasioned.

## **10. RIGHT TO CANCEL OR DELAY**

Without prejudice to any other remedies it may have the Company reserves the right to cancel forthwith or delay performance of the Contract wholly or in part or any other contract between the Company and the Customer upon any breach non-observance or non-performance by the Customer of any term condition or provision express or implied for the time being subsisting between the Company and the Customer.

## **11. TERMINATION**

Without prejudice to any other right or remedy available to the Company the Company shall be entitled to terminate this Contract forthwith by written notice:

11.1 if the Customer (being a company) passes a resolution for its winding up (unless the same be part of a reconstruction or amalgamation) or if any petition is presented for the appointment of an administrator or a receiver or to wind up the company or an administrative receiver is appointed in respect of any part of the Customer's undertaking or assets or if the Customer is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 (or any re-enactment or further enactment thereof) or upon the happening of any similar or analogous event under any foreign jurisdiction; or

11.2 if any other contract between the parties hereto is terminated by the Company for whatever reason; or

11.3 if the Customer is in breach of any term of the Contract and (if such breach is capable of remedy) has failed to remedy the same within 21 days (or such other period as the Company may reasonably specify) following the Company's written notification of such breach.

## **12. INTELLECTUAL PROPERTY RIGHTS**

12.1 All specifications drawings sketches models samples designs technical information or data and other proprietary information written oral or otherwise ("Information") furnished to the Customer by the Company or on its behalf (whether relating to goods or services supplied or to be supplied by the Company to the Customer) and all rights therein (including without limitation copyright, design right (registered or unregistered and whether or not in fact registered) and any other like right in any part of the world) shall remain the property of the Company and shall be returned promptly to the Company (together with all copies) at the Company's request save that upon payment in full by the Customer of all monies due to the Company under the Contract the Customer shall have a non-exclusive licence to use only such of the information as relates directly to the Goods or Services supplied to the Customer under the Contract and then only for the

purpose of using the Goods or Services within the Customer's business and as agreed by the Company when it entered into the Contract.

12.2 Unless the Company has otherwise agreed in writing the Company shall be permitted to use (free of charge) all information prepared by the Customer in connection with the Contract for any purpose whatsoever and the Customer shall at the request and cost of the Company do all such things and sign all such documents as may reasonably be required to perfect the Company's right so to do.

12.3 The Customer shall not in selling its products or in promoting the sale thereof make any reference to the Company's trademarks or brand names except with the previous written consent of the Company.

### **13. INDEMNITY**

The Customer agrees to indemnify and at all times to hold the Company its agents employees officers subsidiaries associated companies and assigns indemnified from and against any and all liability damage loss cost or expense directly or indirectly arising from the consequential upon:

13.1 any alleged or actual infringement of any patent registered design copyright trademark or other rights of any third party by the Company resulting from the manufacture and / or supply of any Goods by the Company or the performance of any Services by the Company (in either case) in accordance with any design or other instruction of the Customer: or

13.2 any act or omission in the performance of or in connection with any of the obligations undertaken by the Customer under the Contract whether by reason of the negligence of the Customer its agents employees or sub-contractors or their agents or employees or otherwise including without prejudice to the generality of the foregoing any liability arising as aforesaid from any injury to any person or persons but excluding any such liability damage loss cost or expense arising directly from negligence on the part of the Company.

### **14. INSURANCE**

The Customer will at all times insure and keep itself insured with a reputable insurance company against all insurable liability under the Contract and without prejudice to the generality of the foregoing against all the Customer's liabilities under Clause 13.

### **15. ASSIGNMENT AND SUB-CONTRACTING**

15.1 The Customer shall not assign any of its rights or obligations under the Contract.

15.2 The Company may in its absolute discretion:

15.2.1 assign the Contract in whole or in part; or

15.2.2 sub-contract any of its obligations under the Contract.

### **16. ADDITIONAL RIGHTS**

The rights of the Company under the Contract shall be in addition to and without prejudice to those implied by or available at law or in equity.

### **17. WAIVER**

No waiver by the Company of any term of the Contract shall be deemed a further or continuing waiver of that or any other term of the Contract.

### **18. SET-OFF**

The Customer shall have no right of set-off and shall not be entitled to withhold payment of any monies due (whether under this Contract or otherwise) for any reason.

### **19. NOTICES**

Any notice or communication required hereunder shall be in writing addressed to the relevant party and shall be deemed to have been sufficiently served on the said party if left at or sent by facsimile transmission or registered or recorded delivery to the registered office (or any principal place of business) of such party.

The same shall be deemed to have been received at the same time when handed to or left with the addressee or if served by post on the next succeeding day (not being a Saturday or Sunday or public holiday) following the day of posting or if by facsimile at the time of despatch thereof.

### **20. ENFORCEABILITY**

If any of the terms hereof are held to be void or unenforceable by any reason of law they shall be void or unenforceable to that extent only and no further and all other items shall remain valid and fully enforceable.

### **21. HEADINGS**

The headings used in these Conditions are for ease of reference only and shall not affect the construction thereof.

### **22. LAW**

The construction validity and performance of the Contract shall be governed in all respects by English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.