

1. Interpretation

1.1. Definitions

In these Conditions, the following definitions apply:

"**Conditions**" the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

"**Contract**" the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

"**Customer**" the person or firm who purchases the Goods from the Supplier.

"**Delivery Location**" has the meaning given in clause 3.1

"**Force Majeure Event**" has the meaning given in clause 9.

"**Order**" the Customer's order for the Goods, as set out in the Customer's purchase order or the Customer's written acceptance of the Supplier's quotation, as the case may be.

"**Order Acknowledgement**" has the meaning given in clause 2.3.

"**Specification**" any specification for the Goods that is requested by the Customer and confirmed by the Supplier in the Order Acknowledgement.

"**Supplier**" Automatic Engineers (Hinckley) Limited (CRN: 02695945).

1.2. Construction

In these Conditions, the following rules apply:

- 1.2.1. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. A **reference to a party** includes its personal representatives, successors or permitted assigns.
- 1.2.3. A **reference to a statute or statutory provision** is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.4. Any phrase introduced by the terms **including, include, in particular** or **any similar expression** shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.5. A reference to **writing** or **written** includes faxes and e-mails.

2. Basis of Contract

- 2.1. These Conditions apply to the Contract 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.
- 2.2. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer shall ensure that the terms of the Order and any relevant Specification are complete and accurate.
- 2.3. The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order ("**Order Acknowledgement**"), at which point the Contract shall come into existence.
- 2.4. No Order which has been accepted by the Supplier may be cancelled by the Customer except with the prior written agreement of the Supplier, which may be provided or rejected in the sole discretion of the Supplier, on the terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 2.5. The Contract constitutes the entire agreement between the 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 the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Supplier and the Customer for the sale of the Goods.

- 2.6. A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 7 days from its date of issue.

3. Delivery

- 3.1. The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree, which delivery location may include the Supplier's premises if the Customer will collect the Goods at such premises ("**Delivery Location**") at any time after the Supplier notifies the Customer that the Goods are ready.
- 3.2. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.3. If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.4. If the Customer fails to accept delivery of the Goods within three days of the Supplier notifying the Customer that the Goods are ready and/or fails to provide any instructions, documents, licenses, consents or authorisations required to enable the Goods to be delivered, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Contract:
 - 3.4.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the third day following the day on which the Supplier notified the Customer that the Goods were ready;
 - 3.4.2. the Supplier may invoice the Customer for the Goods;
 - 3.4.3. the Goods shall be deemed compliant in all respects with the terms of the Contract; and
 - 3.4.4. the Supplier shall store the Goods until actual delivery takes place and charge the Customer for all related costs and expenses (including storage and insurance).
- 3.5. If 10 days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods.
- 3.6. Unless otherwise specified in the Order, the Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 10% more or less than the quantity of Goods ordered. Any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more than the quantity of Goods ordered, the Customer shall be entitled to retain the excess Goods and the price shall not be adjusted, and otherwise, the Customer shall return the excess Goods at the Supplier's risk and expense.
- 3.7. The Supplier may deliver the Goods by installments, which shall be invoiced and paid for separately. Each installment shall constitute a separate Contract. Any delay in delivery or defect in an installment shall not entitle the Customer to cancel any other installment.

- 3.8. The Customer shall inspect the Goods immediately on the delivery thereof and shall within three business days from such inspection give notice to the Supplier of any matter or thing by reason of which it is alleged the Goods are not in accordance with the Contract. If the Customer shall fail to give such notice, the Goods shall be deemed in all respects in accordance with the Contract and the Customer shall be bound to accept and pay for the same accordingly.
- 3.9. Risk in any of the Goods so rejected pursuant to Clause 3.8 shall continue to remain with the Customer until such time as the Supplier takes possession thereof.
- 3.10. Any collection or return of packaging materials shall be undertaken solely at the Supplier's discretion and at the Customer's cost.

4. Quality

- 4.1. The Supplier warrants that the Goods shall:
 - 4.1.1. on delivery conform in all material respects with their description and any applicable Specification; and
 - 4.1.2. for a period of 12 months following delivery be free from material defects in design, material and workmanship.
- 4.2. Subject to clause 4.3, if:
 - 4.2.1. the Customer gives notice in writing to the Supplier within a reasonable time of discovery, and in all cases within 12 months following delivery, that some or all of the Goods do not comply with the warranty set out in clause 4.1; and
 - 4.2.2. the Supplier is given a reasonable opportunity of examining such Goods; and
 - 4.2.3. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
 - 4.2.4. the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.3. The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 if:
 - 4.3.1. the Customer makes any further use of such Goods after giving notice in accordance with clause 4.2; or
 - 4.3.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice; or
 - 4.3.3. the defect arises as a result of goods or materials supplied by other parties that are integrated into the Goods (except if integrated by the Supplier); or
 - 4.3.4. the defect arises as a result of the Supplier following any specification supplied by the Customer; or
 - 4.3.5. the Customer alters or repairs such Goods without the written consent of the Supplier; or
 - 4.3.6. the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage or working conditions.
- 4.4. Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.5. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 4.6. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5. Title and Risk

- 5.1. The risk in the Goods shall pass to the Customer on completion of delivery or deemed delivery.
- 5.2. Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds)

for:

- 5.2.1. the Goods; and
 - 5.2.2. Any other goods or services that the Supplier has supplied to the Customer in respect of which payment has become due.
- 5.3. Until title to the Goods has passed to the Customer, the Customer shall:
 - 5.3.1. hold the Goods on a fiduciary basis as the Supplier's bailee;
 - 5.3.2. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - 5.3.3. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.3.4. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 5.3.5. notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.1;
 - 5.3.6. not transfer, sell, dispose of, pledge or in any way charge by way of security for any indebtedness any of the Goods, and if the Customer does so, all money owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable and the Customer shall forthwith hold upon trust for the Supplier such sum as shall be equal to the amount then owing to the Supplier in respect of the Goods whether or not proceeds of such transfer, re-sale, disposition or indebtedness shall have been received by the Customer; and
 - 5.3.7. give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
 - 5.4. Should the Goods become constituents of or be converted into other products while subject to the Supplier's ownership, the Supplier shall have ownership in such other products as if they were solely and simply the Goods, and the Supplier shall give the Customer credit for any sum received by the Supplier in excess of the price of the Goods. Nothing in this Clause 5.5 shall give the Customer the right to return the Goods to the Supplier.
 - 5.5. If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in clause 7.1, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to inspect and/or recover them.

6. Price and Payment

- 6.1. The price of the Goods shall be the price set out in the Order Acknowledgement, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of Order.
- 6.2. The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 - 6.2.1. any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour materials and other manufacturing costs);
 - 6.2.2. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; and
 - 6.2.3. any delay caused by any instructions of the Customer or

failure of the Customer to give the Supplier adequate or accurate information or instructions.

- 6.3. The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods. All other duties and taxes are also excluded from the price of the Goods. The price of the Goods excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer., including with respect to any Goods under warranty.
- 6.4. The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery or deemed delivery.
- 6.5. Unless otherwise specified in the Order, the Customer shall pay the invoice in full and in cleared funds by the end of the month following the month the invoice was dated. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 6.6. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("due date"), then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above the Bank of England's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 6.7. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding 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. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

7. Termination

- 7.1. Without limiting its other rights or remedies, either party may terminate this Contract with immediate effect by giving written notice to the other party if:
 - 7.1.1. such other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of such breach;
 - 7.1.2. such other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purposes of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 7.1.3. such other party suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 7.1.4. such other party's financial position deteriorates to such an extent that in such party's opinion such other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 7.2. Without limiting its other rights or remedies, the Supplier may suspend supply of the Goods under this Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in Clause 7.1, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date of payment.

- 7.3. On termination of the Contract for any reason, the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest thereon.
- 7.4. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 7.5. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in force and effect.

8. Limitation of Liability

- 8.1. Nothing in these Conditions shall limit or exclude the Supplier's liability for:
 - 8.1.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 8.1.2. Fraud or fraudulent misrepresentation.
 - 8.1.3. breach of the terms implied by section 12 of the Sale of Goods Act of 1979;
 - 8.1.4. defective products under the Consumer Protection Act 1987; or
 - 8.1.5. any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 8.2. Subject to clause 8.1:
 - 8.2.1. the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract; and
 - 8.2.2. the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the price of the Goods.

9. Force Majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract (other than a failure or delay in making a payment or failure or delay in accepting delivery of the Goods) to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

10. Intellectual Property

All intellectual property rights in or arising out of or in connection with the Goods shall be owned by the Supplier. When Goods are supplied by the Supplier in accordance with the Customer's specifications, the Customer shall indemnify and keep indemnified the Supplier against all costs, claims and expenses incurred by the Supplier in respect of the infringement or alleged infringement by such Goods on an intellectual property belonging to third parties.

11. General

- 11.1. **Assignment and Subcontracting**
 - 11.1.1. The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its

- rights or obligations under the Contract.
- 11.1.2. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 11.2. Notices**
- 11.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail.
- 11.2.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2.1; if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the third day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one day after transmission.
- 11.2.3. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 11.3. Severance**
- 11.3.1. If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-pro vision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 11.3.2. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 11.4. Waiver**
- A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. 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.
- 11.5. Third Party Rights**
- A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 11.6. Variation**
- Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer and the Supplier.
- 11.7. Confidentiality**
- 11.7.1. Each party undertakes that it shall not disclose to any other person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or any member of the group to which the other party belongs. For the purposes of this clause, "group" means, in relation to any party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.
- 11.7.2. Each party may disclose the other party's confidential information to the extent required by law, a court of competent jurisdiction or any governmental or regulatory authority and to its employees, officers, representatives or advisers who need to know such information for purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract; provided that such party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this Clause 11.7.
- 11.7.3. No party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 11.8. Governing Law and Jurisdiction**
- The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.