

## AEROTECH PRECISION MANUFACTURING LIMITED

### TERMS AND CONDITIONS OF SALE

#### 1. Definitions

In these Terms and Conditions, the following words shall have the following meanings:

'Buyer'	The person, firm or company who agrees to purchase Goods from the Company.
'Company'	Aerotech Precision Manufacturing Limited (Company Number 3149340) whose registered office is at Unit 4, Upton Industrial Estate, Factory Road, Poole, Dorset BH16 5SJ.
'Company's Place of Business'	Unit 4, Upton Industrial Estate, Factory Road, Poole, Dorset BH16 5SJ.
'Condition'	A term of these Terms and Conditions, any breach of which shall entitle the party not in breach to terminate these Terms and Conditions forthwith and without notice to the party in breach.
'Contract'	The legally binding agreement between the Parties pertaining to the rights and / or liabilities and / or obligations arising by virtue of the Sales Order Acknowledgement and / or these Terms and Conditions.
'Contract Price'	The price as stated in the Company's quotation or Sales Order Acknowledgement, subject to any permitted variation thereof.
'Credit Terms'	As defined in clause 6.1.
'Delivery'	As defined in clause 5.
'Goods'	As described in the Company's quotation or Sales Order Acknowledgement.
'Intellectual Property Right'	Patents, copyrights, registered and unregistered design rights, registered and unregistered trade and service marks, confidential information and such rights as are protected the law of passing off.
'Parties'	The Company and the Buyer, and 'Party' shall mean either one of them.

'Sales Order Acknowledgement' The Company's acceptance of the Buyer's order / offer / request for the Company to supply Goods. A Sales Order Acknowledgement will be in writing on company headed paper and may be in the form of a quotation.

## **2. Interpretation**

In these Terms and Conditions unless the context otherwise requires:

- words importing any gender include every gender;
- words importing the singular number include the plural number and vice versa;
- words importing persons include firms, companies and corporations and vice versa;
- references to numbered clauses are references to the relevant clause in these Terms and Conditions;
- any obligation on any Party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- the headings to the clauses and paragraphs of these Terms and Conditions are not to affect the interpretation;
- any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- where the word 'including' is used in these Terms and Conditions, it shall be understood as meaning 'including without limitation'.

## **3. General**

3.1 The Company submits its Sales Order Acknowledgements and accepts all offers / orders / request for Goods on the following terms and conditions (the Terms and Conditions) which shall prevail over any terms put forward by the Buyer or any course of dealing established between the Company and the Buyer.

3.2 The Sales Order Acknowledgement and these Terms and Conditions shall set out the entire agreement between the Company and the Buyer to the exclusion of all other representations, conditions or warranties, expressed or implied.

3.3 The Buyer agrees that it has not relied on any statements or representations made by or on behalf of the Company.

3.4 The Company reserves the right to revise these Terms and Conditions from time to time by way of update. The Buyer agrees to be bound by any such variations and should confirm current Terms and Conditions of Sale by visiting the Company's website at [www.aero-tech/sale\\_terms.pdf](http://www.aero-tech/sale_terms.pdf)

3.5 Subject to clause 3.4, no variation of these Terms and Conditions or the Company's Sales Order Acknowledgement shall be binding on the Company unless agreed in writing and signed on the Company's behalf by one of the Company's directors; no other employee or agent has authority to agree any variation of these Terms and Conditions.

3.6 No binding Contract shall exist between the Company and the Buyer until the Company has sent a Sales Order Acknowledgement to the Buyer, or in the event that no Sales Order Acknowledgement is provided by the Company, on Delivery of Goods from the Company to the Buyer which shall be deemed conclusive evidence of acceptance of these Terms and Conditions which shall apply.

3.7 The Company reserves the right to re-issue quotations and Sales Order Acknowledgements at a price other than that stated on any previous quotation or Sales Order Acknowledgement submitted by the Company.

3.8 The Company reserves the right to vary the specification / detail of a quotation, Sales Order Acknowledgement, or other agreement to supply Goods to the Buyer, and withdraw from offer any of its products without prior warning.

3.9 The Company reserves the right to decline any offer / order / request for Goods by the Buyer under the Sales Order Acknowledgement that it deems contrary to the Company's policies in force at that time as detailed on the Company's website at [www.aero-tech.co.uk/company\\_policy.html](http://www.aero-tech.co.uk/company_policy.html)

3.10 Where the Buyer or where the Buyer proposes that a third party provides free issue materials / goods to the Company, the following provisions shall apply:-

3.10.1 although every care is taken in handling free issue materials / goods, the Company is not responsible for the materials during the manufacture process. The Company will not accept any claims for any loss howsoever arising. Free issue materials are handled and accepted entirely at the Buyer's / third party's own risk;

3.10.2 the Company shall not be liable for fair wear and tear in relation to tooling, patterns and the like;

3.10.3 free issue materials / goods supplied must be safe to manufacture and free from health or safety risks. The Company shall be notified in writing of any special precautions which need to be taken in relation to use of the free issue materials / goods. Failure to do so may result in serious accident and the Company reserves the right to initiate legal proceedings against the Buyer and / or third party provider of the free issue materials / goods;

3.10.4 any surplus materials / goods may be disposed of at the Company's discretion;

3.10.5 waste of such materials arising from poor workmanship and / or the failure to exercise reasonable care and skill and / or negligence of any sub-contractor, shall be made good at the Seller's expense.

#### **4. Pricing**

4.1 The price payable for the Company's Goods shall, unless otherwise stated by the Company in writing, in Sales Order Acknowledgement or otherwise, be the price quoted by the Company at the date of Delivery.

4.2 Subject to clause 4.1, in the case of a Sales Order Acknowledgement for delivery by instalments, the price payable for each instalment shall be at the Company's current price quoted at the date of Delivery of each instalment. The Buyer shall be informed of the current quoted price on request.

4.3 The Company reserves the right to amend the Contract Price pursuant to variations in wages, materials or other costs by the amount of that increase, or decrease, which shall be payable as if it were the original Contract price.

4.4 The Contract Price and other prices provided by the Company are exclusive of value added tax, taxes and all other applicable duties. The Buyer shall be liable for all local taxes or charges imposed to include, but not limited to, import duty.

4.5 The Company reserves the right to render an invoice for the Goods supplied in Pounds Sterling or in Euros.

4.6 The Company reserves the right to make an additional charge for the cost of packaging, transportation, or any other costs resulting from any variation to the Sales Order Acknowledgement at the Buyer's request.

#### **5. Delivery**

5.1 All Goods supplied by the Company to the Buyer are delivered ex-works and it shall be the Buyer's duty to take delivery of the Goods at the Company's Place of Business.

5.2 The Company accepts no liability for Goods from the point at which they leave the Company's premises, notwithstanding the method of transport or courier service.

5.3 The Buyer hereby authorises to discharge the Company from any liability under section 32 (2) of the Sale of Goods and Services Act 1979.

5.4 Section 32 (3) of the Sale of Goods and Services Act 1979 shall not apply where Goods are sent by the Company to the Buyer.

5.5 All dates / times for Delivery, as quoted by the Company, are to be treated as best estimates and the Company shall bear no liability for failing to deliver the Goods on any

particular date or at any particular time. For the avoidance of doubt, time is not of the essence.

5.6 The Company reserves the right to vary the estimated date of Delivery.

5.7 The Buyer shall procure any documentation required to comply with import formalities, or otherwise.

5.8 The Company may, at its discretion, send the Goods to the Buyer using a courier service of its choice. The cost of the Delivery plus a fee for administration may be added to the Contract Price. If multiple deliveries are required by the Buyer, multiple delivery charges may apply and separate invoices shall be raised.

5.9 The Company may, at its discretion, agree to use a courier service as requested by the Buyer. The Buyer shall bear the cost of Delivery and shall make all necessary arrangements to ensure that the courier is invoiced directly.

5.10 Where the Company requests Delivery instructions or notifies the Buyer the Goods are ready for Delivery, the Buyer fails to provide further Delivery information within fourteen days thereof. If the Buyer fails to do so then the Contract Price shall be payable in full by the Buyer and the Company reserves the right to do any of the following, either alone or in any combination:-

5.10.1 send the Goods to Buyer's registered office; and / or

5.10.2 dispose of the Goods as it thinks fit; and / or

5.10.3 arrange for storage of the Goods at the Buyer's expense and risk. The Buyer shall indemnify the Company for all costs incurred in arranging such storage; and / or

5.10.4 recover from the Buyer any costs incurred in respect of the costs of storage of the Goods or of their disposal, or sending, or any other losses caused as a result of the Buyer's breach.

5.11 If, upon Delivery of Goods, the outer packaging is visibly damaged then the Buyer shall notify the courier service in writing at the time of accepting the Goods. The Buyer shall also notify the Company in writing within 48 hours of Delivery, or on arrival of the Goods at the Buyer's place of business, or as otherwise agreed, whichever is the later, providing a copy of the written notice as supplied to the courier service.

5.12 The Buyer shall carry out a reasonable inspection of the Goods within 48 hours of Delivery, or on arrival of the Goods at the Buyer's place of business or as otherwise agreed, whichever is the later, and shall be deemed to have done so.

5.13 After inspection, if the Goods are found to be damaged and / or defective and / or fail to comply with the Sales Order Acknowledgement, then the Buyer shall notify the Company in writing within 72 hours of Delivery, or on arrival of the Goods at the Buyer's place of business or as otherwise agreed, whichever is the later of that which has occurred. Under no

circumstances shall the damaged Goods be returned to the Company unless expressly authorised in advance by the Company.

5.14 Where the Company has not been notified in accordance with clauses 5.11 and 5.13 above the Goods shall be deemed to have been accepted by the Buyer and the Company shall not be liable for any direct or consequential loss arising from any damage or defects whatsoever.

5.15 Where the Buyer notifies the Company in accordance with clauses 5.11 and 5.13 that the Goods are damaged and / or defective and / or fail to comply with the Sales Order Acknowledgement, then the Company may send a representative to visit the Buyer's premises to examine the Goods and, if they are found not to conform, then the Company may elect to either alone or in any combination:-

5.15.1 replace the Goods found not to accord to the Sales Order Acknowledgement; and / or

5.15.2 reduce the Contract Price by an amount equivalent to that proportion of the price payable in respect of the Goods not found to conform to the Sales Order Acknowledgement; and / or

5.15.3 request that the Goods are returned to the Company. The Buyer shall arrange for such Goods to be adequately packaged, using the original packaging or equivalent, and insured by the Buyer at its expense; and / or

5.15.4 make good any shortfall of Goods by one or more further deliveries.

The Buyer shall in any case accept and pay for all Goods which conform to the Sales Order Acknowledgement in proportion of the Contract Price.

5.16 The Buyer shall not be entitled to reject Delivery of Goods where there is a shortfall in the Goods supplied.

5.17 The Company reserves the right to Deliver Goods in instalments.

5.18 Any equipment sent to the Company must be adequately insured by the Buyer whilst in transit and whilst on the Company's premises.

## **6. Payment**

6.1 Except where instalments have been cited in the Company's Sales Order Acknowledgement, and / or the Contract as otherwise agreed, the Contract Price must be paid by the Buyer to the Company within one calendar month following the date of the Company's invoice for the Goods.

6.2 The Company reserves the right to amend the Credit Terms at its discretion and shall notify the Buyer in writing of any amendments to the same.

6.3 The Buyer shall not be entitled to exercise any:-

6.3.1 set off; or

6.3.2 lien; or

6.3.3 any other similar right or claim.

6.4 The Company shall be entitled to exercise:-

6.4.1 set off in relation to this or any other dealings with the Buyer or Seller; or

6.4.2 lien; or

6.4.3 any other similar right or claim.

6.5 If the Goods are Delivered to the Buyer in instalments, the Company shall be entitled to invoice for each instalment as and when Delivery thereof has been made and payment shall be due in accordance with the Credit Terms in respect of each invoice.

6.6 Should the Buyer fail to pay an instalment due in accordance with the Company's Sales Order Acknowledgement / quotation then the total Contract Price for Goods already manufactured at the time of such a default will be due forthwith without notice.

6.7 Should the Buyer fail to adhere to the Credit Terms, the Company shall be entitled to charge interest at the rate of 8% per annum above the Bank of England base rate or in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 (the Act), as amended, whichever is the greater, together with compensation for debt recovery costs pursuant to The Act.

6.8 The Company reserves the right to insist on payment of any outstanding invoices prior to the delivery of any further Goods to the Buyer. Prompt payment by the Buyer shall be a Condition of this Contract.

## **7. Passing of title and risk**

7.1 The risk in the Goods shall pass to the Buyer on Delivery.

7.2 The property in the Goods shall not pass to the Buyer until the Company has received payment of the Contract Price due in regard of the Goods together with any other sums that are due or owing to the Company, in full and in cleared funds, whether or not Delivery has been made.

7.3 Until payment of the Contract Price pursuant to this Contract, or any other Contract between the Parties, has been made in full and in cleared funds to the Company, the Buyer shall not dispose of any Goods unless authorised in writing by the Company.

7.4 If the Buyer sells the Goods before title has passed to it, the Buyer shall act as agent for the Company, provided that the Buyer shall have no authority to create privity of Contract between the Company and any customer to whom the Goods are sold, and the Buyer shall hold any proceeds of sale as trustee for the Company, separate from its own monies in a separate, identifiable bank account.

7.5 In the event of failure to pay the Contract Price in accordance with this Contract or on the liquidation or bankruptcy of the Buyer, the Company, its agents, servants or employees, shall be entitled to enter upon any premises or land occupied or owned by the Buyer forthwith for the purpose of removing all Goods in relation to which title remains with the Company. The Buyer hereby grants the Company, its agents, servants or employees at any time to enter any premises where the Goods are stored in order to inspect them or, where the Buyer's right to possession has terminated, to recover them.

7.6 The Company may exercise any right of re-sale in respect of such Goods obtained in relation to clause 7.5 above.

7.7 After Delivery and until such time as the title in the Goods passes to the Buyer, the Buyer shall keep the Goods comprehensively insured against all insurable risks for an amount of at least equal to the sum owing to the Company. The policy shall bear an endorsement recording the Company's title and interest and shall be produced to the Company upon request.

## **8. Warranties**

8.1 Except as provided for in these Terms and Conditions any warranties, (whether expressed or implied by statute or common law or howsoever (including without limitation those of satisfactory quality or of fitness for a particular purpose) even if that purpose is made known expressly or by implication of the Company) are hereby excluded.

## **9. Liability**

9.1 The Company shall not be liable for any loss arising in contract, tort, negligence or otherwise howsoever arising, for any claim, damage, loss or costs in respect of:-

9.1.1 any losses special to the Buyer; and / or

9.1.2 any direct loss of profits, loss of goodwill, any direct loss of turnover and / or any direct loss of revenue; and / or

9.1.3 any direct or consequential loss or damage howsoever caused including without limitation any losses special to the Buyer, and loss of profits, loss of turnover, loss of revenue, loss of business and/or loss of data.

9.2 The Company shall not incur any liability for indirect or consequential loss arising from any failure or inaccuracy in any design and / or drawing supplied by the Buyer, or for any economic loss suffered by the Buyer as a result of any failure of Goods to conform to the Sales Order Acknowledgement.

9.3 The Company shall not incur any liability for indirect or consequential loss arising from any failure or defect in any free issue materials / goods provided to it.

9.4 The Company shall not be liable for any failure by the Buyer to comply with recommendations and instructions of the Company, to include but not limited to, storage, handling, use, or servicing of the Goods, use of the Goods with other Goods, misuse of the Goods, or fair wear and tear of the Goods.

9.5 The aggregate liability of the Company, whether in contract, tort, negligence or breach of statutory duty or otherwise, for any loss or damage shall be limited to the price of the Goods.

9.6 The Buyer shall indemnify the Company from and against all claims and losses arising from loss, damage, liability, injury to the Company, its employees and agents, and third parties arising as a result of, or in connection with any act, omission, negligence and / or breach of the terms of this Contract or otherwise due to the default of the Buyer. Claims shall include all demands, claims, proceedings, penalties, fines, and liability, whether criminal, or civil, in contract, tort or otherwise and losses shall mean all losses including, without limitation, financial losses, damages, legal costs and other expenses of any nature whatsoever.

9.7 The Company makes no representation that the use of the Goods does not infringe the rights of any third party, including any Intellectual Property Right and the Company accepts no liability in this respect.

## **10. Default or Insolvency of Buyer**

10.1 In the event that:-

10.1.1 the Buyer shall be in breach of any of its obligations under the Contract; or

10.1.2 any distress or execution shall be levied on the Buyer's property assets; or

10.1.3 the Buyer, being an individual or partnership, shall make, or offer, to make any voluntary arrangement, or composition with its creditors, or become bankrupt, or if any bankruptcy petition be presented against him; or

10.1.4 the Buyer is a company and an administrative receiver or an administrator has been appointed, or it makes a voluntary arrangement with its creditors, or commences to be wound up; or

10.1.5 the Buyer fails to pay its debts as and when they fall due; or

10.1.6 such equivalent event as at 10.1.1 to 10.1.6 above occur in the Buyer's local jurisdiction;

then the Company may at its discretion and without prejudice to any other right or claim it may have, give written notice to terminate, or withdraw, wholly or in part, this Contract, all or

any other Sales Order Acknowledgements, quotations, Purchase Orders or Contracts it may have with the Buyer or, without prejudice to the Company's rights subsequently terminate the Contract for the same cause, alternatively suspend further deliveries of Goods.

## **11. Force Majeure**

11.1 Neither Party shall have any liability and the Company shall be entitled to delay and / or cancel performance of its obligations under the Contract or, to vary the amount of Goods to be Delivered pursuant to a Sales Order Acknowledgement, if it is prevented from or hindered, or delayed in manufacturing, obtaining or Delivering the Goods by normal route, or means of delivery, through any circumstances beyond its reasonable control including, but not limited to, strikes, lock outs, accidents, war, fire, reduction in or unavailability of power at a manufacturing plant, breakdown of plant or machinery or shortage of or unavailability of raw materials from the normal source of supply or an act of god. The Party affected by such circumstances shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six months, either Party may terminate these Terms and Conditions by written notice to the other Party.

## **12. Waiver**

12.1 No failure, delay or partial exercise by the Company in exercising any right, power or privilege, or insistence upon the strict performance of any obligation under the Contract shall impair the same or operate as a waiver of the same. The rights and remedies provided in these Terms and Conditions are cumulative and not exclusive of any rights and remedies provided by law.

## **13. Severability**

13.1 Each provision of these Terms and Conditions is severable and distinct from the others. The Parties intend that every such provision shall be and remain valid and enforceable to the fullest extent permitted by law. If any provision is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from these Terms and Conditions and rendered ineffective as far as possible without modifying the remaining provisions, and shall not in any way affect any other circumstances of or the validity or enforcement of these Terms and Conditions.

## **14. Assignment**

14.1 The Buyer may not assign, delegate, sub-Contract, factor, mortgage, charge or otherwise transfer any or all of its obligations under the Contract without the prior written agreement of the Company.

14.2 Any prior written permission so provided by the Company pursuant to clause 14.1 shall not impair or operate as a waiver of the Buyer's obligation to obtain the same in relation to future requests for permission, nor will it be taken as evidence of a course of dealing. Each request for an assignment, delegation, sub-contracting, factoring, mortgage, charge or any other transfer will be dealt with on a separate and individual basis.

## **15. Subcontracting**

15.1 The Company may perform any or all of its obligations under the Contract through agents or sub-contractors at its discretion.

## **16. Notices**

16.1 Any notice required to be served under these Terms and Conditions shall be served on the Company at its registered office in the UK or such other address as the Company may from time to time notify to the Buyer, and on the Buyer at the address notified to the Company and / or specified in the Sales Order Acknowledgement, by first class post, registered airmail or by e-mail or facsimile. The Buyer is responsible for notifying the Company in writing of any change of address, e-mail address or fax number.

16.2 Any such notice served by post shall be deemed to have been served in the case of a destination in the UK two days after the date of posting and seven days after the date of posting to any other destination. In the case of service by email, when the e-mail is available to read in the recipients inbox and in the case of facsimiles when the addressees' machine acknowledges receipt thereof provided that a copy of the notice or communication is also put in the post in accordance with clause 16.1 above within 24 hours following transmission of the initial version.

16.3 In proving the giving of a notice it shall be sufficient to prove that the notice was left, or that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and transmitted and the transmission was confirmed and/or acknowledged as the case may be, in accordance with clauses 16.1 and 16.2.

## **17. Governing Law**

17.1 This Contract shall be construed and operated in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

## **18. Third parties**

18.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999, and notwithstanding any other provision of these Terms and Conditions, these Terms and Conditions is not intended to, and do not, give any person who is not a party to it any right to enforce any of its provisions.