

## **AEROTECH PRECISION MANUFACTURING LIMITED**

### **TERMS AND CONDITIONS OF PURCHASE**

#### **1. Definitions**

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

'Seller'	The person, firm or company who agrees to sell Goods to 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 Purchase Order and / or these Terms and Conditions and any representations made by the Seller and any requests or requirements made known to the Seller by the Company.
'Contract Price'	The price as stated in the Company's Purchase Order, subject to any permitted variation thereof.
'Delivery'	As defined in clause 7.
'Goods'	As described in the Company's Purchase Order.
'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 Seller, and 'Party' shall mean either one of them.
'Purchase Order'	The Company's request for Goods accepting the Seller's offer to supply Goods to the Company. A Purchase

Order will be in writing on company headed paper.

## 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 Purchase Orders and accepts all offers to sell / supply Goods to the Company on the following terms and conditions (the Terms and Conditions) which shall prevail over any terms put forward by the Seller or any course of dealing established between the Company and the Seller.

3.2 The Company reserves the right to revise these Terms and Conditions from time to time by way of update. The Seller agrees to be bound by any such variations and should confirm current Terms and Conditions of Purchase by visiting the Company's website at [www.aerotech.co.uk/purchase\\_terms.html](http://www.aerotech.co.uk/purchase_terms.html)

3.3 Subject to clause 3.2, no variation of these Terms and Conditions or the Company's Purchase Order 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.

3.4 No binding Contract shall exist between the Company and the Seller until the Company has sent its Purchase Order to the Seller, or in the event that no Purchase Order is provided by the Company, on despatch of Goods from the Seller to the Company which shall be

deemed conclusive evidence of acceptance of these Terms and Conditions which shall apply.

3.5 The Company reserves the right to vary the specification / detail of a Purchase Order, or other agreement to purchase Goods from the Seller.

3.6 Any requirements relating to the design, test, examination, inspection and related instruction for acceptance by the Company are to be made known to the Company prior to any work commencing.

3.7 If it is deemed necessary that a test specimen (e.g. production method, number, storage conditions) is submitted for design approval, inspection, investigating or auditing, this will be stated on the Purchase Order.

3.8 The Seller is to notify the Company of any changes in product and/or process definition and written approval, pursuant to clause 3.3 above, must be granted prior to any further work being commenced.

3.9 The Seller is to afford access to the Company, their customer and/or regulatory authority, to the Seller's facility which was involved in processing / manufacturing the Company's Purchase Order, and to all of the Seller's records concerning that Purchase Order or the Contract as otherwise agreed.

3.10 The Seller is to ensure that all sub-contractors and suppliers are provided with all applicable requirements as detailed in the Purchase Order, all specifications and any other requirements communicated by the Company to the Seller, to include, but not limited to the key characteristics.

3.11 None of the Seller's records concerning the Purchase Order and / or the Contract as otherwise agreed are to be destroyed without the prior agreement of the Company.

3.12 Where the Company agrees to provide free issue materials / goods to the Seller the following provisions shall apply:-

3.12.1 such materials are to remain the property of Company; and

3.12.2 the Seller shall use such free issue materials / goods solely in connection with the Contract; and

3.12.3 the Seller shall maintain all such materials / goods in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear; and

3.12.4 any surplus materials / goods shall be disposed of at the Company's discretion; and

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

3.12.6 without prejudice to any other of the rights of the Company under these Terms and Conditions, the Seller shall deliver up such materials / goods, whether further processed or not, to the Company on demand.

3.13 The Seller shall ensure that product to be purchased is released to any of the following as appropriate on the purchase order:-

- a) requirements for approval of product, procedures, processes and equipment
- b) requirements for qualification of personnel
- c) quality management system requirements (ISO 9001 or Aerotech QMS)

3.14 The Seller shall ensure that its employees conduct themselves in both an ethical and responsible manner when dealing with the company's finances, products, etc.

#### **4. Nature and Quality of Goods**

4.1 It is a Condition of these Terms and Conditions that the Goods supplied shall conform in all respect with the Purchase Order and all specifications and any other requirements communicated by the Company to the Seller, including any samples supplied by the Company to the Seller.

4.2 The Company is to be informed at the earliest possible moment in time of any non-conforming products and arrangements for the Company's possible approval of the offending items.

4.3 It is a Condition of these Terms and Conditions that all Goods supplied will conform to the description as represented to, and / or given by, the Company. Description shall be deemed to include all references to markings, labels, warnings, patterns and specifications.

4.4 It is a Condition of these Terms and Conditions that all Goods supplied will be of satisfactory quality (as defined in the Sale and Supply of Goods Act 1994) and fit for their common purposes.

4.5 It is a Condition of these Terms and Conditions that all Goods supplied will be fit for any particular purpose made known to the Seller by the Company.

4.6 It is a Condition of these Terms and Conditions that all Goods supplied will be fully traceable to the materials used and the production facility including staff.

4.7 It is a Condition of these Terms and Conditions that all Goods supplied will be free for any damage, foreign objects or debris.

4.8 It is a Condition of these Terms and Conditions that all Goods supplied are subject to verification of authenticity, if items are called into question regarding counterfeiting the supplier shall be informed and the items shall be destroyed.

#### **5. Quantity**

5.1 It is a Condition of these Terms and Conditions that the Seller will deliver the exact quantity of Goods specified in the Purchase Order.

5.2 If the Seller delivers a quantity less than the quantity specified in the Purchase Order, the Company may elect to:-

5.2.1 terminate the Contract; or

5.2.2 accept the lesser quantity and pay for it at the contract rate, subject to a deduction of the Contract Price, calculated by the Company to be a fair proportion based on the amount unsupplied, to compensate the Company for any inconvenience caused.

5.3 If the Seller delivers more than the quantity specified in the Purchase Order, the Company may elect to:-

5.3.1 accept and pay for all the Goods Delivered at the Contract rate; or

5.3.2 accept and pay for the Contract quantity and reject the excess, or

5.3.3 reject the whole quantity.

## **6. Title to Goods**

6.1 It is a Condition of these Terms and Conditions that the:-

6.1.1 Seller has the right to sell the Goods to the Company at the time of Delivery; and

6.1.2 Goods sold will be free of all encumbrances; and

6.1.3 Company will enjoy quiet possession of the Goods supplied.

6.2 Where the Company's ownership, possession or use of the Goods infringes any other person's Intellectual Property Rights, then the Seller will indemnify the Company for all resulting losses, expenses and liabilities.

## **7. Delivery**

7.1 It is a Condition of these Terms and Conditions that Goods shall be Delivered promptly on the date(s) specified in the Purchase Order or, as subsequently varied by the Company in writing. If the Seller fails to Deliver the Goods on the specified delivery date the Company may terminate the Contract. For the avoidance of doubt, time is of the essence.

7.2 Unless otherwise specified, the place of Delivery shall be the Company's Place of Business.

7.3 The Company reserves the right by written notice, to vary the time and / or place of Delivery, provided the Company has given the Seller reasonable notice.

7.4 It shall be a Condition of these Terms and Conditions that the Seller will deliver the Goods in accordance with the Company's instructions detailed in its Purchase Order and / or the Contract as otherwise agreed.

7.5 The Seller shall supply all specifications, drawings, process requirements, inspection instructions as well as any other technical data as required and / or stated in the Purchase Order at the time of Delivery.

7.6 All expenses associated with Delivery shall be payable by the Seller and shall be deemed included within the Contract Price.

7.7 The Company is not obliged to accept Delivery by instalments.

## **8. Payment of Contract Price**

8.1 The Contract Price payable is inclusive of VAT, taxes and all other duties.

8.2 The Contract Price is payable pursuant to the payment terms detailed in the Purchase Order.

8.3 The Company reserves the right to extend payment terms in adverse trading conditions without incurring any penalties, interest, or additional cost.

8.4 The Company shall be entitled to receive a discount of 10% of the Contract Price if payment is made within 7 days of delivery.

8.5 Any Delivery received after the twenty-fifth day of a month will be deemed Delivered on the first day of the next month to allow for sufficient time for the Company to inspect the Goods. Applicable payment terms will start from the deemed date of Delivery (i.e. the first day of the month following Delivery) and invoices will be processed accordingly.

8.6 The Seller shall not be entitled to exercise any:-

8.6.1 set off; or

8.6.2 lien; or

8.6.3 any other similar right or claim.

8.7 The Company shall be entitled to exercise:-

8.7.1 set off in relation to this or any other dealings with the Seller or Seller for whatever reason; or

8.7.2 lien; or

8.7.3 any other similar right or claim..

## **9. Passing of Property and Risk**

9.1 The property in the Goods shall pass to the Company at the time the Contract is made, or when the Goods are dispatched to the Company, whichever is the earlier. Passing of property will not prejudice the Company's right to reject the Goods under clause 10 below.

9.2 The Goods shall be at the Seller's risk until the Goods are Delivered in accordance with clause 7 of these Terms and Conditions and the Purchase Order.

## **10. Right to Reject and Replace**

10.1 The Company shall not be deemed to have accepted the Goods until it has inspected them to determine whether they comply with the Purchase Order and / or the Contract as otherwise agreed.

10.2 The Company shall have the right to reject any or all of the Goods within 3 months of their delivery, for any breach of Condition.

10.3 Where the Seller has supplied Goods in breach of clause 4, or are not in conformity with the Purchase Order and / or Contract as otherwise agreed, the Company may elect:-

10.3.1 to reject the Goods and to terminate the Contract; or

10.3.2 to demand that the Seller supply replacement Goods within a time specified by the Company,

and in either case claim damages for all losses, expenses and liabilities incurred as a result of the Seller's breach.

## **11. Right to indemnity**

11.1 The Seller shall indemnify the Company against all loss, damage, claims, liability, injury to it, its employees and third parties by reason of or arising out of any breach of the Contract by the Seller. Loss shall include all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

## **12. Default or Insolvency of Seller**

12.1 In the event that:-

12.1.1 the Seller is in breach of any of its obligations under the Contract; or

12.1.2 any distress or execution shall be levied on the Seller's property assets; or

12.1.3 the Seller, 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

12.1.4 the Seller 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

12.1.5 the Seller fails to pay its debts as and when they fall due; or

12.1.6 such equivalent event as at 12.1.1 to 12.1.5 above occur in the Seller's local jurisdiction;

then the Company may at its discretion and without prejudice to any other right or claim it may have, give notice to terminate, or withdraw, wholly or in part, this Contract, all or any other quotations, Purchase Orders or contracts it may have with the Seller or, without prejudice to the Company's rights subsequently terminate the Contract for the same cause, alternatively suspend further deliveries of Goods.

### **13. Force Majeure**

13.1 Neither Party shall have any liability 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, so long it 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.

### **14. Cancellation**

14.1 The Company may, by written notice and at any time, cancel any order before Delivery, without any liability to the Seller.

### **15. Waiver**

15.1 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.

### **16. Severability**

16.1 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.

## **17. Assignment**

17.1 The Seller 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 permission of the Company.

17.2 Any prior written permission so provided by the Company pursuant to clause 17.1 shall not impair or operate as a waiver of the Seller'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.

## **18. Notices**

18.1 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 Seller, and on the Seller at the address notified to the Company and / or specified in the Purchase Order, by first class post, registered airmail or by e-mail or facsimile. The Seller is responsible for notifying the Company in writing of any change of address, e-mail address or fax number.

18.2 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 18.1 above within 24 hours following transmission of the initial version.

18.3 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 18.1 and 18.2.

## **19. Governing Law**

19.1 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.

## **20. Third Parties**

20.1 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.