

## **1. INTERPRETATION**

In these Conditions, save where the context requires otherwise:

"the Company" means Autoflame Engineering Limited;

"the Products" means the products sold or to be sold by the Company to the Purchaser;

"the Purchaser" means the person with whom the Company is contracting.

- 1.1. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.
- 1.2. Any references to "writing" or cognate expressions includes a reference to email, fax or comparable means of communication.
- 1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

## **2. QUOTATIONS**

- 2.1. These Conditions shall apply exclusively to all quotations given or contracts made or to be made by the Company, unless otherwise expressly agreed in writing by a director of the Company. The giving by the Purchaser of any delivery instruction or the acceptance by the Purchaser of delivery of the Products shall constitute unqualified acceptance by the Purchaser of these Conditions. Any Conditions submitted, proposed or stipulated by the Purchaser in whatever form and at whatever time, whether written or oral, are expressly waived and excluded.
- 2.2. No change to these Conditions shall be binding unless agreed in writing by the Company.
- 2.3. The placing of an order following our quotation shall not be binding on the Company until or unless confirmed by the Company in writing. Additions or alterations to orders, however made, shall not be

binding until they have been confirmed by the Company in writing.

## **3. PRICE**

- 3.1. Unless otherwise agreed in writing by the Company, prices are exclusive of:
  - 3.1.1. costs of packaging and delivery which the Purchaser shall pay at the same time as payment for the Products; and
  - 3.1.2. any banking costs or fees associated with making payment to the Company for the Products which the Purchaser shall pay at the same time as payment for the Products. Purchaser shall re-imburse Company for any such costs or fees in the event that Company pays such cost or fees.
- 3.2. Prices and costs of packaging and delivery are exclusive of value added tax which, where applicable, will be separately charged at the applicable rate and recoverable as part of the price of the Products.
- 3.3. The Company reserves the right by notice given at any time before delivery to vary the price of the Products if, after the date of the contract, there is an increase in the cost of the Products to the Company by reason of any circumstance outside the control of the Company including (without limitation) increases in the cost of materials, labour or transport, exchange rate fluctuations, increases in import levies or other taxes, war, hostilities or warlike operations. If the price of the Products is increased pursuant to this Condition 3.3, Purchaser may cancel the undelivered balance of the contract by written notice to the Company served within three days of receipt of the Company's notice.

## **4. PAYMENT**

- 4.1. Unless otherwise agreed in writing by the Company, the Purchaser shall make payment for the Products by transmitting

cleared funds direct to the Company's bank account. Credit may be granted subject to status.

- 4.2. Unless otherwise agreed in writing by the Company, payment shall be made in full within 30 days from the date of the invoice. Payments made by post shall be at the risk of the Purchaser. Time for payment is of the essence of the contract.
- 4.3. Payment shall become due immediately if the Purchaser has a receiver or administrative receiver appointed over it or over any part of its undertaking or assets or passes a resolution for winding up or a court of competent jurisdiction makes an order to that effect or if the Purchaser becomes subject to an administration order or enters into any voluntary arrangement with its creditors or ceases or threatens to cease to carry on business.
- 4.4. If any sums become overdue, the Company may (without prejudice to any other right or remedy available to it) do all or any of the following (at its option):
  - 4.4.1. suspend all further deliveries until payment in full has been made;
  - 4.4.2. charge interest at a annual rate of 8 per cent. above the base rate of Barclays Bank Plc on any sum not paid on the due date. Such interest shall run from day to day and accrue after as well as before any judgment and shall from time to time be compounded monthly on the amount overdue until payment; and
  - 4.4.3. cancel the contract as regards any Products which remain to be delivered.
- 4.5. All costs incurred by the Company in recovering overdue moneys shall be borne by the Purchaser.

4.6. The Purchaser shall not exercise any right of set-off or counterclaim in respect of monies owed to the Company for Products invoiced and delivered to the Purchaser.

## 5. **DELIVERY**

- 5.1. Any times quoted for delivery are estimates only and are to be reckoned from the date of the Company's confirmation of order or receipt by the Company of all necessary information, drawings, approvals and releases necessary to enable the Company to put the work in hand, and of any pre-payments agreed upon, whichever is the later.
- 5.2. The Company shall use its reasonable endeavours to maintain the quoted estimated delivery times but in the event of the Company failing for any reason to make delivery by the due date the Company shall be under no liability whatsoever for any loss (including loss of trade or profit) or damage whether arising directly or indirectly from delay in delivery.
- 5.3. Where the Company is arranging carriage, the Company shall be deemed to have delivered the Products when the Products are delivered to the address specified by the Purchaser and sub-sections (1) and (2) of Section 32 of the Sale of Products Act 1979 shall not apply to any contract to which these Conditions apply. Where the Company is not arranging carriage, the Company shall be deemed to have delivered the Products when it gives notice to the Purchaser that the Products are ready for collection.
- 5.4. In all cases, whether a time for delivery is quoted or not, the time for delivery shall be extended by a reasonable period if delay in delivery is caused by instructions or lack of instructions from the Purchaser, or by any cause whatsoever beyond the Company's reasonable control.

5.5. The Company may withhold delivery of the Products in the event that the Purchaser is in breach of any of these Conditions. On such breach being remedied to the reasonable satisfaction of the Company, the Company will deliver the Products to the Purchaser within a reasonable timeframe.

5.6. If delivery is delayed through the Purchaser's default or if the Purchaser declines or delays in accepting delivery, then and in either such case the Company may (without prejudice to any other right or remedy available to it) do all or any of the following:

- (a) charge as part of the price of the Products a reasonable storage fee and other costs incurred by the Company;
- (b) sell the Products for the Company's account;
- (c) cancel the contract as regards any Products that remain to be delivered thereunder.

5.7. The Company may deliver the Products by instalments and may invoice the Purchaser for each such instalment.

5.8. Each delivery shall be considered as a separate contract and the failure of any delivery shall not vitiate the contract as to others.

## **6. TRANSFER OF RISK**

6.1. After delivery, the Products shall be at the Purchaser's sole risk in respect of all loss or damage arising from any cause whatsoever.

6.2. Where the Company is arranging carriage, the Company shall not be liable (i) for damage in transit or shortage of delivery unless a claim in writing is made within 7 days of the receipt of the Products at the delivery address, or (ii) for loss of the Products unless a claim in writing is made within 7 days of the invoice date.

6.3. The Purchaser will be deemed to have accepted the Products unless he rejects them within 7 days after their receipt at the delivery address.

## **7. GUARANTEE**

7.1. The Company will make good by repair or, at the option of the Company, by the supply of a replacement part, defects which under proper use appear in the Products within 12 months after installation but not later than 15 months after the invoice date and which arise solely from faulty design, materials or workmanship.

7.2. No claim will be met by the Company under Condition 7.1 if, in the opinion of the Company:

- (a) the Products have been misused or subjected to neglect, carelessness or abnormal conditions or involved in any accident or attempt at repair, replacement or modification or dealt with contrary to any directions issued by the Company;
- (b) the Purchaser has not fulfilled all obligations under the contract;
- (c) notice is not given to the Company immediately after discovery of all defects; or
- (d) the Company is not provided with reasonable facilities for carrying out repairs or replacements.

7.3. Parts returned to the Company in exchange for replacement parts shall become the Company's property.

7.4. Where the Company agrees to repair or replace a part or parts, the Company will pay the direct costs arising from such repair or replacement including where appropriate the cost of new parts, delivery of those parts and all related reasonable charges.

- 7.5. The guarantee extends only to the Products manufactured by the Company. Where a defect appears in goods supplied by the Company but manufactured by a third party, the Company shall (insofar as possible) extend to the Purchaser the benefit of any guarantee given to the Company in respect of a part manufactured by a third party.
- 7.6. The guarantee is given in lieu of all warranties and conditions implied into the contract by law and to the extent permitted by law, all conditions, warranties or obligations whether express or implied by statute, common law or otherwise are excluded.

## 8. INSTALLATION

- 8.1. Unless otherwise agreed in writing by the Company the costs of installation will be charged separately including but not limited to all labour costs (whether at normal or over-time rates) and travelling expenses of workmen and staff. If installation work is interrupted or delayed by circumstances beyond the control of the Company, the Purchaser must bear all additional labour costs and travelling expenses occasioned by the interruption or delay.
- 8.2. Agreed prices for installation work are based on labour costs calculated at normal rates and do not include labour costs at over-time rates which may necessarily be incurred. Such additional charges shall be borne by the Purchaser.
- 8.3. In the event of defects in installation work, the Company shall repair or replace (at the option of the Company) free of charge any of the Products which prove to be unfit for use or the usefulness of which proves to be substantially reduced due to faulty installation, provided that the Purchaser informs the Company of the defect as soon as it is discovered, and provided that in any event no complaint of any defect in installation work shall be considered later

than three months after completion of the relevant installation. Any further responsibility is hereby expressly excluded.

## 9. COMMISSIONING

- 9.1. Costs of Commissioning are based on a steady load condition allowing for uninterrupted work. Any stoppages or waiting time will be charged on a time and material basis over and above original price.

## 10. OWNERSHIP OF GOODS

- 10.1. Notwithstanding delivery, installation or commissioning the property in the Products will remain in the Company and subject to the following provisions of this Condition the Purchaser will hold the Products as bailee for the Company until payment in full of the price for the Products and all other sums due from the Purchaser to the Company on any account whatsoever (in this Condition referred to as "Payment").
- 10.2. If the Purchaser (before Payment) sells the Products to any third party it shall, as between the Purchaser and such third party sell as principal but as between the Purchaser and the Company, the Purchaser shall sell as the fiduciary agent of the Company.
- 10.3. The Purchaser shall hold such part of the proceeds of any such sale as equates to the aggregate amount due from the Purchaser to the Company on any account whatsoever separate and for the Company's account pending Payment or shall if the Company so requires authorise and direct such third party to pay to the Company a like part of the sum due to the Purchaser in respect of the Products so sold and assign to the Company such part of the debt owed to the Purchaser by such third party.
- 10.4. The Purchaser shall keep the Products in good condition, and separate and clearly identified as the property of the Company until Payment.

- 10.5. After delivery and until Payment the Purchaser shall keep the Products fully insured with a reputable insurance company and if the Products are lost, damaged or destroyed shall hold the proceeds of insurance for and to the order of the Company pending Payment.
- 10.6. The Company may at any time without notice recover possession of the Products which are the property of the Company and the Purchaser grants to the Company irrevocable licence to enter for that purpose any premises then occupied by the Purchaser. All costs incurred by the Company in repossessing the Products shall be borne by the Purchaser.
- 10.7. The Purchaser shall not before Payment attach the Products to buildings, structures or land so as to become a fixture without the prior written consent of the Company. If the Products have been affixed to any such buildings, structures or land, the Company shall be entitled to remove the Products and the Purchaser shall be responsible for all damage caused to the land or buildings by such removal.
- 10.8. The Company may maintain an action for the price of the Products, notwithstanding that the property in them has not passed to the Purchaser.

## **11. DESIGN AND SPECIFICATION**

- 11.1. The Company reserves the right to alter the design, specification, materials and construction of the Products at any time without prior notice and to supply goods as altered in the performance of any contract.
- 11.2. Whilst every effort is made to ensure accuracy, all specifications, drawings, particulars of weights and dimensions, and information relating to the performance of the Products are to be considered as approximate only, unless they have been

- specifically stated by the Company in writing to be binding.
  - 11.3. All intellectual property rights (other than those granted under these Conditions) in and relating to all specifications, drawings and other material and data contained in or submitted with the quotation or prepared by the Company in connection with the contract shall remain the sole and exclusive property of Company.
  - 11.4. The Purchaser shall keep all such specifications, drawings and other material and data confidential and shall not reproduce any of them in any literature or incorporate any of them in any article belonging to the Purchaser and shall not part with possession of any of them or disclose any information contained in any of them to third parties.
  - 11.5. Dimensions in imperial measurements are to the nearest equivalent metric measurements except when expressly stated otherwise by the Company in writing.
- ## **12. PERFORMANCE**
- 12.1. Any performance facts or figures given by the Company are based upon its experience and are such as the Company expects to obtain on test. The Company accepts no liability if these figures are not obtained unless they are specifically guaranteed by the Company in writing. The Purchaser must ensure that the capacity and performance of the Products are sufficient and suitable for its purpose and that its premises are safe and suitable for the installation and operation of the Products.
  - 12.2. In the event of the performance of the Products failing to fulfil the terms of any such guarantee, reasonable time and opportunity shall be given to the Company to secure compliance. If the Company fails to do so after such reasonable time and opportunity, the Purchaser may cancel the

contract only as regards such of the Products as fail to fulfil the terms of the guarantee ("the Defective Products"). In such event the Company shall repay to the Purchaser all monies paid under the contract for the Defective Products and the Purchaser shall return the Defective Products and the Company shall not be under any other liability to the Purchaser.

### **13. LIABILITY**

- 13.1. All descriptions, representations, specifications, samples, colours, illustrations and other particulars furnished or made orally by the Company or in catalogues, trade literature, price lists or other documents issued by the company are given for general information purposes only and the Purchaser acknowledges that it is not entering into the contract in reliance upon any such description, representation, specification, sample or other particular.
- 13.2. The Company's entire liability (including any liability for the acts and omissions of its employees, agents and sub-contractors) in contract, tort or otherwise arising under or in connection with the supply of the Products shall be limited to the price paid by the Purchaser in respect of the Products which are the subject of any such claim.
- 13.3. The Company shall not in any event be liable for any loss of profits, loss of revenue, loss of anticipated saving and any indirect or consequential loss whatever and however caused.
- 13.4. The Purchaser shall indemnify the Company against any liability whatsoever which it may incur resulting from any claim made against the Company by any third party (including without limitation any employee or agent of the Purchaser or any subsequent purchaser or hirer or other bailee of the Products or any of them) arising or arisen directly or indirectly out of the ownership, possession, resale, hire, bailment, use or misuse of the

Products or any of them by the Purchaser or any other act or omission of the Purchaser.

- 13.5. Where the Unfair Contract Terms Act 1977 applies, nothing in these Conditions shall exclude or restrict any liability for death or personal injury resulting from the Company's negligence, as that expression is defined in section 1 of that Act.
- 13.6. Nothing in these Conditions shall exclude or restrict any liability for fraudulent misrepresentation.

### **14. SOFTWARE**

- 14.1. Where the Products includes software then:
  - 14.1.1. where the software is Company software ("Company Software"), then the provisions of clauses 14.2 to 14.9 shall apply;
  - 14.1.2. where the software is proprietary software of a third party, then the third party licensor's standard licence terms shall apply. The licence for the third-party software will be a direct licence between the licensor of the software and the Purchaser. It is Purchaser's responsibility to ensure that the terms of such a licence are complied with.
- 14.2. Company hereby grants, and Purchaser accepts, a non-sub-licensable, perpetual, non-exclusive, fully paid, limited licence to use Company Software in machine readable form. The licence will continue until Purchaser transfers the Products at which point the licence shall be automatically transferred to the new owner, subject to the terms stated.
- 14.3. Purchaser shall not use Company Software except in connection with the use of the Products or other products supplied by Company.

- 14.4. All intellectual property rights in and relating to Company Software, other than those granted under these Conditions, shall remain the sole and exclusive property of Company.
- 14.5. Purchaser agrees that subject to any rights Purchaser may have under applicable law it shall not attempt to reverse engineer, decompile, or dissemble Company Software or any portion thereof, or otherwise derive its source code.
- 14.6. Purchaser may make backup and archival copies of Company Software solely for its internal use, retaining on all copies Company's and/or its suppliers' copyright, trademark, or other proprietary notices.
- 14.7. Purchaser shall erase Company Software from the storage media of any Purchaser's equipment prior to disposing of or retiring such equipment from active use.
- 14.8. Purchaser agrees not to disclose, provide or otherwise make available the manufacturing processes, internal design and implementation techniques, and source code of Company Software ("the Proprietary Information") to any person other than authorized employees without the Company's prior written consent. Purchaser agrees to protect the Proprietary Information through instructions to its employees, access limitations, and the like, no less securely than if it were Purchaser's own intellectual property. No media containing Company Software, or any related documentation shall be transferred, reproduced or used in any way other than as provided by this Agreement.

## **15. INTELLECTUAL PROPERTY RIGHTS**

- 15.1. In the event of any claim being made or any action brought against the Purchaser in respect of infringement of patents or of any copyright or confidential information or claim for passing off by reason of the manufacture or sale by the Company of the

Products, the Purchaser shall notify the Company immediately, allow the Company (at its option) sole conduct of the claim and any litigation that may arise therefrom and make no admission of liability or otherwise compromise the Company's defence of the claim.

- 15.2. The Purchaser shall provide such facilities and assistance as may be required by the Company to investigate and deal with any such claim for infringement without cost to the Company.
- 15.3. Subject to the Purchaser's compliance with its obligations under clauses 15.1 and 15.2 the Company shall, where it is decided or agreed that there has been any infringement of patents or copyright or confidential information or any passing off, give credit to the Purchaser for such Products or (at its option) make such alteration to the Products as will mean that no future infringement arises.
- 15.4. Save as provided by Condition 15.1, the Company shall have no liability whatsoever to the Purchaser as regards any infringement or alleged infringement of any intellectual property right owned or controlled by any third party.
- 15.5. Where the Products are manufactured and sold by the Company to the Purchaser in accordance with the specification provided by the Purchaser, then the Purchaser shall indemnify the Company against all actions, claims, costs and demands of whatsoever description and howsoever arising in relation to any claim or alleged claim in respect of infringement of patents or copyright, infringement of confidential information or any action for passing off.

## **16. COMPLIANCE WITH REGULATIONS**

- 16.1. The Company assumes that the Purchaser has complied with every applicable statute, bye law and other requirements of the

Government or any local authority. The obtaining by the Purchaser of all necessary licences, permits and consents that may be required is a condition precedent to the performance by the Company of any of its obligations under the contract.

## **17. FORCE MAJEURE**

- 17.1. If the Company shall be prevented from producing, acquiring or effecting deliveries of the Products or any of them by reason of any of the following causes, namely, Act of God, insurrection, riot, war, hostilities, warlike operations, piracy, arrests, restraints or detainments of any competent authority, strikes or combinations or lock-out of workmen, fire, floods, droughts, earthquakes, mechanical breakdown, shortage of or inability to obtain materials, equipment or transportation or any other circumstances (whether of a nature similar to those specified, or not) beyond the control of the Company regardless of whether or not the circumstances in question could have been foreseen at any time, the obligation of the Company to effect deliveries under these Conditions shall be suspended whilst such prevention shall continue.
- 17.2. Should any deliveries under the contract be suspended under this Condition 17, the Purchaser shall nevertheless accept delivery and pay for such of the Products as the Company shall be able to deliver. The Company shall not be liable for any loss or damage of any kind resulting from the causes mentioned above.
- 17.3. If the Company has contracted to provide identical or similar goods to more than one Purchaser and is prevented from fully meeting its obligations by reason of any of the causes referred to in Condition 17.1, the Company may determine which contracts it will honour and to what extent at its own discretion.

## **18. WAIVER**

- 18.1. No failure or delay by the Company in exercising any rights under these Conditions shall operate as a waiver thereof or extend to or affect any other or subsequent event or impair any rights or remedies consequent thereon or in any way modify or diminish the rights of the Company under these Conditions.

## **19. ASSIGNMENT**

- 19.1. The Purchaser shall not assign or transfer or purport to assign or transfer any contract to which these Conditions apply or the benefit thereof to any other person.

## **20. EFFECT ON TERMINATION**

- 20.1. Notwithstanding termination of the contract, these Conditions shall continue in full force and effect for so long as is necessary after such termination to give full effect to the provisions contained in these Conditions.

## **21. SEVERABILITY**

- 21.1. Each and every obligation contained in any clause or sub-clause of these Conditions shall be treated as a separate obligation and shall be severally enforceable as such and the non-enforceability at any time of any clause or sub-clause of these Conditions shall not prejudice the enforceability of the remainder.

## **22. NOTICES**

- 22.1. Any notice to be given under these Conditions may be delivered, or be sent by first class pre-paid post addressed to the party to be served at the address for such party last known to the party giving the notice or may be transmitted by telecopier to the telecopier number of the party to be served last known to the party giving notice.

22.2. Notices served by post shall be deemed served on the second business day after posting. Notices served by telecopier shall be deemed served on the next business day after despatch.

**23. THIRD PARTY RIGHTS**

23.1. A person who is not a party to the contract between the Company and the Purchaser may not enforce any of the its terms under the Contracts (Rights of Third Parties) Act 1999

**24. LAW AND JURISDICTION**

24.1. These Conditions shall be governed by and construed in accordance with English Law and the Purchaser submits to the non-exclusive jurisdiction of the English Courts.