



CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS & SERVICES

1. INTERPRETATION

Definitions:

BUYER-means Air Control Industries Ltd via its authorised representatives.

SELLER- the company contracting with Air Control Industries Ltd to supply goods or services.

DELIVERY LOCATION - means the location specified on the PO to which the GOODS shall be delivered or such other location as is specified by the BUYER.

INTELLECTUAL PROPERTY Also known as IP - shall include any patents, trade, and services marks, database rights, registered and unregistered designs, copyright (including copyright in computer software), know-how and confidential, technical and commercial information howsoever recorded).

PO- Purchase Order

WRITING- includes the post, facsimile transmissions and email.

STATUTORY REQUIREMENTS- all laws, permission, consents, codes, bye-laws, rules and regulations and the requirements of any local, national, supra-national agency, public authorities and statutory undertakers or other statutory person or of the Government or the European Union, and any relevant Standard codes of practice including (without limitation) any such requirements with which the BUYER or SELLER is obliged to comply.

CONSEQUENTIAL LOSS- any indirect or consequential loss, including loss of savings, loss of profit, loss of use, loss of contract, loss of production, loss of revenue, business interference or increased costs of working howsoever caused, arising out of or in connection with the PO other than losses arising from theft, dishonesty, fraud or misappropriation.

2. QUALITY & PERFORMANCE

2.1. The seller acknowledges that the buyer is at all time relying on the skill and knowledge of the seller. These provisions shall therefore apply notwithstanding that the buyer may have included specifications on the drawing or on the Purchase Order.

2.2. Any goods supplied under a PO shall conform to the specification and:

2.2.1. Be of good and sound design, materials and workmanship

2.2.2. Be of satisfactory quality and fit for the purpose for which they are supplied, if the buyer makes that purpose known to the seller.

2.2.3. Conform as to quality and description with the specifications stated by the buyer on any drawing, PO, document or verbally.

2.2.4. Correspond with samples or patterns, if any, that may have been supplied by the buyer.



- 2.2.5. Comply with all STATUTORY REQUIREMENTS.
- 2.2.6. Be free from any defect in title.
- 2.3. Notwithstanding that the GOODS or any part thereof have been the subject of any inspection, review, approval or acceptance, the SELLER shall not be relieved from any liability or obligation under this contract.
- 2.4. If the SELLER plans any changes that may affect the performance of the GOODS it shall inform the BUYER immediately. The BUYER reserves the right not to accept these modifications.

3. PACKING AND CARRIAGE OF THE GOODS

- 3.1. The SELLER shall ensure that the GOODS are packaged and carried in a manner consistent with their value and susceptibility to damage in order that they reach the DELIVERY LOCATION in good condition.
- 3.2. Unless otherwise agreed by notice or by custom, all packaging and carriage shall be included in the PRICE .

4. DELIVERY

- 4.1. GOODS shall be delivered on the dates and at the places specified on an PURCHASE ORDER. Delivery of the goods to a carrier (whether named by the BUYER or not) for the purpose of transmission to the BUYER shall not constitute a delivery of the GOODS to the BUYER.
- 4.2. The signed SELLER'S despatch note certifies that the GOODS have been delivered by the SELLER but in no way prejudices the rights and obligations of the BUYER including but not limited to the possibility of rejection.
- 4.3. The SELLER has an obligation to notify the BUYER, in the case of any delay in agreed delivery date.
- 4.4. If the SELLER fails to ensure DELIVERY of any goods in accordance with PO then following written notice in WRITING to the SELLER, the BUYER may, without prejudice to its other rights, cancel the PO or any part of it.

5. PROPERTY AND RISK

Both the property and the risk in the GOODS or any part thereof, pass to the BUYER only after delivery, acceptance (in accordance with Para. 8) and payment have occurred.

6. FORCE MAJEURE

- 6.1. Force Majeure shall mean any event which is beyond the control of the party affected including, without limitation:
 - Acts of God including flood
 - Fire or Explosion
 - War or Acts of terrorism
 - Rebellion or riot
 - Acts of government
 - Sabotage
 - Official strike or similar official dispute



- 6.2. The BUYER does not accept the following events (without limitation) as being FORCE MAJEURE :-
- 6.2.1. Unofficial strikes of the SELLER and its SUB-CONTRACTORS
 - 6.2.2. Shortage of labour, materials or other resources unless caused by circumstances which are themselves Force Majeure
- 6.3. The party affected by the FORCE MAJEURE shall take all reasonable steps available to it to minimise the effects of FORCE MAJEURE on the performance of its obligations under the PO.
- 6.4. If in the BUYER's reasonable opinion an event of FORCE MAJEURE results in disruption to the provision of the GOODS the parties shall then discuss and make all reasonable endeavours to agree how the GOODS can be manufactured but should the parties fail to reach agreement the BUYER shall be entitled by giving 1 days notice in WRITING to the SELLER to terminate the PO, termination taking effect upon the expiry of such notice. The parties shall bear their own costs thereto.

7. PRICE

- 7.1. The price for each unit shall, unless prior agreement is obtained from the BUYER, be inclusive of all charges for packaging, packing, shipping, carriage, insurance if any, of the GOODS to the DELIVERY LOCATION and any duties, imposts or levies other than VAT.
- 7.2. No increase in the PRICE may be made without the prior consent of the BUYER

8. REJECTION

- 8.1. Without any prejudice to the BUYER's other rights, if following DELIVERY of the GOODS and until the GOODS are put into operational use, an inspection shows that the GOODS are not in accordance with PO, DRAWING or any STATUTORY REQUIREMENTS, the BUYER may reject the whole or part of such GOODS.
- 8.2. The BUYER shall have the right to require the SELLER, at the SELLER's risk and expense, to expeditiously replace any rejected GOODS.
- 8.3. If the SELLER fails to fulfil its obligations to the BUYER under Condition 8 (REJECTION) then the BUYER may:-
- 8.3.1. Cancel the PO without prejudice to its other rights and remedies and/or
 - 8.3.2. Deduct from the PRICE (or if the BUYER has paid the price, claim from the SELLER) all extra costs and expenses arising from the delivery of defective GOODS including those of removal, carriage, storage, testing reinstallation, recommissioning and reinstating defective GOODS, purchasing GOODS elsewhere, if appropriate, storage and CONSEQUENTIAL LOSS.
- 8.4. Where the SELLER replaces GOODS under any provision in this Condition 8, the same provisions shall apply to the replacement GOODS.



9. WARRANTY

9.1. Without prejudice to the BUYER's rights under this agreement and any PO, the SELLER shall at the BUYER'S option repair or replace any defective GOODS at its own expense and to the satisfaction of the BUYER for a period of 12 months from the date when the GOODS have been put into

Operational use either following delivery or following the repair, modification or replacement of the GOODS or any part thereof. Where the GOODS are repaired, modified or replaced during the warranty period, the SELLER will warrant the goods for a further period of 12 months.

9.2. In addition to the remedies under this section and without prejudice to any of its other rights the BUYER shall have the right to recover from the SELLER all costs and expenses arising from the defective GOODS including but not limited to those of removal, carriage and storage, testing, reinstallation and re-commissioning

9.3. If one of more items of the GOODS are defective it shall be the SELLERS's responsibility to prove to the BUYER that the remaining GOODS in the same BATCH are in accordance with the PO, the specifications and drawings provided. If for any reason this is not possible, the BUYER may demand the replacement of all the GOODS in that BATCH at the SELLER's own expense.

9.4. If the SELLER fails to fulfil its obligations to the BUYER under Condition 18 then the BUYER may:-

9.4.1. Cancel the PO without prejudice to its other rights and remedies and/or

9.4.2. Deduct from the PRICE (or if the BUYER has paid the price claim from the SELLER) all extra costs and expenses arising from the delivery of defective GOODS including those of removal, carriage, storage, testing reinstallation, recommissioning and reinstating defective GOODS, purchasing GOODS elsewhere, if appropriate, storage and CONSEQUENTIAL LOSS.

9.5. If due to the BUYER's operational requirements or because of an emergency, the BUYER carries out repairs or obtains a replacement, then without prejudice to any of its other rights the BUYER shall have the right to recover from the SELLER all costs and expenses referred to in Condition 9.2

10. INDEMNITY

The SELLER shall indemnify the BUYER in full against all liability, loss, damages, costs and expenses awarded against or incurred by or paid by the BUYER as a result of or in connection with:

10.1. Breach of any obligations of the SELLER or otherwise caused or contributed by the neglect, act or omission of the SELLER, its employees, agents, representatives or sub-contractors.

10.2. Any claim that the GOODS infringe or their importation, use or resale, infringes the patent, copyright, design right, trademark or other intellectual property rights of any other person, except to the extent that the claim arises from the compliance with any design or specification supplied by the BUYER.

10.3. The SELLER'S failure to deliver the GOODS within the time specified.



11. INSURANCE

The SELLER shall effect and maintain in force such insurance policies as are appropriate and adequate with a reputable insurer having regard to its obligations and liabilities under the this agreement and the SELLER shall ensure that its SUB-CONTRACTORS also maintain adequate insurance having regard to their obligations under this agreement which insurance shall include:

- 11.1. Product Liability insurance for an adequate amount to meet all potential claims.
- 11.2. General Third Party, Public Liability, Employers' liability and Professional indemnity insurance should provide sufficient cover to provide for business continuity in the event of any claim.
- 11.3. Such POLICIES shall contain a waiver of subrogation rights in favour of the BUYER.
- 11.4. The SELLER shall on request provide the BUYER with reasonable details of each of the POLICIES. Failure by the SELLER to comply with this condition may be
 - 11.4.1. Interpreted by the BUYER to indicate that the SELLER has failed to meet its obligations to provide the insurance cover required.
 - 11.4.2. The SELLER shall not during the CONTRACT period and for a period of 6 years thereafter do anything to invalidate any of the policies.
 - 11.4.3. The taking out of any of the POLICIES in no way releases the SELLER from its legal and contractual responsibilities.
 - 11.4.4. The amounts guaranteed by the policies may in no way be interpreted as a limitation of the SELLERS liability towards the BUYER and of third parties. Moreover, the exclusions stipulated in the insurance policies may in no way be interpreted as a limitation of the SELLER's liability towards the BUYER and/or third parties.

12. INTELLECTUAL PROPERTY

- 12.1. Any INTELLECTUAL PROPERTY developed in the performance of or otherwise arising out of any PO or any discussion or meeting including, without limitation, any IP created by the SELLER or the SELLERS STAFF, shall vest in the BUYER, and the SELLER for itself and as agent for the SELLERS STAFF waives in favour of the BUYER all moral or legal rights therein.
- 12.2. All IP in any DATA not prepared or developed by the SELLER under or in connection with the provision of an ORDER but which are :
 - 12.2.1. Already vested in the SELLER and
 - 12.2.2. Used by the SELLER in connection with the PO.
 - 12.2.3. Shall remain vested in the SELLER but the SELLER hereby grants a non-exclusive irrevocable, royalty-free licence to both the BUYER and to any third party whom the BUYER has authorised or may in the future authorise to use, copy or modify such DATA provided it is to enable the BUYER or such third party to utilise the DATA prepared or developed under or in connection with the PO.



- 12.3. The SELLER agrees to take such action at the SELLER's cost as may be necessary to transfer licence or evidence such transfer of

13. SUB-CONTRACTING

- 13.1. With the exception of minor items and raw materials the SELLER shall not sub-contract the whole or any part of the PO without prior notification in WRITING to the BUYER.
- 13.2. If any SUB-CONTRACTORS are used to fulfil this order, their obligations shall not relieve the SELLER from any liability or obligation under the PO and the SELLER shall be responsible for the acts, omissions, defaults or

negligence of any contractor, sub-contractor or its agents, workmen, as fully as if they were the acts, omissions, defaults or negligence of the SELLER.

14. CONFIDENTIALITY

- 14.1. The SELLER shall keep and shall procure to be kept confidential the content of the PO and all information connected with the business of the BUYER or which comes to the SELLER's knowledge under or as a result of the PO, for a period of 10 years from the expiry or termination of the PO and shall not disclose it to any third party or use it other than for the purposes of the PO except with prior written agreement of the BUYER.
- 14.2. The SELLER or any of its SUB-CONTRACTORS shall not, without the prior consent in WRITING of the BUYER, advertise or make known that they supply or have supplied GOODS to the BUYER.
- 14.3. The SELLER shall ensure its staff, agents and representatives are aware of and undertake to comply with the obligations and confidentiality set out in this Condition.

15. TERMINATION

- 15.1. The BUYER shall be entitled to terminate the PO in accordance with Condition 8 and 9.
- 15.2. The BUYER may without prejudice to any other rights or remedies terminate the whole or any part of the PO forthwith if:
- 15.2.1.1. Written notice has been given to the SELLER of a substantial and/or persistent breach of any PO (to include persistent refusal) stating the period during which such breach is to be rectified and the SELLER has failed to satisfactorily remedy such breach within the stated period.
 - 15.2.1.2. A court order is made for the winding up of the SELLER
 - 15.2.1.3. There is a material change of control of the SELLER
 - 15.2.1.4. The SELLER ceases to trade.

16. WAIVER

The non-enforcement of any of the terms of the PO shall not be construed as a waiver of any of the terms unless expressly set forth in WRITING



17. HEALTH, SAFETY AND ENVIRONMENTAL PROTECTION

The SELLER shall give the BUYER notice in writing within a reasonable time prior to the delivery of the GOODS of anything which is hazardous to the environment or health and safety of persons or property.

18. RIGHTS of THIRD PARTIES

No provision of this PO shall be construed as creating any rights enforceable by a third party and all third party rights as may be implied by law are hereby excluded to the fullest extent permitted by law.

19. DISPUTE RESOLUTION PROCEDURE

19.1. Any dispute or difference which may arise between BUYER and the SELLER out of or in connection with the PO shall be referred and resolved by arbitration under the Rules of the High Court of International Arbitration,

which rules are deemed to be incorporated by reference into this condition. It is agreed to appoint to a single Arbitrator to be agreed between the parties or in the absence of such agreement, to be nominated by the President of the Chartered Institute of Arbitrators upon application of either party. The place of arbitration shall be England and the language shall be English.

19.2. Performance of the PO shall continue during procedures described in 19.1 & 19.2 and during any negotiations or arbitration proceedings. No payments due or payable by the BUYER or the SELLER shall be with held on account of pending or current reference to mediation or arbitration in respect of any GOODS or parts thereof which are not in dispute.

20. SELLER'S TERMS

Seller's terms & conditions, if not in accordance with the terms & conditions of this PO, are valid only if specifically agreed to by the BUYER in writing.

21. LEGAL JURISDICTION

The contract entered into by the BUYER and the SELLER shall be governed by the laws of England and any claim or dispute shall be settled by the courts of England.