

## Terms and Conditions of Sale

### **1. Definitions**

In these terms and conditions:-

- 1.1 - "the contract" means the contract between the Seller and the Buyer for the sale or supply of the goods or services pursuant to the order.
- 1.2 - "the goods" includes all goods covered by the order whether raw materials, processed materials or fabricated products.
- 1.3 - "the services" means any services supplied by the Seller the subject of this contract.
- 1.4 - "the Seller" means the person named above or overleaf who sells or supplies or is to sell or supply the goods.
- 1.5 - "the Buyer" means the person who buys or who is to buy the goods.

### **2. Preliminaries**

2.1 - These terms and conditions are the only ones to which the contract for the sale or supply of the goods and/or services by the Seller to the Buyer is subject. Any other conditions proposed or stipulated by the Buyer in whatever form, written or oral, are hereby expressly waived and excluded. These terms and conditions may not be varied except by the written consent of a director of the Seller. An acceptance of the Seller's quotation for the sale or supply of the goods or services or of delivery of the goods implies an unconditional acceptance of these terms and conditions.

2.2 - A quotation by the Seller may be withdrawn without notice; an order given by the Buyer is not binding on the Seller until accepted by the Seller in writing or by making delivery of or supplying the goods or services. Quotations (unless otherwise stated) are open for acceptance for a period of 90 days from the date thereof, and prices are subject to the provisions of Clause 3.1 (price variation)

2.3 - The contract is conditional on the Buyer confirming to the Seller (where appropriate) that a necessary letter of credit in a form acceptable to the Seller has been opened or export or import licence or exchange permit has been granted.

2.4 - Orders of less than the Seller's advertised minimum order value will only be accepted on the understanding that a processing charge, as advised by the Seller, will apply.

### **3. Price and Payment**

3.1 - Unless the sale is specifically stated to be at a fixed price the Seller's price is the price ruling at the date of delivery. The Seller reserves the right at any time before delivery to vary the price. In the case of a variation in price during the fulfilment of an order the undelivered portions of the order outstanding at the date of such change shall be subject to a proportionate adjustment.

3.2 - Unless otherwise agreed in writing payment is due 30 days after date of the invoice without deduction.

3.3 - All payments shall be covered by our own credit insurance. Customers not covered by the credit insurance shall be liable to alternative payment methods (pro-forma invoice) by prior agreement between the seller and the buyer.

3.4 - All payments are to be made in sterling.

3.5 - Payment terms without credit shall be cash, with the order or sight draft attached to a Bill of Lading (or other shipping documents) at the option of, and without expense to the Seller.

3.6 - Staged payment terms will be requested on orders over £75,000. Terms will be as follows, unless agreed prior to order placement:

Stage payments will be made by telegraphic transfer. All advance payments are irrevocable.

10% of the total order value payable with the order,

10% of the total order value payable upon customer receipt and acceptance of drawings,

30% of the total order value payable upon Advanced Actuators receipt of main materials,

Payment terms of the balance of payments to be agreed prior to order placement (otherwise balance will be nett 30 days ex works Advanced Actuators, Silsden). All payments shall be made without expense to the Seller.

3.7 - All C and F contracts are based upon current rates of freight and insurance and are subject to increase on those rates. Such contracts are also subject to available shipping space.

3.8 - Installation and/or Commissioning – unless specifically stated in the Seller's quotation or order acknowledgement, prices quoted do not include the cost of installation, commissioning, spare parts and ancillary equipment.

3.9 - If any payment is not made on or before the date due for payment, the Seller reserves the right to charge interest at 3 per cent per annum above Advanced Actuators own bank base lending rate for the time being in force from the date due for payment until the day payment is received by the Seller. Such interest shall run from day to day and shall accrue after as well as before any judgement and shall be compounded monthly on the amounts overdue until payment thereof. Time of payment by the Buyer shall be of the essence of the contract.

3.10 - The Seller shall, in respect of all unpaid debts from the Buyer, have a general lien on all goods and property of the Buyer (whether or not paid for), in the possession of the Seller and shall be entitled, upon the expiration of 14 days notice, to dispose of such goods or property as it thinks fit and to apply the proceeds towards such debts.

3.11 - Unless otherwise stated by the Seller, the price payable to the Buyer is exclusive of Value Added Tax and any other tax or duty relating to the manufacture, transport, export, import, sale or delivery of the goods which shall be added to the price at the rate prevailing at the invoice date.

3.12 - Under no circumstances except with the Seller's consent shall the Buyer withhold payment of any amount due to the Seller because of a disputed claim of any nature nor shall the Buyer be entitled to claim a right of set off, claim or counterclaim in respect of any of the Seller's obligations arising in respect of matters other than the contract to which the claim specifically relates.

## **4. Delivery**

4.1 - The Seller shall be deemed to have delivered the goods either when the goods are despatched from the Seller's premises or (as the case may be) when goods are ready for collection at the Seller's premises.

4.2 - The time for delivery shall not be of the essence of the contract. The Seller shall not be liable for any loss or damage whether arising directly or indirectly from delay in delivery.

4.3 - Liquidated damages will not be accepted without prior agreement between the Buyer and the Seller.

4.4 - The Seller may employ one or more sub-contractors to fulfil some or all of its obligations under the contract.

4.5 - The Seller shall be entitled to deliver the goods by instalments and to invoice the Buyer for each such instalment. Each instalment will be considered a separate transaction and the failure of any one delivery shall not affect the due performance of the contract as a whole.

4.6 - Should expedited delivery be agreed and necessitate overtime or additional costs, such costs and overtime expenses shall be paid by the Buyer.

4.7 - The Seller may, at its absolute discretion, make a reasonable storage charge for custody for all goods standing to the credit of the Buyer, or to the Buyer's order. Carriage and insurance charges will, unless otherwise stated, be added to all invoices for goods delivered to the Buyer by the Seller.

4.8 - Unless otherwise specifically mentioned in the Seller's quotation or acceptance of order, the price does not include any packaging and/or other protection of the goods or parts. Unless otherwise agreed in writing, packing materials and containers, etc. are returnable to the Seller and if not returned will be charged for. Where returned carriage paid and in good condition, credit will be allowed in all cases where packing materials and containers have been charged to the Buyer.

4.9 - If a delivery by the Seller, or the acceptance by the Buyer of a delivery, is delayed or prevented because the manufacturer of the goods, their delivery to the Buyer's works by usual route, or the consumption or use of the goods by the Buyer in the ordinary course of its business has been or is being prevented or hindered by circumstances beyond the reasonable control of either party, including any form of Government intervention, strikes and lockouts relevant to the contract, civil disturbance, wars, acts of Queen's enemies, Act of God, fire, storm, flood, tempest, seizure, arrest or requisition of goods or raw materials, non-availability of power, breakdown of plant or any other matter outside the control of that party, such delivery shall be suspended, and if it cannot be made within a reasonable time after the due date, the contract may be cancelled by either party in writing. The Buyer shall pay the Seller such sum as may be equitable in respect of any work performed prior to any such cancellation. Where more than one delivery is to be made under the contract, deliveries not so cancelled will be resumed as soon as the circumstances causing the delay cease, but, except where the Seller otherwise agrees in writing, the period during which deliveries are to be made will not be extended.

## **5. Loss or Damage in Transit**

5.1 - The Seller shall not be responsible for damage to any of the goods or loss of the goods or part thereof in transit unless the Buyer gives notice of a claim to the Seller:-

- In the case of damage, within 3 days after having received the goods.
- In the case of loss, within 14 days of the date of the invoice.

5.2 - The Buyer is required to sign a copy of the Seller's delivery note as acknowledgement of receipt of goods. The Buyer should inspect the goods carefully as an unqualified signature shall be deemed to signify the Buyer's acceptance that the goods are in good condition.

5.3 - The Seller's liability in the case of loss or damage in transit shall be limited to repairing or replacing the damaged or, as the case may be, the lost goods and the Seller shall not be under any other liability there under, whatsoever, including indirect or consequential loss and loss of profit.

5.4 - In the case of delivery by a carrier, the carrier's liability for loss or damage in transit shall be limited by the terms and conditions of carriage stipulated by the carrier, a copy of which is available on request from such carrier.

## **6. Seller's Liability**

6.1 - The Seller warrants that the capacity and performance of the goods supplied are sufficient and suitable for such of the purposes of the Buyer as the Buyer has made known to the Seller. The Buyer shall give full and accurate particulars of the Buyer's requirements and the conditions under which the goods are to be used.

6.2 - The Seller undertakes to replace or repair at the Seller's option and to deliver carriage paid within the UK, or FOB United Kingdom Port any goods or parts of goods proved by the Buyer to be defective in design, material or workmanship provided such goods or parts are returned to the Seller's works carriage paid within 12 months from date of despatch (or from date of commissioning if the Seller so agrees in writing). Any goods or parts not manufactured by the Seller are sold to the Buyer without any guarantee or warranty except such as are given by the manufacturer or supplier thereof and which the Seller is able without cost to itself to enforce for the benefit of the Buyer.

6.3 - The provision of sub-clause 6.2 is intended to operate in lieu of any warranty, condition or representation express or implied in respect of any defect in, or failure of, goods supplied or failure of such goods to perform a specific function, or for any loss, injury or damage of any nature resulting there from.

6.4 - The Seller's liability shall not exceed the invoice value of the goods in respect of which the claim is made; in no event shall the Seller be liable for any indirect or consequential loss or loss of profit whatever and however arising.

6.5 - In respect of goods supplied but not manufactured by the Seller, the Seller gives to the Buyer only such guarantees and warranties (if any) as the Seller enjoys and can enforce in respect of the goods. All goods replaced become the property of the Seller.

6.6 - The Seller shall be under no liability:

- Unless the Buyer gives to the Seller written notice and details of the defect.
- Unless the Buyer returns the goods at the Buyer's cost to the Seller if required by the Seller, or otherwise gives the Seller's representative adequate opportunity to inspect the goods and remove samples for analysis.

- If the Buyer has not used, kept, maintained or dealt with the goods properly and in accordance with the Seller's instructions or directions issued from time to time.
- For the repair or replacement of expendable items; for repair or replacement of fair wear and tear consistent with the application of the goods; if the Buyer has permitted persons other than the Seller or the Seller's authorised representatives to effect any repair or replacement of parts, or maintenance or adjustments to the goods.
- If the goods have not been paid for in full.
- If the Buyer has used any spares or replacements not authorised by the Seller.

6.7 - The guarantee contained in clauses 6.1 and 6.2 are not transferable without the Seller's written consent.

6.8 - All descriptions, depictions and other particulars supplied by the Seller in catalogues, price lists or other documents issued by the Seller or statements made by word of mouth are given for general information purposes only and the Buyer acknowledges that it is not entering into the contract in reliance thereupon.

## **7. Designs, etc.**

7.1 - Where the goods are supplied by the Seller in accordance with the Buyer's instructions, specifications or drawings, the Buyer shall indemnify the Seller against all costs, claims, damages and expenses to which the Seller may become liable as a result of the infringement or the alleged infringement of any patent, registered design or any other intellectual property right.

7.2 - The Seller shall not be liable to compensate the Buyer in respect of any claim for infringement of letters patent, registered design or copyright by the use or sale of any article or material supplied by the Seller to the Buyer in any case where the Buyer has not followed any instruction furnished or given by the Seller, or to the use of such article or material in a manner or for a purpose or in a country not specified or disclosed to the Seller, or to any infringement which is due to the use of such article or material in association or combination with any other article or material not supplied by the Seller. Nor shall the Seller be liable to compensate the Buyer unless the Buyer gives to the Seller the earliest possible notice in writing of any claim being made or action threatened or brought against the Buyer, and permits the Seller at the Buyer's expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.

7.3 - The Buyer shall not divulge to any third party any of the Seller's designs, drawings, specifications or other information which may be or come into the Buyer's possession in relation to the contract.

7.4 - The copyright, design, right and any other intellectual property rights in any designs, drawings, moulds, fabrications or other materials produced by the Seller shall be and remain the property of the Seller.

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

8.1 - The property in any goods delivered by the Seller to the Buyer shall remain with the Seller until such time as the Buyer has paid in full for those goods.

8.2 - The Seller may at any time recover and dispose of any goods in which the Seller has retained the property under sub-clause 8.1 and for this purpose has the Buyer's consent to enter any property in which the goods may be lying.

8.3 - The Buyer agrees to store or move all goods that are the property of the Seller in such a way that they are readily identifiable as such to insure the same for their full value and to make a note in its accounting records that the goods are the property of the Seller.

8.4 - Notwithstanding the provisions in sub-clause 8.1 the goods shall be at the risk of the Buyer from the time when they are tendered for delivery at an agreed destination or are available for collection by the Buyer or cease to be in the possession of the Seller and in particular when they are delivered into a possession or custody of a carrier, forwarding agent, warehouseman or other bailliff or agent for the purpose of transmission whether or not such person contracts with or is instructed by the Seller or the Buyer.

8.5 - Where the property in the goods has not passed the Seller may nevertheless maintain an action against the Buyer for the purchase price and all other monies owing to the Seller in relation to the goods notwithstanding Section 49 of the Sale of Goods Act 1979.

## **9. Termination**

9.1 - If the Buyer fails to take delivery of the goods or commits any breach of these terms and conditions or any of the events mentioned in clause 9.3 shall have occurred, or if, in the opinion of the Seller, the financial standing of the Buyer becomes unsatisfactory the Seller may, without prejudice to its other rights and remedies, suspend performance of or terminate this contract and/or any other contract between the Buyer and the Seller, by notice in writing to the Buyer. The Seller shall also be entitled in addition to or as an alternative to suspension or termination, to require immediate payment for all goods delivered under this and any other contract subsisting between the parties or (at the Seller's option) security for payment satisfactory to the Seller. In the event of termination under the provisions of this clause the Seller shall be relieved of all liability under this contract and any other contract so terminated but such termination shall be without prejudice to any claim or right the Seller might otherwise have against the Buyer.

9.2 - Cancellation of an order by the Buyer, in whole or in part (except under the provisions of clause 4.8) may not be effected except with the Seller's written consent and in such event the Buyer will reimburse the Seller, together where appropriate with a sum equivalent to the Seller's lost profit thereon, for any expenditure or costs incurred by the Seller in relation to the order or such part of it so cancelled.

9.3 - The events mentioned in clause 9.1 are if the Buyer:-

- Had any distress or execution levied against the goods or any of the Buyer's assets.
- Has a bankruptcy order made against the Buyer.
- Goes into liquidation whether voluntary or compulsory (except solely for the purpose of a bona fide reorganisation).
- Makes an arrangement with the Buyer's creditors.
- Has an administrator or administrative receiver appointed over any of the Buyer's assets.
- Receives a written demand from the Seller to pay overdue sums owed to the Seller.

9.4 - Should the Buyer request that an order is to be put on hold, the Seller reserves the right to accept/deny this request dependent on the current status of the contract at the time of request. The Seller may accept the request, but reserves the right to invoice for the work already completed, and materials purchased. Contracts on hold for more than 6 months shall be deemed cancelled, and will be invoiced at the full contract value.

## **10. Consumer Protection Act 1987 – Information and Liability**

10.1 - All warnings, data sheets, diagrams and other information as to the use, storage, construction, assembly or disposal of the goods which are made available to the Buyer before, at the time of or after the time of supply of the goods to the Buyer (“the data”) shall be complied with by the Buyer or (as the case may be) supplied by the Buyer to any person to whom the Buyer supplies the goods or any product in which the goods are incorporated and the Buyer shall impose a similar requirement on such person. The Buyer shall indemnify the Seller in full against all liabilities, costs, claims, demands and expenses resulting from any failure by any person other than the Seller to comply with the data or to make the data available to any other person.

10.2 - Where an indication as to the time limits for the use of the goods has been supplied to the Buyer, the Buyer shall procure that all persons into whose hands the goods may come are aware of such time limits and shall not supply the goods after such time limits have been exceeded.

10.3 - The Buyer will notify the Seller of any intended application of the goods other than that contemplated in the information referred to in subparagraph 10.1 above so as to enable the Seller to verify that the goods will be safe for use in such application.

10.4 - The Seller shall not be liable to the Buyer in respect of any defect in the goods (under the provisions of the Consumer Protection Act 1987 or otherwise) where such defect is attributable to any act or default of a person other than the Seller, unless the Buyer is a person who suffers damage within the meaning of Section 5 of the Consumer Protection Act 1987 (death of or personal injury to or loss of damage to any property of a consumer of products).

## **11. Goods Returned for Credit**

11.1 - The Seller is not obliged to accept the return of any goods for credit where it has not been in breach of the contract.

11.2 - Any goods returned for the purpose of credit, when the return has not previously been authorised by the Seller, may incur a handling and inspections charge.

11.3 - The Seller cannot accept responsibility for any goods which are lost or damaged in transit or otherwise during return.

11.4 - Goods returned, for whatever reason, remain at the risk of the Buyer until receipt is acknowledged in writing by the Seller.

## **12. General**

12.1 - Any notice to be given under these terms and conditions may be delivered, or be sent by prepaid post sent first class, addressed to the party to be served at its registered office for the time being or (if not a company) the address for that party last known to the party giving the notice. Notices served by post shall (except where expressly provided otherwise) be deemed served on the second business day after the date of posting; “business day” shall mean a day other than a Saturday and Sunday or an English Bank or Statutory Public Holiday.

12.2 - The Buyer shall not assign any of its rights or obligations under the contract.

12.3 - Clause headings are for ease of reference only and do not affect construction.

## **13. Proper Law**

The contract shall be deemed to have been made in England and shall be governed by and construed in accordance with English Law and both parties submit to the jurisdiction of the English Courts.

## **14. Supplied Certification**

14.1 - The following certification and documentation is available upon request. These must be requested at quotation stage to be incorporated within the agreed purchase order amount. Any purchase order placed which includes any items below, without the items being accounted for in the quotation, will not be issued, or will be charged at extra cost if available.

- Material certificates for manufactured items - Only if requested at placement of an order. Cannot be obtained retrospectively - **(free of charge)**
- Verified copies of original material mill certificates, EN 10204 3.1 - **(£30 per line item)**
- Installation Operating and Maintenance instructions - **(free of charge)**
- Hazardous area certificate - **(free of charge)**
- Certificate of conformity (C of C) - **(free of charge)**
- NACE Paint certification - **(£300 per order painted in a single batch. Multiple batches, at customer request, will incur £300 per batch charge)**
- CPS (Coating Procedure Specification) - **(£250.00 each)**
- ITP Quality Plan - **(£250.00 per contract)**
- Factory acceptance test (FAT) report - **(free of charge)**
- Certificate of origin issued by Chamber of Commerce (please advise final destination of goods) - **(£85 per order)**
- 3rd Party Inspection (excluding cost of Inspector and associated costs) - **(£500.00 per day/part day)**
- PMI Certificate - **(£300 per line item)**