

Terms and Conditions of Sale

TERMS AND CONDITIONS OF SALE governing all contracts for the sale or supply of goods or services by Ontic Engineering & Manufacturing UK Limited ("the Company"). In these Conditions: -

"Buyer" means any person at whose request goods or services are supplied by the Company; "Contract" means any contract between the Company and the Buyer for the sale and purchase of Goods, incorporating these Conditions; and "Goods" means any goods or replacements therefore together with any services / workmanship, and including any part of parts of them, supplied to the Buyer under the Contract; references to any statutory provision shall be construed as references to such provision as amended, consolidated or re-enacted (without substantial amendment) from time to time. The headings are for convenience only and shall not affect construction of these Conditions; words in the singular include the plural and in the plural include the singular; a reference to one gender includes a reference to the other gender.

1. Application of Terms

- 1.1. Subject only to any variation under Condition 1.3, every Contract shall be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 1.2. No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 1.3. These Conditions apply to all the Company's sales and any variation to these Conditions shall have no effect unless expressly agreed in writing and signed by a director or other authorised person on behalf of the Company.

2. Formation & Parties

- 2.1. The Buyer's order (in whatever manner communicated) to the Company is and shall be deemed to be an offer by the Buyer to enter into a Contract to purchase the Goods upon these Conditions. Acceptance occurs and the Contract is formed only upon the Company despatching to the Buyer its Acknowledgement of Order or (if earlier) the Company delivers the Goods to the Buyer. Any terms or conditions proffered at any time by the Buyer are hereby excluded.
- 2.2. A quotation by the Company does not constitute an offer. Quotations are valid for the period of 30 days from date of issue and may be withdrawn at any time.
- 2.3. The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.4. The Buyer shall not assign the benefit of the Contract without the Company's prior written consent. The Company shall be entitled to sub-contract all or any part of the Contract as it may think fit.
- 2.5. The Contract is not cancellable by the Buyer without express written agreement of a director or other authorised person on behalf of the Company and subject to Condition 2.6 below.
- 2.6. If the Company agrees cancellation by the Buyer, the Buyer shall indemnify the Company in full against all expenses incurred up to the time of cancellation together with a reasonable amount by way of liquidated damages for breach of contract as specified by the Company, each sum being acknowledged by the Buyer as representing a genuine pre-estimate of the Company's loss of profit and not in any event to exceed 30% of the Contract price.

3. Price

- 3.1. Prices quoted for inland orders are ex-works and exclusive of Value Added Tax.
- 3.2. Prices quoted for export orders are ex-works or agreed at the time of quotations as FOB UK port or airport. Any orders requiring delivery overseas CIF to be agreed at the time of quotation or acceptance of order and shall be priced accordingly.
- 3.3. The orders will be priced firm fixed price or subject to an agreed variation of price dependent on the time scale and prevailing economic conditions.
- 3.4. The Company reserves the right to vary the price of Goods by any amount attributable to a change in or insufficiency of Buyer's instructions or attributable to reasons relating to duties, taxes, exchange rates, bank or other finance handling charges or other costs of whatever nature including (but not restricted to) those applicable to yearly price lists where the price is determined by the date of delivery.

4. Delivery

- 4.1. Unless otherwise agreed in writing delivery dates are estimates only. Time of delivery is not of the essence of the Contract. Unless otherwise stated, delivery periods commence from date of Acknowledgement of Order. The Company shall use its reasonable endeavours to deliver the Goods by the stated delivery date (or if no delivery date is stated, within a reasonable time), but may suspend or delay delivery and, subject to the other provisions of these Conditions, shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses whatsoever caused directly or indirectly by any late delivery or any non-delivery of Goods or any instalment owing to any occurrence whatsoever beyond the Company's reasonable

control. The Buyer shall not be entitled to refuse to accept late delivery or treat late delivery as grounds to terminate or rescind the Contract unless such delay exceeds 270 days.

- 4.2. The Company may at its option deliver by instalments; each instalment shall constitute a separate contract on these Conditions. Default in delivery or defect in any one such instalment shall not entitle the Buyer to repudiate the Contract nor to cancel subsequent instalments.
- 4.3. Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.
- 4.4. The Buyer shall take delivery of the Goods within seven days of the Company giving it notice that the Goods are ready for delivery.
- 4.4. Where the Contract provides for installation or commissioning work (a "with Installation" Contract), delivery means date of commissioning of Goods, or, where Goods form part only of a larger installation, date of completion of work on that part being provided by the Company pursuant to the Contract. In each case risk shall pass upon delivery.
- 4.5. If for any reason the Buyer has failed to collect Goods on the expiry of the seventh day following notification of readiness for despatch or has otherwise failed to take delivery or caused the Company to be unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licensed or authorisations:
 - (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - (b) the Goods shall be deemed to have been delivered;
 - (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6. In respect of credit, stated delivery periods shall commence only upon receipt of a letter of credit complying in all respects with the Company's requirements.
- 4.7. The quantity of any consignment of Goods as recorded by the Company on delivery shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 4.8. Without prejudice to the other provisions of these Conditions, any liability of the Company for non-delivery of Goods shall be limited to replacing the Goods within a reasonable time, or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 4.9. The Buyer shall provide at the delivery point (or shall procure there is provided) at the Buyer's sole expense adequate and appropriate equipment and manual labour for loading the Goods.

5. Risk

- 5.1 The Goods are at the risk of the Buyer from the time of delivery.
- 5.2 Unless otherwise expressly agreed in writing, the Company shall not be liable for loss or damage to Goods in transit.

6. Inspection

- 6.1. The Buyer shall inspect the Goods immediately upon receipt and shall be deemed to have accepted the Goods as delivered if he fails to notify the Company of any defect or lack of conformity with the Contract within 10 days after receipt.
- 6.2. The Company shall make good shortages notified to it under Condition 6.1 as soon as reasonably practicable but shall not be liable for any other loss whatsoever arising from such shortage.

7. Warranty

- 7.1 The product warranty periods for parts forming part of Goods delivered by the Company under and Contract shall be as follows:
 - (a) Factory New Parts: 12 months;
 - (b) Overhaul Parts 12 months or 2000 flight hours (documentation substantiating flight hours required), whichever occurs first and limited to extent of overhaul work performed;
 - (c) Repair Parts 6 months and limited to materials installed and labour performed during last repair activity;
 - (d) Detail Parts No warranty, guaranteed conformity prior to installation.
- 7.2 Seller warrants that each type of above-listed parts will be free from defects in material and workmanship under normal use and service for the corresponding period specified above after delivery of those parts (the "Warranty"). If, prior to expiry of the relevant warranty period after delivery of the relevant part, and subject always to the other provisions of this Condition 7, any part is found to be defective in material or workmanship, the Company shall, at its option, repair or replace such part at its expense with reasonable promptness.
- 7.3 All Warranty adjudication requests must receive prior approval from the Company before the Buyer returns any parts under a Warranty claim, and the Company has sole right at its discretion to accept or deny a Warranty request. Buyer shall provide the Company with written notice of a claimed defect within 14 days after the defect becomes apparent to Buyer. Said notice will contain reasonable proof that the claimed defect is covered by the Warranty set-out in these Conditions, and this shall remain subject to confirmation and verification by the Company. The Company's Return Material Authorization ("RMA") number(s) for the relevant part or parts which are the subject of the Warranty claim will be used to authenticate the claim upon receipt by the Company. Failure to have the Company's RMA number(s) for the relevant part or parts clearly marked on the Buyer's notice of claim will invalidate Warranty consideration.
- 7.4 Any parts determined by the Company to have a No Fault Found (NFF) shall result in the Buyer being liable to the Company for inspection, test and recertification charges (including, where applicable, transportation charges).

- 7.5 If the Company approves a Warranty request, the Company's obligation under the Warranty (and the Buyer's remedy) is limited to the repair or replacement of the relevant parts. In the event that the Company agrees to replace a defective part, the Buyer shall dispose of the defective part in accordance with the Company's instructions.
- 7.6 The Company's liability under the Warranty applies only to defects appearing before the Buyer makes any modification or alteration to the Goods and whilst the Goods are being properly used, handled, maintained or stored in accordance with the Company's instructions. In particular (but without limitation) the Company shall not be liable in the case of defects arising from normal deterioration or improper or faulty handling, operation, maintenance or processing by the Buyer or any third party.
- 7.7 The Warranty does not extend to any new materials or components forming part of the Goods which are not of the Company's manufacture. In respect of such items the Buyer shall be entitled only to the benefit of any manufacturer's warranty or guarantee the benefit of which the Company is able to obtain.
- 7.8 Where the Buyer has entered into a maintenance agreement with the Company in respect of the Goods, the Company shall not be liable under the Warranty unless the Buyer has complied in all material respects with its obligations under such maintenance agreement.
- 7.9 The Warranty set out herein is exclusive. No other warranties of any kind whatsoever, whether express or implied, or arising from a course of dealing, course of performance, usage of trade, or otherwise, including warranties of merchantability and fitness for a particular purpose, shall apply.
- 7.10 The remedies set forth under the Warranty are the sole and exclusive remedies of Buyer for any claims, expenses or damage arising out of or related to Goods delivered under any Contract. In no event shall the Company be liable in tort, contract or otherwise for any incidental, special, indirect or consequential losses or damages (including loss of profit).
- 7.11 The Buyer agrees that, following delivery, any work performed on, or the incorporation of any parts into, or repairs made to any of the Goods, which, in each case are not performed or otherwise approved by the Company, shall result in any unexpired portion of the Warranty in respect of those Goods immediately becoming void and disclaimed by the Company, and cause the Buyer to indemnify and keep indemnified the Company in respect of any and all damages and liability resulting from the work performed on, parts incorporated into, or repairs made to the relevant Goods.

8. Items Supplied by Buyer & Use of Purchased Parts

- 8.1. The Buyer shall be liable for all drawings, specifications and instructions issued to the Company with orders, or pursuant to the Contract and shall indemnify and keep indemnified the Company against all loss directly or indirectly arising out of any error in or omission from such drawings, specifications and instructions and against all costs claims demands and expenses whatsoever in respect of the infringement or potential infringement of any patent, copyright, registered design or other third party right arising out of the Company's use of such drawings, specifications or instructions.
- 8.2 Repairs, maintenance and modification of equipment comprising or containing Parts purchased as Goods under the Contract must be performed as specified in the applicable component maintenance or overhaul manual and/or service bulletin by technically competent and appropriately qualified personnel. Any such repairs, maintenance and/or modification must also be performed using tooling and test equipment as specified in the relevant manual or service bulletin and be performed in a repair facility approved by the appropriate governing airworthiness authority (as applicable). In the event Buyer does not comply with the provisions of this Condition 8.2, Buyer agrees to defend, indemnify and hold harmless the Company from any and all claims, loss or expense resulting directly or indirectly from such non-compliance.
- 8.3 The Buyer shall be liable for, and shall indemnify and keep indemnified the Company against, any claims by third parties in respect of or arising out of any use of any Goods purchased under the Contract, save where such liability has arisen as a direct result of the negligence of the Company.

9. Limits of Liability

- 9.1. The Goods are supplied strictly on the terms that the Buyer has satisfied itself of their suitability for its purposes. The Buyer acknowledges that all specifications and details in catalogues, quotations or acknowledgements of order or similar documents or by word of mouth and all forecasts of performances, howsoever given, are approximate only and do not form part of the Contract and that in respect of such specifications, details and forecasts the Company shall be under no liability nor shall the Buyer be entitled to any remedy under the provisions of the Misrepresentation Act 1967.
- 9.2. Notwithstanding any other provision of these Conditions, in the event the Buyer claims the Company has breached any of its obligations under the Contract (whether of warranty or otherwise), the Company may request the return of the Goods (at the Company's expense) and refund to the Buyer the purchase price (or any part thereof) already paid by the Buyer for those Goods, and in which event the Company shall have no further liability under the Contract other than to refund such purchase price upon return of the relevant Goods.
- 9.3. Other than as expressly provided in Condition 9.2, in all cases where Buyer claims against the Company pursuant to the Contract, whether such claims are based in contract, tort, or under any other legal or equitable theory of law or arise out of or relate to the sale, delivery or use of defective Parts or damage resulting therefrom, Buyer's exclusive remedies, and the Company's sole liability, shall be limited to those specifically provided in Condition 7 (Warranty), and further, shall in all cases be subject to the limitation of the purchase price of the applicable Part(s).
- 9.4. Notwithstanding any other provision of the Contract, the Company shall not be liable, whether by way of indemnity or by reason of breach of contract, tort (including negligence and strict liability) or breach of statutory duty or in any other manner for any special, consequential, indirect or incidental loss or damage of whatever nature suffered by the Buyer or for any loss of use (whether complete or partial) of the Goods or any other property or equipment, or for damage or loss of property or equipment not furnished under the Contract, or loss or profit or revenues (or the loss of use thereof), or loss of any contract or other business.

- 9.4. Nothing in this Condition shall be construed as limiting or excluding the Company's liability under Part 1 of the Consumer Protection Act 1987 or for death or personal injury resulting from its negligence (as defined in Section 1 of the Unfair Contract Terms Act 1977) or for fraud or fraudulent misrepresentation or for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.
- 9.5. All warranties, conditions and other terms implied by statute or common law (save for the conditions set out in section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10. Retention of Title

- 10.1. Until the Company has received payment in full of all sums owed to it on any account by the Buyer, whether arising out of this or any other contract, "property and title" to the Goods shall remain in the Company, such Goods are referred to in this condition as "retained goods".
- 10.2. Retained goods:-
- (a) shall be at the Buyer's risk, insured by the Buyer from the date of delivery at its own expense for their full replacement value against all usual risks; and kept safe in good conditions and stored separately and clearly identifiable as the Company's property and with all identifying marks intact and legible; and
 - (b) may, subject to Condition 10.3 below, be used or sold by the Buyer in the ordinary course of its business on the basis that the Buyer shall hold the proceeds of sale in trust for the Company absolutely and account to the Company therefore, and, pending such accounting, keep such proceeds of sale in a separate bank account and not mix the same with any other monies.
- 10.3. The Buyer's powers of use and sale of retained goods shall terminate:-
- (a) forthwith on notice from the Company if the Buyer is in default of any of its obligations under this or any other contract with the Company or if the Company has reasonable doubts as to the ability or willingness of the Buyer to pay any sum to it on the due date; and
 - (b) automatically upon the occurrence of any of the events specified in Condition 10.4 below ("The Events").
- 10.4. The Events are:-
- (a) if the Buyer makes any arrangement or composition with its creditors, or convenes a meeting of creditors (whether formal or informal); or
 - (b) if the Buyer becomes insolvent or appears to be unable to pay a debt or to have no reasonable prospect of paying a debt; or, being a company, appears unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986);
 - (c) if there is presented a petition for the winding up of the Buyer or for the appointment of an Administrator of its undertaking; or
 - (d) if the Buyer has an Administrator or Administrative Receiver appointed over any of its assets or undertaking or a winding up order made against it or it goes into voluntary liquidation (otherwise than for the purposes of bona fide reconstruction or amalgamation of a solvent company); or
 - (e) if any creditor serves upon the Buyer a statutory demand; or
 - (f) if a proposal to enter into a voluntary arrangement is made with respect to the Buyer pursuant to Section 1 of the Insolvency Act 1986 or if the Buyer applies to the court for an interim order pursuant to section 252 of the Insolvency Act 1986; or
 - (g) if any creditor of the Buyer serves upon the Buyer a formal notice of demand or any notice the effect of which is to call in a loan or facility; or
 - (h) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe any of its obligations under the Contract or any other contract between the Company and the Buyer, or ceases to trade; or
 - (i) the Buyer encumbers or in any way charges any of the Goods.
- 10.5. The Company may, at any time on giving prior notice, enter the Buyer's premises for the purposes of inspecting retained goods and identifying them as the Company's property and the Buyer irrevocably authorises the Company to enter upon its premises for that purpose.
- 10.6. Upon suspension and revocation or determination of the Buyer's power of sale and use under this Condition the Buyer shall place all the retained goods in its possession or under its control at the Company's disposal and shall be deemed irrevocably to authorise the Company to enter upon any of the Buyer's premises, with or without vehicles, for the purpose of removing such goods.
- 10.7. The repossession of retained goods by the Company in accordance with this Condition shall be without prejudice to all or any of the Company's other rights against the Buyer under the Contract.
- 10.8. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 10.9. On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 10 shall remain in full force and effect.

11. Payment

- 11.1. Subject to satisfactory trade, banker's and other requisite references, and where no other terms of payment have been specifically agreed in writing, the Company's terms for inland orders are cash payment in full without deduction or set-off to be made within 30 days after the date of invoice.
- 11.2. Unless otherwise specifically agreed in writing, payment for export orders shall be by irrevocable letter of credit confirmed by a London Clearing Bank acceptable to the Company and on presentation of the bills of lading and issued under the Incoterms then in force.

- 11.3. No discount or allowance will be made unless specifically stated by the Company in writing. Interest will be charged on all sums due under or by way of damages for breach of the contract at the rate of 2.5% per annum above the base rate of HSBC Bank plc from time to time in force and shall be calculated and accrue on a day to day basis from the date on which payment fell due until payment (whether made before or after judgement has been obtained by the Company against the Buyer).
- 11.4. Time for making payment shall be of the essence of the Contract.
- 11.5. The Company may at any time, in its absolute discretion, appropriate any payment made by the Buyer in respect of goods to such outstanding debt as the Company thinks fit, notwithstanding any purported appropriation to the contrary by the Buyer.
- 11.6. The Company shall be entitled without prejudice to its other rights and remedies to cancel the Contract or to postpone any delivery until payment has been received, upon the occurrence of any of the Events or in the event that the Company has reasonable doubts about the Buyer's ability or willingness to pay on the due date.
- 11.7. The Company reserves the right at any time at its discretion to demand security for payment before continuing with an order or delivering Goods or any instalment.
- 11.8. VAT will be charged at the rate ruling at the time of despatch of the Goods or, if different, the basic tax point (as defined in regulations governing VAT from time to time in force).

12. Premises & Safety

- 12.1. Where the Company's employees or agents require to enter premises occupied by the Buyer or other premises at which the Contract is required to be performed ("Premises") the Buyer shall:-
 - (a) ensure that the Premises are ready and available so as to enable the Company to perform its obligations and provide to the Company, its employees and agents such information as the Company may reasonably require to permit the Contract to be performed at the Premises;
 - (b) ensure that compliance is being made at the Premises with all relevant provisions of the Health and Safety at Work etc. Act 1974 and other legislation concerning safety and working conditions;
 - (c) draw to the notice of the Company, its employees and agents any hazards on the Premises and issue appropriate warnings and safety equipment;
 - (d) indemnify and keep indemnified the Company against all loss, costs, claims, damages, expenses and other liabilities whatsoever arising out of any failure in whole or in part of the Buyer to comply with its obligations under this Condition 12.1.
- 12.2. If the Buyer shall be in breach of any of its obligations under Condition 12.1 above, the Company shall be entitled to suspend performance of the Contract until such breach shall be remedied to the reasonable satisfaction of the Company.

13. Force Majeure

The Company shall not be liable to the Buyer if unable to carry out any provision of the Contract for any reason beyond its control including (but without limitation) Act of God, legislation, war, civil commotion, fire, flood, drought, failure of power supply, lock out, strike, stoppage or other action by employees or third parties in contemplation or furtherance of any dispute or owing to any inability to procure parts or material required for the performance of the Contract.

14. No Waiver

Any failure by the Company to enforce any or all of these Conditions shall not be construed as a waiver of the Company's rights.

15. Assignment

- 15.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 15.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

16. Notices

Any notice under these Conditions shall be properly given in writing and sent by first class post, telex or facsimile to the address of the intended recipient as stated in the contract or to such address as the Company and the Buyer from time to time notify to each other as their respective addresses for service and shall be deemed served in the case of postal notice, on the expiry of 48 hours from time of posting, in the case of telex on the recording of the "answer back" code on the sender's machine, and in the case of facsimile, on the expiry of 15 minutes from completion of transmission by the sender.

17. Construction & Jurisdiction

English Law shall govern construction and operation of the contract and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts.