

Teignbridge Propellers Ltd

TERMS OF SALE

1 INTERPRETATION

- 1.1 In these conditions:
“**BUYER**” means the person who accepts a quotation of the Company for the sale of the Goods of whose order for the Goods is accepted by the Company.
“**GOODS**” means the Goods (including any installment of the Goods or any parts for them) which the Company is to supply in accordance with these Terms.
“**COMPANY**” means the Seller of the Goods Teignbridge Propellers Limited, .
“**TERMS**” means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Company.
“**CONTRACT**” means the Contract for the purchase and sale of the Goods.
“**WRITING**” means letters signed by an officer of the Company, telex, cable, facsimile transmission and comparable means of communication.
- 1.2 Any reference in these Terms 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.
- 1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.

2 BASIS OF THE SALE

- 2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Buyer, or any written order of the Buyer which is accepted by the Company, subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.
- 2.2 No variation to these Terms shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Company.
- 2.3 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company's authorised representative is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.4 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company's authorised representative in writing and signed by an officer of the Company.
In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3 ORDERS DESIGNS AND SPECIFICATIONS

- 3.1 No order submitted by the Buyer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company's authorised representative.
- 3.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable design or specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Company).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a design or specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.
- 3.5 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.

- 3.6 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

4 **PRICE OF THE GOODS**

- 4.1 The price of the Goods shall be the Company's quoted price subject to the clause 4.4. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Company without giving notice to the Buyer.
- 4.2 Except as otherwise stated under the terms of any quotation of the Company and unless otherwise agreed in writing between the Buyer and the Company, all prices are given by the Company on an ex-works basis, and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 4.3 If the Company incurs any costs (including storage charges) as a result of the Buyer's neglect or default, the Buyer shall pay these costs in addition to the Contract price.
- 4.4 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect
- 4.4.1 any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, a foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of Sub-contract labour, materials or other costs of manufacture), or
 - 4.4.2 any change in delivery dates, quantities or specifications for the goods which is requested by the Buyer, or
 - 4.4.3 any delay caused by the Buyer's instructions or failure of the Buyer to give the Company adequate information or instructions, or
 - 4.4.4 additional cost incurred by the Company in submitting specifications or drawings to or in complying with requirements of Government Departments, Local Authorities, Insurance Companies or other regulatory authorities.
- 4.5 All prices are exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay the Company.

5 **TERMS OF PAYMENT**

- 5.1 Subject to any special terms agreed in writing between the Buyer and the Company, the Company shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods (without any deduction) by net monthly account unless otherwise agreed in writing notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the Contract.
- 5.3 In respect of Goods for export payment shall, unless otherwise agreed, be by irrevocable letters of credit opened by the Buyer in favour of the Company and confirmed by the bank acceptable to the Company.
- 5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 5.4.1 Cancel the Contract or suspend any further deliveries to the Buyer;
 - 5.4.2 Appropriate any payment made by the Buyer to such of the Goods (or the Goods supplied under any other Contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer) and
 - 5.4.3 Charge the Buyer interest (both before and after any judgement) on the amount unpaid at the current rate from time to time payable on judgements and orders under the Judgements Act 1938. Such interest is deemed to accrue on a day to day basis from and including the date for payment.

6 DELIVERY

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company's premises at any time after the Company has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company by the Company delivering the Goods to that place.
- 6.2 Delivery dates mentioned in any quotation, order or other document are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 6.3 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Company to deliver any one or more of these instalments in accordance with these Terms of Sale or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.4 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.5 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company may:
 - 6.5.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- 6.6 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.7 The buyer is under a duty to inspect the Goods on delivery (or on collection by the Buyer, if appropriate) wherever it is possible to do so.
- 6.8 If inspection is impossible, the Buyer must write on the delivery (or collection) note "Goods not examined".
- 6.9 If the Seller is prevented from delivering the Goods as a result of any cause beyond its control the Seller shall be at liberty to cancel or suspend the Contract without incurring any liability for loss or damage arising therefrom.
- 6.10 If the Buyer instructs the Seller to delay delivery of the Goods or fails to give the Seller instructions at the time stated for delivery then, without prejudice to any other right or remedy available to the Seller, the Seller may store the Goods until actual delivery and charge the Buyer a 10 per cent surcharge per month compounded monthly on the price of the Goods for each month or part of a month that the Buyer fails to take delivery of the Goods from the date quoted for delivery to the actual date of delivery.
- 6.11 The seller cannot guarantee exact quantities and the Seller shall be deemed to have fulfilled the Contract by delivery of a quantity of plus or minus 10% of the quantity specified, and the Buyer shall pay at the Contract rate for the actual quantities delivered.
- 6.12 Without prejudice to Clause 6.7 above the Seller shall not be liable for any damage discrepancy or shortage in the goods unless the Buyer notifies the Seller within 48 hours of the time of delivery.

7 RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the goods shall pass to the Buyer:
 - 7.1.1 In the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or
 - 7.1.2 In the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the buyer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
- 7.2 Notwithstanding the passing of risk in the Goods, or any other provision of these Terms, title in the Goods shall not pass to the Buyer until whichever shall be the first to occur of the following:-
 - 7.2.1 Payment being received by the Company for the Goods and no other amounts then being outstanding from the Buyer to the Company in respect of other Goods supplied by the Company;
 - 7.2.2 The Buyer selling the Goods in accordance with the provisions of these Terms in which case title to the Goods shall be deemed to have passed to the Buyer immediately prior to delivery of the Goods to the Buyer's customer; and

- 7.2.3 The Company waiving its right under this Clause in respect of specified goods whereupon title to the said Goods shall forthwith vest in the Buyer.
- 7.3 Before title has passed to the Buyer under the Terms of Clause 2 and without prejudice to any of its other rights, the Company shall have the right to recover or resell the Goods or any of them and may enter upon the Buyer's premises by servants or agents for that purpose.
- 7.4 Should the Buyer alter the Goods by subjecting them to any manufacturing process or incorporating them into another product or mixing them in any way then the resulting product ("Altered Goods") will pass into the ownership of the Company until payment due under all Contracts between the Company and the Buyer has been made in full and all the Company's rights hereunder shall extend to the Altered Goods.
- 7.5 Until payment due under all Contracts between the Buyer and the Company has been made in full:
- 7.5.1 The Buyer shall hold upon trust for the Company the Goods and Altered Goods
- 7.5.2 In the event of the sale or hire of the Goods or Altered Goods by the Buyer he shall hold the proceeds of such sale or hire on trust for the Company in a separate bank account opened by the Buyer for this purpose
- 7.5.3 The Company shall be entitled to trace all such proceeds of sale or hire charges received by the Buyer through any bank or other account maintained by the Buyer
- 7.5.4 In the event of sale or hire of the Goods or the Altered Goods by the Buyer in the ordinary course of its business the Buyer shall assign its rights to recover the selling price or hire charges for the third party concerned to the Company if required to do so in writing by the Company.
- 7.6 As the insurable risks in the Goods will pass to the Buyer as soon as the goods are delivered to him to his order or otherwise in accordance with the Clause 1 and pending disposal the Buyer shall keep the Goods insured in the amount of the price at which the Goods are sold to the Buyer against all insurance risks.
- 7.7 If the Goods are destroyed by an insured risk before the Buyer has paid the Contract price for the Goods, the Buyer shall receive the proceeds of any such insurance as trustee for the Company.
- 7.8 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the buyer does so all monies owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Buyer) forthwith become due and payable.

8 EXPORT TERMS

- 8.1 In these Terms "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Terms of Sale, but if there is any conflict between the provisions of Incoterms and these Terms, the latter shall prevail.
- 8.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Clause shall (subject to any special terms agreed in writing between the Buyer and the Company) apply notwithstanding any other provisions of these Terms.
- 8.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 8.4 Unless otherwise agreed in writing between the Buyer and the Company, the Goods shall be delivered FCA Newton Abbot and the Company shall be under no obligation to give notice under Section 32(3) of the Sales of Goods Act 1979.
- 8.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

9 WARRANTY

- 9.1 Subject to the conditions set out below the Company warrants that the Goods will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from the date of their initial use or 12 months from delivery, whichever is the first to expire.
- 9.2 The above warranty is given by the Company subject to the following conditions:
- 9.2.1 The Company shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

- 9.2.2 The Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Company's approval;
- 9.2.3 The Company shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
- 9.2.4 The above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company.

10 **EXCLUSION AND LIMITATION OF LIABILITY**

IMPORTANT: BECAUSE the potential losses which the Buyer might suffer as a result of any breach of Contract by the Company are more readily ascertainable by the Buyer AND BECAUSE such losses could be wholly disproportionate to the Contract, AND SO THAT the Company can keep the Contract price as low as reasonably possible THE PARTIES AGREE THAT the Company limits its liability in accordance with the following provisions.

- 10.1 Subject as expressly provided in the Terms of Sale, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 10.2 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976 the statutory rights of the Buyer are not affected by these conditions.
- 10.3 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the specifications shall (whether or not delivery is refused by the Buyer) be notified to the Company within seven days from the date of delivery or (whether defect or failure was not apparent on reasonable inspection) within a reasonable time after discover of the defect or failure. If delivery is not refused and the Buyer does not notify the Company accordingly. The Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 10.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Terms, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Company shall have no further liability to the Buyer.
- 10.5 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Buyer by reason of any representation or implied warranty, condition or other term or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit, loss of Contracts, damage to property of the Buyer, personal injury to the Buyer or anyone else (but only so far as such injury is not caused by the Company's negligence or otherwise), costs, expenses or other claims with consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods in their use or resale by the Buyer except as expressly provided in these Terms.
- 10.6 The Company shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Company's reasonable control.
- 10.7 If a court finds that any sub-clause in this Clause fails the requirements of reasonableness under the Unfair Contract Terms Act 1977, the Company nevertheless excludes the relevant liability to the extent that the court finds reasonable.
- 10.8 The Buyer is responsible for ensuring that the Goods ordered are sufficient and suitable for the Buyer's purposes and accordingly no guarantee is given by the Seller as to the Goods' suitability or fitness for any particular purpose even though that purpose may be known to the Seller.

11 **INDEMNITY – CONSUMER PROTECTION ACT 1987**

Where the Company incurs any liability, whether by court proceedings or by a bona fide out-of-court settlement (or by arbitration under Clause 13.5), as a result of a claim against the Company under Part 1 of the Consumer Protection Act 1987 in respect of an alleged defect in the Goods, then the Buyer shall indemnify the Company against the liability.

12 **TERMINATION OF CONTRACT**

12.1 If this clause applies, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

12.2 This clause applies where the Buyer:

- a) being a Company,
 - (i) has a petition presented for its winding-up, or
 - (ii) passes a resolution for voluntary winding-up (other than for the purpose of a bona fide amalgamation or reconstruction), or
 - (iii) compounds with its creditors, or
 - (iv) has a receiver appointed of all or any of its assets; or
 - (v) ceases, or threatens to cease, to carry on business; or
- b) being an individual,
 - (i) becomes bankrupt or insolvent, or
 - (ii) enters into any arrangements with his creditors, or
 - (iii) ceases, or threatens to cease, to carry on business; or
- c) In either case, commits a serious breach of this agreement (and in the case of such a breach being remediable, fails to remedy it within seven days after receiving notice to do so), then the Company may treat the Contract as being at an end.

13 **GENERAL**

13.1 Any notice required or permitted to be given by either part to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. None of the Goods sold under the Contract may be exhibited at any display, exhibition or show without the consent in writing of the Company's authorised representative.

13.2 No waiver by the Company of any breach of the contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.3 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these terms and the remainder of the provisions in question shall not be affected thereby.

13.4 Any dispute arising under or in connection with these Terms or the sale of the Goods shall be referred in accordance with the provisions of the Arbitration Acts 1950 to 1970 and all statutory modifications or re-enactments thereof for the time being in force to a single arbitrator to be appointed by agreement between the Company and the Buyer or in default of agreement by the President or a Vice President for the time being of and under the Arbitration Rules of the Chartered Institute of Arbitrators.

13.5 The Contract shall be governed by the laws of England.