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Airpower engineering Ltd. Terms & Conditions of Sale

Airpower engineering Limited will be referred to as "the company" in these conditions, "the buyer" means the customer to whom goods are contracted to be sold to in accordance with these conditions

1. These conditions constitute the entire contract for the supply of goods between the company and the buyer and shall prevail over any inconsistent terms and conditions contained in or referred to in the buyer's order or correspondence or elsewhere and all or any such conditions or stipulations contrary to these conditions are hereby excluded. No variation of these terms shall apply unless agreed to by the company in writing.
2. Dates or periods for delivery stated in the contract are approximate and not essential terms unless, in the circumstances of any particular case, the parties agree in writing guaranteed delivery dates. Should the delivery of goods to the schedule be prevented or hindered directly or indirectly by fire, the elements, war, civil commotion, strikes or lock-outs, industrial disputes, shortage or blockage of raw material or fuel, government action affecting the company, its suppliers or agents, to shortage of labour, breakdown or partial failure of plant and machinery, late receipt of any of the buyer's specifications or other necessary information, any act or delay on the part of any subcontractor or supplier, or any other reason whatsoever beyond the reasonable control of the company, then the time for delivery of goods shall be extended for a reasonable period.
3. The company shall not be liable for any defects in the quality or state of the goods which would be apparent on a reasonable examination unless the buyer shall have given the company within three days after receipt of the goods a written notice specifying the matters complained of and shall thereafter afford the company a reasonable opportunity of inspecting the goods before they have been used or installed.
4. Where the contract provides for delivery of the goods elsewhere than at the buyer's premises, the company will entertain a claim by the buyer in respect of loss or damage in transit only if the buyer:-
 - (a) in case of non delivery, within 21 days after the date of the company's advice note or other notification of dispatch of the goods;
 - (b) in any other case, within 7 days after delivery of the goods; or
 - (c) when the goods are consigned by an outside carrier, comply in all respects with such carriers conditions of carriage for notifying claims for loss or damage in transit.
5. The quantities of goods delivered shall be specified upon dispatch by the company and shall be accepted by the buyer as conclusive evidence of the quantity so delivered unless the buyer notes any alleged variance on the delivery docket and returns the docket forthwith to the company in any event not later than 36 hours from the time of delivery.
6. In the case of delivery by instalments each delivery shall be regarded as a separate and independent contract. The Company reserves the right to make partial deliveries.
7. In the event of the buyer giving delivery instructions and afterwards cancelling or changing those instructions, such changes or cancellations can only be accepted on the terms that the buyer accepts full responsibility for all expenses incurred by the company up to the time of such change or cancellation. The company's estimate of expenses incurred shall be final and conclusive.
8. Delivery is affected on the earlier of the following:-
 - (a) On arrival at the buyers or any specified premises if such address is specified by the buyer as the place of delivery.
 - (b) Upon collection by the buyer;
 - (c) Upon collection by any person authorised by the buyer to collect the goods.
9. The company shall be entitled without prejudice to its other rights and remedies to terminate the whole or part of any or every contract between itself and the buyer or to suspend any further deliveries under any or every such contract in any of the following events:-
 - (a) If any debt is due and payable by the buyer to the company but remains unpaid.
 - (b) If the buyer has failed to provide any letter of credit, bill of exchange or any other security required by the contract, provided that in such event the aforesaid right of termination or suspension shall apply only in regard to the particular contract in respect of which the buyer shall have failed.
 - (c) If the buyer has failed to take delivery of any goods under any contract between the buyer and the company otherwise than in accordance with the company's contractual terms; or
 - (d) If the buyer becomes insolvent, or being a body corporate has passed a resolution for voluntary winding-up (except where solely for the purpose of a solvent reconstruction or amalgamation), or is subject to an order of the court for their winding up, or has had a receiver appointed or being an individual or partnership has suspended payment of his or their debts in whole or part or has proposed or entered into any composition or arrangement with his, it's or their creditors or has had a receiving order in bankruptcy made against him or it.
10. All payments received by the company shall first be used by the company in settlement of the oldest account and/or at the option of the company, any interest payable on any overdue accounts.
11. The buyer shall not be entitled to withhold payment of any amount payable to the company under the contract.
12. Risk of damage to or loss of the goods shall pass to the buyer:-
 - (a) In the case of goods to be delivered to the buyer, at the time of delivery but if the buyer fails to take delivery of the goods the said risk shall be deemed to have passed at the time the goods were handed to the carrier for delivery to the buyer; or
 - (b) In the case of goods to be collected by the buyer, at the time when the goods are collected.
13. All prices are strictly net unless otherwise quoted. The company shall be entitled to add to the price agreed upon, the amount of any tax or other government charge which the company must pay in respect of the goods (including without limitation value added tax and import duty), such taxes or government charges now in effect or as may hereafter be imposed or any increase therein prior to delivery. If at any time before delivery of the goods, the cost to the company of completing the contract is increased for any reason outside the control of the company then the price shall be increased proportionately and the buyer agrees to pay such increased prices.
14. The price of each contract shall be paid in full and received by the company strictly in accordance with the payment terms agreed [payment in all cases is due 30 days from the date of the invoice unless otherwise agreed in writing]. The company shall be entitled to charge interest on any overdue account in accordance with European Community Directives dealing with interest payable on overdue accounts.
15. The buyer shall on or before the date for payment pay the purchase price and any additional expenses or charges due by the buyer to the company under the terms of the contract for sale and without any reduction to the company. The buyer may not make any set off against the sum due or raise any counterclaim in diminution of the sum due. Any complaints regarding short delivery, alleged defects or faults in the goods or failure to deliver in accordance with the terms of the contract shall leave the buyers obligation to pay the entire purchase price on time and all other charges including charges for interest due intact under the contract.
16. In the event of the buyer failing to make any payment due under this contract or any other contract for the sale of goods between the buyer and the company, the company may refuse to deliver any goods purchased by the buyer from the company under this or any other contract between the parties until such sum has been paid without notification. The buyer hereby acknowledges that the goods purchased under this contract may be withheld by the company because monies are due under this or any other contract between the company and the buyer and that the withholding of delivery by the company shall in no way diminish or detract from the buyer's obligations under this contract.
17. The goods shall, notwithstanding delivery, remain the property of the company until the entire of the price, any interest charges incurred and all other debts payable by the buyer to the company have been paid in full without any counterclaim. Until such payment, the buyer shall hold the goods on behalf of the company and so long as the property of the goods shall remain in the company the buyer shall hold the goods as bailee for the company. To this end the company shall be separately stored, kept, monitored and marked by the buyer as those of the company.
If any amount owing by the buyer to the company is overdue, the company may, without prejudice to any of its rights or remedies, repossess and re-sell any or all of the goods and may at any time enter upon the buyers premises or any premises where the goods are stored for that purpose. The buyer hereby grants permission to the company to enter upon its premises or on to any land or location where the company's goods are kept, in order to allow the company to inspect, and if so desired, to retake possession of all of the company's goods.
18. Nothing herein contained shall entitle the buyer to refuse or delay payment or to require the company to accept the return of goods on the grounds that the property in the goods supplied is reserved to the company. The buyer shall not be entitled to pledge or create any lien or charge over the goods. Except as aforesaid, the buyer may deal with the goods in the ordinary course of trade unless and until the company takes steps to repossess the same or any part



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thereof pursuant to the provisions of this clause, or if the company shall notify the buyer that it has withdrawn the buyer's permission or licence to deal with the goods.

19. (a) Prior to the payment in full of all sums due by the buyer to the company under this contract the buyer shall be entitled to use the goods (which remain the property of the seller in the manner hereinafter appearing) in the manner set out in this clause:-

(i) The buyer may:-

- A. present the goods for sale; or
- B. incorporate the same into any process of manufacture or construction either in a worked or unworked state; or
- C. may use the same for private use or consumption.

(ii) The buyer may not offer the goods as security for the performance of any obligation of the buyer to any third party.

(b) At any time prior to the buyer paying all sums due for the goods under this contract, the company may, by notice in writing delivered to the buyer's address as kept in the company's records, determine the buyers right to use the goods whereupon the buyer shall forthwith return the goods to the company and/or the company may enter the buyers premises for the purposes of recovering the goods.

(c) Further, the happening of any of the events set out below shall forthwith (without notice) terminate the buyers right to use the goods:-

- (i) any notice to the buyer that a receiver or manager is to be appointed;
- (ii) any notice to the buyer that a petition to wind up the buyer is to be or has been presented or any notice of a resolution to wind up the company (save for the purposes of reconstruction or amalgamation).
- (iii) a decision by the buyer that the buyer intends to make an arrangement with its creditors; or

(iv) insolvency of the buyer.

20. Notwithstanding the provisions in this contract regarding delivery of and payment for the goods sold hereunder if the buyer makes any claim against the company that the goods are not in accordance with the specification agreed, that there is a shortage in delivery or that the goods delivered are faulty or defective, the company may suspend all further deliveries of goods pending the determination of the said dispute or alternatively, the company, at its option may insist that all further deliveries are paid for in full prior to dispatch. In the event of delivery being suspended any applicable delivery date or dates shall be delayed accordingly. In the event of suspension of delivery of alternatively the company insisting on payment in full prior to delivery, no liability shall attach to the company by reason of any delay thereby caused.

21. Where the buyer is not a consumer within the meaning of the Sale of Goods and Supply of Services Act 1980, the liability of the company to the buyer shall be limited as follows:-

(a) (i) Liability in respect of any goods supplied to the buyer proved to be defective shall be limited to the purchase price of such goods paid under the contract;

(ii) The company shall be under no liability for any adverse affects resulting from the application of the goods to or in any process, operation or treatment unless specifically recommended or so agreed by the company;

(iii) The company shall not be liable for any expenditure incurred by the buyer in respect of any goods alleged to be defective;

(iv) The company shall not be liable for any loss of profit or any consequential of indirect loss or damage of any kind to the buyer howsoever caused; or

(v) The company shall not be liable for any goods which have been processed in any way by the buyer or damaged after the risk in the goods have passed to the buyer.

(b) For the sake of clarity, the maximum liability the company may have to the buyer shall be limited to the value of the consignment in which the defective product was delivered.

(c) The buyer agrees in the event of any fault or defect appearing in the goods for which the buyer wishes to make a claim against the company, the buyer will notify the company of the defect or fault within 7 days of the same occurring and that if the buyer fails to so notify the company no claim shall lie against the buyer in respect of such fault or defect unless the buyer's delay in so notifying the company was beyond its control.

22. Any notice or other communication to be served on any of the parties under or in connection with this contract may be served by being left at the last address known by the company in respect of the buyer by posting the same by letter addressed to the buyer at such address, or by transmitting same by facsimile or by e-mail to the last known number or e-mail address of the buyer.

23. Any notice or other communication by the company to the buyer under or in connection with the contract may be made by electronic mail or other electronic means and the buyer hereby agrees that this is an acceptable form of communication.

24. The buyer hereby acknowledges that the nature of communication by electronic means is such that the company cannot guarantee the privacy or confidentiality of any information passing by such means or that such communication would be free from any interference by third parties.

Without prejudice to that position, the company will use reasonable endeavours to protect the confidentiality of information communicated by electronic mail or other electronic means.

25. Any notice served by the company on the buyer shall be deemed to served:-

- (i) when dispatched (if served by facsimile or electronic mail or other electronic means); or
- (ii) when left at any address at which the buyer conducts business; or
- (iii) one day after posting (if served by post).

26. Any dispute or difference arising out of or in relation to this contract or to any breach thereof which cannot be settled amicably shall be referred to arbitration in Dublin of an arbitrator to be appointed by the company and the buyer or in default of the parties agreeing with 7 days of a request being made by either party, such arbitrator as may be appointed by the President for the time being of the Incorporated Law Society of Ireland at the request of either the company or the buyer whoever shall be the first to make the relevant application. Such arbitration shall be subject to the provisions of the Arbitration Acts applicable at the time. The award of such arbitrator shall be final and binding on both parties.

27. This Contract shall be governed by and construed in accordance with the Laws of Ireland. The parties agree that the Courts of Ireland are to have jurisdiction to settle any disputes which may arise out of or in connection with this Contract and that accordingly any suit, action or proceedings arising out of or in connection with this contract may be brought in such Courts.

Nothing in this clause shall limit the right of the company to take proceedings against the buyer in any other Court of competent jurisdiction, nor shall the taking of proceedings in one or more jurisdiction preclude the taking of proceedings in another jurisdiction whether concurrently or not.

28. Changes to the terms and conditions may be made from time to time, and communicated by email or by posting a link to these conditions on the company's website. The buyer shall be deemed to have notice at the latest, of these terms and conditions seven days from the date same are posted on the company's website.

29. The company will not accept any return of goods unless it shall have given it's prior permission in writing to the making of such returns.

30. The company reserves the right to attach it's imprint to all goods.

31. Where the buyer is to supply the company with any specifications regarding the goods being purchased, the company shall not be under an obligation to take into stock any of the goods to be sold or any part thereof until such specifications are delivered to the company by the buyer.