

## **1 INTERPRETATION**

1.1 In these Conditions unless the context otherwise requires:-

- (i) "APL" means Automated Production Limited
- (ii) "the Customer" means the party or parties with whom APL contracts:
- (iii) "the Goods" means all or any part of the goods, materials, items or products supplied by APL
- (iv) "Contract" means any contract between APL and the Customer for the sale and purchase of the Goods
- (v) "FAT" means the Factory Acceptance Test that confirms that the Goods have been manufactured in accordance with the terms of the contract.
- (vi) "SAT" means the Site Acceptance Test that confirms that the Goods have been installed at the customer's premises and operate in accordance with the test results recorded at the FAT.
- (vii) "the Price" means the price payable by the Customer under the Contract: and
- (viii) reference to agreement by APL shall mean agreement by APL in writing under the hand either of one of its Directors or its Secretary or of someone authorised by APL in writing to make such agreement on its behalf.

1.2 These Conditions apply to and are deemed to be incorporated in every Contract and in the absence of agreement by APL to the contrary shall be the sole and exclusive terms applicable to every Contract

1.3 These Conditions and the Contract and the rights and duties of the parties shall be governed in all respects and subject to interpretation by the Law of England.

1.4 The marginal headings shall not affect the construction of these Conditions.

1.5 The Customer hereby acknowledges that the Customer has not contracted in reliance wholly or partly on any prior statement representation or promise made or information given by APL.

1.6 All proposals and quotations shall be valid for acceptance within a maximum period of 30 days from the date of issue after which they will become void.

## **2 SAMPLES**

2.1 The Customer shall promptly as and when requested by APL from time to time

- a) provide APL with full complete and accurate details of and information concerning the Customer's operations systems and processes and the purposes for which the Goods are required and the use to which they are intended to be put by the Customer and such further or other information as APL shall require from time to time in connection with the performance of its obligations to the Customer under the Contract: and
- b) supply APL with such samples of components and parts in connection with which the Goods may be required and in such quantities as APL shall request.

2.2 APL disclaims any liability for and shall be under no responsibility, obligation, liability or commitment whatsoever concerning the accuracy of all and any such details and information provided to it by the Customer.

2.3 Subject to contrary provision elsewhere in the Contract ownership of such samples shall vest in APL: where however the Contract provides that ownership of such samples shall not vest in APL then

- a) APL shall be under no liability whatsoever for loss, damage or deterioration of any such samples, and
- b) APL shall nevertheless be entitled to retain such quantity thereof for such period as it shall decide and notify to the Customer in writing.

## **3 SPECIFICATIONS**

3.1 Any service, recommendation, suggestion or advice provided by APL concerning the Goods whether in technical literature, specifications, drawings, catalogues, price lists or advertising material or in response to specific enquiry is provided in good faith but APL disclaims any liability therefore and shall not be liable for any loss or damage arising there from or from reliance thereon.

3.2 Where the Goods are designed and/or manufactured and/or supplied by APL to the Customer's specification APL shall have no responsibility for or in respect of such specification or its suitability, adequacy, accuracy or otherwise which (as well as any other information supplied by the Customer in relation to the Goods) shall be the sole liability and responsibility of the Customer.

3.3 APL disclaims any liability for and the Customer shall indemnify APL against all actions of any infringement (actual or alleged) of any patent, copyright, design or other intellectual property rights resulting from compliance with the Customers instructions or requirements express or implied.

## **4 PRICE**

4.1 APL shall be entitled to adjust the Price in the event of variation in the cost to APL of manufacturing and/or supplying the Goods or any part thereof occurring between the date of the Contract and the date of despatch of the Goods by APL and directly or indirectly caused by or incurred or arising as the result of

- (i) any failure or delay on the part of the Customer in performing the Customers obligations under Condition 2.1: or
- (ii) fluctuations in exchange rates, variation or imposition of any tax, or of any export, import or customs duty or deposit, the action of any government or any other authority or labour problems: or
- (iii) any variation modification or change whatsoever in the specification or design of the Goods required by the Customer and agreed to by APL after the date of the Contract.

4.2 If the price is expressed in any currency other than English Sterling and if (by reason of a decline in the value of such currency as compared with English Sterling) any decrease in the value of the Price in English Sterling on the date or respective dates on which the Price shall be payable shall exceed 2½% of its value at the date of the Contract the Price shall be increased by an amount equivalent to such excess.

4.3 The Price is exclusive of Value Added Tax.

## **5 DELIVERY**

5.1 Delivery shall not be permitted until such time that the instalment due after FAT has been received in cleared funds to APL's bank account.

5.2 Time for delivery shall not be of the essence of the Contract: all delivery promises or forecasts whilst given in good faith are estimates only and APL does not undertake and shall in no event be liable to deliver within any specified period should any delay occur or any reason whatsoever

5.3 Where the Contract provides for delivery by instalments each instalment shall be deemed to be supplied under a separate Contract and default or defect in the delivery of any one or more of such instalments shall not entitle the Customer to repudiate the Contract with regard to any other instalments remaining deliverable.

## **6 PACKING AND CARRIAGE**

6.1 The method of packing is at APL's discretion

6.2 Unless otherwise provided the Prices do not include the cost of packing and carriage.

## **7 GUARANTEE**

7.1 Save and subject as mentioned in these Conditions or elsewhere in the Contract if any material or workmanship in any of the Goods shall be found to be defective APL shall either rectify or replace Its Goods in question at the original place of delivery and in the condition originally specified or (if in APL's opinion rectification or replacement shall be impractical) credit the Customer with the proportion of the Price attributable to those Goods provided they are returned to APL and the claim is made in writing and admitted within 12 months from the date of the invoice.

7.2 Save and subject as mentioned in these Conditions or elsewhere in the Contract APL warrants

(a) that the Goods accord with the specification and/or drawings set out or contained in the Customer's order forming part of the Contract or

(b) if there is not such specification and/or drawings that the Goods are of reasonable quality and

(c) that the Goods are reasonably fit and suitable for a purpose of the Customer of which APL shall have received from the customer written notice prior to the making of the Contract and which shall be stated in the Contract: otherwise APL makes and gives no representation promise or guarantee or warranty, express or implied, as to the quality, performance or description of the Goods or as to their fitness for any particular use or purpose.

7.3 APL's liability under 7.1 and 7.2 shall be subject to and conditional on

a) performance in full of the Customer's obligations under the Contract particularly (but without limitation) Condition 2.1 and as to payment of the Price and any additional amount that may become due:

b) the Customer immediately on discovering any defect having given written notice to APL to enable the complaint to be investigated (the Customer supplying all material to be handled, power and labour, as APL shall require for the purpose) before the Goods are further used or returned.

c) the defects not being due to fair wear or the use of injurious substances:

d) full compliance by the Customer with APL's instructions and/or recommendations for the use and maintenance of the Goods:

e) (in the case of component handling equipment) the components handled by the Goods being and having been identical in configuration, weight, quality and condition to the samples provided by the Customer under Condition 2.1, free from "burr" or "flash" and unadulterated with dirt, grease or other debris:

f) no alteration or repairs having been carried out or attempted by or for the Customer without APL's agreement.

7.4 Any Goods replaced by APL or for which APL shall have given credit under the foregoing provisions shall become APL's property.

## **8 INSURANCE AND PASSING OF TITLE**

Although the Customer is at risk and should insure from the moment of delivery of the Goods all the Goods shall continue to belong to APL unless and until the Customer has paid in full everything owed by the Customer to APL on all accounts. Further any goods which are held by the Customer at any time and which are derived from or include goods supplied by APL shall so long as the Customer owes money to APL be kept apart from other assets and upon that separation shall belong to APL at law. If the Customer does not effect that separation APL may do it on the Customer's behalf. Unless APL gives the Customer notice to the contrary the Customer may on APL's behalf work on or with or sell goods belonging to APL even if the Customer has not paid APL in full but only in the ordinary course of the Customer's business and so that all proceeds of said and property for life time being representing the process shall belong to APL. The Customer will be accountable as a fiduciary to APL in respect of all of such goods proceeds and property and must keep them separate from other assets and APL may require the Customer to deliver them to APL. The Customer shall not consume any of APL's goods in any way such that no Goods derived from or including them shall be held by the Customer. The Customer must not change APL's goods or deal with other persons inconsistently with these provisions or in any other way that might prejudice APL's rights hereunder without APL's prior consent in writing. If the Customer has goods which may not be APL's but which cannot be distinguished from APL's goods then until the Customer has paid APL in full on all accounts the Customer and APL shall each (up to the quantity of the corresponding goods which could or might be APL's) have the same rights and obligations in relation to such indistinguishable goods in all respects as the Customer and APL would each have had if such goods had been APL's. The Customer shall at all reasonable times afford APL's representatives access to any premises where any goods for the time being belonging to APL may be situated for the purpose of repossessing the same. No failure by APL either past or future shall prejudice any of such rights which shall not be taken to be either waived or qualified by anything short of APL's agreement.

## **9 COPYRIGHT IN DRAWINGS AND OWNERSHIP OF TOOLS AND JIGS**

9.1 Any dies, tools, jigs or other special apparatus necessary for the production of the Goods shall be and remain APL's property and APL will normally (but without being obliged to do so) retain them for a period of not more than 3 years from the date of the Contract.

9.2 Copyright of all drawings made by or for APL and all designs of the Goods shall be and remain APL's property.

## **10 FORCE MAJEURE AND DEFAULT BY CUSTOMER**

10.1 If performance by APL of the contract or any part thereof shall be hindered, prevented or delayed

a) by any cause whatsoever beyond APL's control and in particular (but not by way of limitation) by Act of God, war, armed hostilities, fire, flood drought, subsidence, accident, strike, lockout, combinations or workmen, epidemics, sabotage, civil commotion, any act or omission of, or any control, prohibition or restriction imposed by and government (local or national) or defective or delayed delivery of any material, part or component; or

b) by any failure or omission on the part of the Customer or in relation to the performance of the Customer's obligations under Condition 2.1; or

c) by any variation or alteration of the Goods to which APL may have agreed at the Customer's request then and in any such case (without prejudice to any other remedy available to APL) APL shall be entitled to such further or extended time as shall be reasonable in the circumstances and shall be under no liability for any loss or damage thereby occasioned.

10.2 Nothing in this Condition shall limit the generality of Condition 5.1

10.3 If the Customer or any company in its group shall

a) fail to make any payment under the Contract or any other contract with APL or fully to comply with any of its other obligations thereunder or

b) commit any act of bankruptcy or make any arrangement or composition with creditors or

c) being a Corporation go into liquidation (save voluntarily for the purpose of amalgamation or reconstruction) or have a receiver appointed of any part of its property or undertaking.

APL shall be entitled without prejudice to its other rights and remedies) either to suspend further work or deliveries under the Contract and any other contract between the Customer or any company in its group and APL, or to require payment in advance for all or any such work or deliveries, or to terminate the Contract and any other contract between the Customer or any company in its group and APL forthwith AND APL shall be entitled to reallocate any payment (or any part thereof) received from the Customer to any other contract between the Customer or any company in its group and APL or to any claim by APL under any such contract for work carried out by APL or otherwise.

## 11 PAYMENT AND INTEREST

11.1 Time of payment is of the essence and (in addition and without prejudice to APL's other rights and remedies hereunder) if payment is not made when due the Customer shall pay APL interest thereon at a rate 8% over the Bank of England base rate.

11.2 No time or indulgence allowed by APL shall prejudice any right or remedy which APL may have hereunder.

11.3 The Customer agrees to make any payment due under the Contract or under any other account regardless of any right or set-off or Counter-claim which the Customer may assert.

11.4 In the event that the contract includes the installation of the goods by APL then the final sum due under the contract will become due on the earlier of the Customer's acceptance that the goods have been satisfactorily installed or 12 weeks from the dispatch of the goods from APL. APL's decision as to whether the installation has been completed shall be final. This does not affect the Customer's rights under 7.1 above.

## 12 TESTS

12.1 Upon completion of the Goods APL may before their despatch give to the Customer not less than 7 days notice in writing that the Goods are ready and available for testing in the Customer's presence and may specify a place in the UK where and a time and date when a test shall take place.

12.2 APL shall at the appointed place date and time make such tests as it shall consider necessary and appropriate to demonstrate that the Goods comply with the Contract

12.3 If the Customer shall fail to attend at the appointed place date and time APL may make such tests in the absence of the Customer and the same shall be deemed to be conclusive

12.4 APL shall make and keep for a reasonable time thereafter notes to record the tests so made and their results

12.5 If as the result of such test the Goods shall be found not to comply with the Contract in any respect APL shall carry out such further work on the Goods as maybe required within such time as shall be reasonable having regard to the nature and gravity of the problem so found.

12.6 Upon completion of such tests (and if 11.5 applies such further work) APL shall be at liberty if it so chooses to deliver the goods in accordance with the Contract and any payments due thereunder on delivery shall be immediately payable by the Customer to APL.

12.7 In the event that the customer fails to make the instalment payment after the FAT in accordance with the contract or to arrange the shipment of the goods within 15 days from the FAT then APL reserves the right to charge demurrage at a rate of 2% of the contract value for every week or part thereof that the goods remain unpaid for or not shipped.

12.8 Should the contract include the installation of the Goods by APL then the SAT instalment payment will become due on the earlier of the Customer's agreement that the Goods have been satisfactorily installed or 12 weeks from dispatch of the Goods from APL.

## 13 LIMIT OF LIABILITY

13.1 Nothing in these Conditions shall limit or exclude APL's liability for:

a) death or personal injury caused by its negligence, or the negligence of its employees, agents and subcontractors (as applicable);

b) fraud or fraudulent misrepresentation;

c) breach of the terms implied by section 12 of the Sale of Goods Act 1979

d) defective products under the Consumer Protection Act 1987; or

e) any matter in respect of which it would be unlawful for APL to exclude or restrict liability.

13.2 Subject to Condition 13.1:

a) APL shall under no circumstances whatsoever be liable to the Customer whether in contract tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or any indirect or consequential loss arising in connection with the Contract;

b) APL's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Price of the Goods.

13.3 APL shall not be responsible for any damage or any claim or loss caused by or arising from or attributable whether directly or indirectly to the mode of fixing, fitting or installing of the Goods, by the Customer or by the Customer's own contractor, unless such fixing, fitting and installation, or any of them, shall have been carried out by APL or strictly in accordance with the instructions, recommendations and directions given by APL. Nothing in the foregoing shall be construed as imposing upon APL any obligation (unless expressly assumed by APL in the Contract) to arrange for the erection, installation or commissioning of the Goods or the construction of any foundations or other civil engineering works or for the installation of electrical wiring and cable work.