

AUTOMATED PRODUCTION LTD CONDITIONS OF SALE

1 INTERPRETATION

1.1 In these Conditions unless the context otherwise requires.-

- (i) "APL" means Automated Production Limited (registered in England and Wales with company number 09830077);
- (ii) "the Customer" means the party or parties with who purchase goods from APL;
- (iii) "the Goods" means all or any part of the goods, materials, items or products supplied by APL to the Customer;
- (iv) "Contract" means any contract between APL and the Customer for the sale and purchase of the Goods in accordance with these conditions;
- (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 during the FAT; and
- (vii) "the Price" means the price payable by the Customer under the Contract: and

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

1.3 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 BASIS OF CONTRACT

2.1 These conditions apply to the Contract to the exclusion of all other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The order constitutes an offer by the Customer to purchase the goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the order are complete and accurate.

2.3 The order shall only be deemed to be accepted when APL issues a written acceptance of the order, at which point the Contract will come into existence.

2.4 A quotation for the Goods given by APL shall not constitute an offer.

2.5 Drawings illustrations and descriptions and particulars of weights measurements, ratings and performance figures and other information contained in APL's catalogues, brochures, price lists and other advertising material are intended for general guidance only to give an approximate idea of the goods. They do not constitute representations inducing the Contract and do not form part of the Contract nor do they have any contractual force. APL accepts no responsibility for any errors or omissions therein or for any loss or damage resulting from reliance on any such matters.

3 SAMPLES

3.1 The Customer shall promptly as and when requested by APL from time to time at the Customers cost

- 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.

3.2 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. The Customer is for ensuring that anything provided by the Customer to APL pursuant to Condition 3.1 is complete and accurate

3.3 Subject to any contrary provision elsewhere in the Contract ownership of such samples shall vest in APL: unless 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 determine and notify to the Customer in writing, in order to fulfil its obligations under the Contract.

4 SPECIFICATIONS

4.1 Any service, recommendation, suggestion or advice provided by APL concerning the Goods whether in, 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.

4.2 Where the Goods are designed and/or manufactured and/or supplied by APL to a specification provided by the Customer, 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.

4.3 The Customer shall indemnify APL against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by APL in connection with any claim made against APL for any infringement (actual or alleged) of any patent, copyright, design or other intellectual property rights resulting from compliance with or use of the Customer's specification, instructions or requirements whether express or implied. This condition 4.3 shall survive termination of the Contract.

4.4 APL reserves the right to amend the specification of the Goods if required by any applicable statutory or regulatory requirements.

5 PRICE

5.1 APL shall be entitled by giving notice to the Customer 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 the Contract, including but not limited to 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 any other factor beyond APL's control;

(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.

5.2 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.

5.3 The Price is exclusive of Value Added Tax, which the Customer shall additionally be liable to pay to APL at the prevailing rate.

5.4 The price excludes the costs and charges of packaging and transport of the Goods, which shall be invoiced to the Customer in the event that APL are requested by the Customer to arrange such packaging and transport.

6 DELIVERY AND PACKAGING

6.1 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 in accordance with Condition 11.

6.2 APL shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the FAT (or if further work is required in respect of the Goods pursuant to Condition 12.5 at any time after APL notifies the Customer that the Goods are ready).

6.3 Delivery is completed on completion of unloading of the Goods at the Delivery Location

6.4 Time for delivery shall not be of the essence of the Contract. Any dates quoted or forecasts provided are estimates only and APL does not undertake and shall in no event be liable to deliver the Goods within any specified period should any delay occur. APL shall not be liable for any delay in delivery of the Goods that is caused by a force majeure event (as more specifically detailed in Condition 10.1) or which is caused by any default by the Customer of any of its obligations under the Contract or any change or variation requested by the Customer to the specification of the Goods following the date of the Contract.

6.5 If the Customer fails to accept delivery of the Goods within fifteen days of the FAT (or if further work is required in respect of the Goods pursuant to Condition 12.5, in which case if the Customer fails to accept delivery within 15 days of APL notifying the Customer that the Goods are ready), then:

a) delivery of the Goods shall be deemed to have been completed at 9.00am on the fifteenth day after the FAT (or where Condition 12.5 applies, the fifteenth day after the day on which APL notified the Customer that the Goods were ready); and

b) APL shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).

6.6 APL may deliver by instalments. Any 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.

6.7 The method of packaging is at APL's sole discretion.

7 GUARANTEE

7.1 Save and subject as mentioned in these Conditions or elsewhere in the Contract APL warrants that for a period of 12 months from the date of delivery the Goods (save for those parts or components within the Goods which are manufactured by a third party, in which case Condition 7.4 shall apply to such parts or components) shall:

a) conform in all material respects with the specification and/or drawings set out or contained in the Order or if there is no such specification, with their description;

b) to be free from material defects in design, material and workmanship; and

c) be reasonably fit and suitable for a purpose of the Customer made known by the Customer to APL by written notice prior to the entering of the Contract and which purpose shall be stated in the order.

7.2 Subject to Condition 7.3, if:

a) the Customer immediately on discovering that the Goods do not comply with the warranty in Condition 7.1, gives written notice to APL;

b) APL is given reasonable opportunity of examining the Goods to enable the complaint to be investigated;

c) the Customer (if asked to do so by APL) returns such Goods to APL's place of business at Customer's cost (such costs to be refunded in the event that the Customer's complaint is upheld) along with all material to be handled, power and labour, as APL shall require for the purpose of examining such Goods.

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

a) performance in full of the Customer's obligations under the Contract, including but not limited to, Condition 2.1 and as to payment of the Price and any additional amount that may become due;

b) the Customer not making any further use of the Goods after having given notice in accordance with 7.2;

c) the defects not being due to fair wear and tear, wilful damage, negligence or abnormal storage or working conditions or the use of injurious substances;

d) full compliance by the Customer with APL's instructions and/or recommendations (whether orally or in writing) for the storage, commissioning, installation, use and maintenance of the Goods or (if there were none) good trade practice regarding the same;

e) the defect not arising as a result of APL following any drawing, design or specification provided by the Customer;

f) (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 3.1, free from "burr" or "flash" and unadulterated with dirt, grease or other debris;

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

7.4 The warranty in Condition 7.1 shall not apply to parts or components of the Goods not manufactured by APL. APL shall furnish details of any warranties or guarantees as are given by the manufacturer to APL (if any), to the Customer and, where possible, APL will use its reasonable endeavours to procure that the benefit of such warranties or guarantees are available to the Customer.

7.5 Except as provided in this Condition 7, APL shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Condition 7.1

7.6 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

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

8 RISK AND PASSING OF TITLE

8.1 The risk in the Goods shall pass to the Customer on completion of delivery.

8.2 Title to the Goods shall not pass to the Customer until the earlier of:

- a) APL receives payment in full (in cleared funds) for the Goods and any other Goods that APL has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
- b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in Condition

8.3 Until title to the Goods has passed to the Customer, the Customer shall:

- a) store the Goods separately from all other Goods held by the Customer so that they remain readily identifiable as APL's property;
- b) not remove, deface or obscure any identifiable mark or packaging on or relating to the Goods;
- c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- d) notify APL immediately if it becomes subject to any of the events listed in Condition 13.1
- e) give APL such information relating to the Goods as APL may require from time to time.

8.4 Subject to Condition 8.5, the Customer may resell the Goods in the ordinary course of its business (but not otherwise) before APL receives payment for the Goods. However if the Customer resells the Goods before that time:

- a) it does so as principal and not as APL's agent; and
- b) title to the Goods shall pass from APL to the Customer immediately before the time at which resale by the Customer occurs.

8.5 If before title to the Goods passes to the Customer, the Customer becomes subject to any of the events listed in Condition 13.1 then, without limiting any other right or remedy APL may have:

- a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately;
- b) APL may at any time:
 - i) require the Customer to deliver up all the Goods in its possession that have not been resold or irrevocably incorporated into another product; and
 - ii) if the Customer fails to do so promptly, enter any premises of the Customer or any third party where the Goods are stored in order to recover them.

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, control and software development shall be and remain APL's property.

10 FORCE MAJEURE AND DEFAULT BY CUSTOMER

If performance by APL of the contract or any part thereof shall be hindered, prevented or delayed by any cause whatsoever beyond APL's control including but not limited to by Act of God, war, armed hostilities, fire, flood, drought, subsidence, accident, strike, lockout, combinations or workmen, epidemics, sabotage, civil commotion, any act of omission of, or any control, prohibition or restriction imposed by the Government (local or National) or defective or delayed delivery by any Supplier of APL of any material, part or component, APL shall not be in breach of the Contract and shall not be liable for delay in performing, or failure to perform, any of its obligations under the Contract. If the period of non-performance continues for six months, the Customer may terminate the Contract by giving two weeks' notice to APL.

11 PAYMENT AND INTEREST

11.1 APL shall invoice the Customer for the Goods. 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 pursuant to the SAT Test or 12 weeks from dispatch of the Goods from APL

11.2 The Customer shall pay each invoice in full in cleared funds in accordance with the payment terms set out in the quotation or acknowledgement. Payment shall be made to the bank account nominated in writing by APL. Time of payment is of the essence.

11.3 If payment is not made when due under the Contract (in addition and without prejudice to APL's other rights and remedies hereunder) the Customer shall pay APL interest on the overdue amount at a rate of 8% per annum over the Bank of England base rate. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgement. The Customer shall pay the interest together with the overdue amount.

11.4 In the event that the Customer fails to make the instalment payment after the FAT in accordance with the Contract or to arrange shipment of the Goods within 15 days of the FAT then APL reserves the right to charge demurrage at a rate of 2% of the Price for every week or part thereof that the Goods remain unpaid for or not shipped.

11.5 The Customer shall pay all amounts under the Contract in full and without set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).

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 FAT's the Goods shall be found not to comply with the Contract in any material 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 FAT's (or if Condition 12.5 applies, upon completion of such further work) APL shall deliver the Goods in accordance with the Contract.

13 TERMINATION

13.1 Without limiting its other rights and remedies, APL may terminate this Contract with immediate effect by giving written notice to the Customer if:

- a) the Customer commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within 14 days of the Customer being notified in writing to do so;
- b) The Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed over any of its assets or ceasing to carry on business;
- c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- d) The Customer's financial position deteriorates to such an extent that in APL's opinion The Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.2 Without limiting its other rights and remedies, APL may suspend the provision of the Goods under the Contract or any other contract between the Customer and APL if the Customer becomes subject to any of the events in Condition 13.1a) to 13.1d), or APL reasonably believes that the Customer is about to be subject to them, or if the Customer fails to pay any amount due under this contract on the due date for payment..

13.3 Without limiting its other rights or remedies, APL may terminate the Contract with immediate effect by giving notice in writing to the Customer if the Customer fails to pay any amount due under Contract on the due date for payment.

13.4 On termination of the Contract for any reason the Customer shall:

- a) immediately pay to APL all of APL's outstanding invoices and interest; and
- b) in respect of costs incurred or which APL has committed to (including for the avoidance of doubt any labour costs) but for which no invoice has been submitted, APL may submit an invoice which shall be payable by the Customer immediately on receipt **OR** APL may submit an invoice for the balance of the price which shall be payable by the Customer immediately on receipt.

13.5 Termination of the Contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the time of termination.

13.6 Any provision of this Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

14 LIMIT OF LIABILITY

14.1 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.

14.2 Subject to Condition 14.1:

- 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 indirect or consequential loss arising in connection with the Contract;
- b) APL's total liability to the Customer in respect of all losses arising under or in connection with the Contract, whether in contract, tort (excluding negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

14.3 APL shall not be responsible for any damage or any claim or loss caused 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.

15 GENERAL

15.1 **Assignment and other dealings**

- a) may at any time assign, mortgage, charge, subcontract or deal in any manner with all or any of its rights or obligations under the Contract.
- b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of APL.

15.2 **Confidentiality**

- a) The Customer undertakes that it shall not at any time disclose to any person any confidential information concerning the business affairs, customers, clients or suppliers of APL or of any member of the group to which APL Belongs, except as permitted by Condition 15.2b).
- b) The Customer may disclose APL's confidential information:
 - i) to its employees, officers, representatives or advisors who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses APL's Confidential information comply with this Condition 15.2; and
 - ii) as may be required by the court of competent jurisdiction or for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

15.3 **Entire Agreement**

- a) This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

15.4 **Variation**

No variation of this Contract shall be effective unless it is in writing and signed by a Director of each of the parties (or their authorised representatives).

15.5 **Waiver**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.6 **Severance.** If any provision or part-provision of the Contract becomes invalid, illegal or unenforceable it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of the Contract.

15.7 **Notices**

a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition and shall be delivered personally, sent by pre-paid first class post or other next day delivery service, commercial courier, or email.

b) A notice or other communication shall be deemed to have been received; if delivered personally, when left at the address referred to in Condition 15.7a) if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by email, one business day after transmission.

c) The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

15.8 **Third party rights** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms

15.9 **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

15.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.