

AR Engineering Industries Ltd Terms of Business

1. Interpretation

1.1 In these Terms:

"Buyer" means the person who accepts the Seller's written quotation for the sale of the Goods or whose written order for the Goods is accepted by the Seller;  
"Goods" means the goods (including any instalment of the goods or any parts for them) which the Seller is to supply in accordance with these Terms;  
"Seller" means AR Engineering Industries Ltd;  
"Contract" means the contract for the sale and purchase of the Goods;  
"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;  
"Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller.

2. Basis of the sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Seller's written quotation (if accepted by the Buyer), or the Buyer's written order (if accepted by the Seller), subject in either case to these Terms, which shall govern the Contract to the exclusion of any other terms 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 Seller.  
2.3 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.  
2.4 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

3. Orders and specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in writing by the Seller's authorised representative.  
3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.  
3.3 The quantity, quality and description of the Goods and any specification for them shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).  
3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller 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 Seller's use of the Buyer's specification.  
3.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U. requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.  
3.6 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller 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 Seller as a result of cancellation.

4. Price of the goods

4.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of delivery or deemed delivery. Where the Goods are supplied for export from the United Kingdom, the Seller's published export price list shall apply. 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 Seller without giving notice to the Buyer.  
4.2 The Seller reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.  
4.3 The price is exclusive of any applicable value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which the Buyer shall pay in addition when it is due to pay for the Goods.  
4.4 The Seller requires the return of the pallets unless the parties otherwise agree. The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

5. Terms of payment

5.1 The Buyer shall pay to the Seller the price for the Goods as shown in the Seller's invoice and in accordance with payment terms of 30 days from the invoicing date, unless any other payment schedule has been specified by the Seller. All payments shall be made in cleared funds to such bank accounts as the Seller may specify.  
5.2 The Seller shall be entitled to recover the price of the Goods, 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 If the Buyer fails to make any payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may:  
5.3.1 cancel the contract or suspend any further deliveries to the Buyer;  
5.3.2 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 Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and  
5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 3% per annum above Lloyds TSB base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest). The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest Act 1998).

6. Delivery

6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.  
6.2 Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Seller in writing. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.  
6.3 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 5% more or 5% less than the quantity ordered with appropriate price adjustment, and the quantity so delivered shall be deemed to be the quantity ordered.  
6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms 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.  
6.5 If the Seller fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller'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.  
6.6 If the Buyer fails to take delivery of the Goods or fails to give the Seller 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 Seller's fault) then, without limiting any other right or remedy available to the Seller, the Seller may:  
6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or  
6.6.2 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.

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 Seller's premises, at the time when the Seller 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 Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.  
7.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.  
7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Goods in the ordinary course of its business.  
7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller may at any time require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.  
7.5 The Buyer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

8. Warranties and liability

8.1 Subject to the following provisions, the Seller 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.  
8.2 The above warranty is given by the Seller subject to the following conditions:  
8.2.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;  
8.2.2 the Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;  
8.2.3 the Seller 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;  
8.2.4 the above warranty does not extend to parts, materials or equipment not manufactured by the Seller, 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 Seller.  
8.3 The Seller warrants that (subject to the other provisions of these conditions) on delivery, and for a period of 12 months from the date of delivery the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose made known to the Seller in writing at the time of placing the order will correspond with any relevant specification or sample, and will comply with all statutory and E.U. requirements and regulations relating to the Sale of the Goods.  
8.4 The Seller shall not be liable for a breach of any of the warranties in condition 8.1 and 8.3 unless:  
8.4.1 the Buyer gives written notice to the Seller within seven days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure; and  
8.4.2 the Seller is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the cost of the Seller for examination to take place; and  
8.4.3 if delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller 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.  
8.5 Subject to conditions 8.1 and 8.4 where a valid claim in respect of any of the Goods which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Terms, the Seller may replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), in which case the Seller shall have no further liability to the Buyer.  
9. Limitation of Liability  
9.1 Subject to condition 6 and condition 8, the following provisions set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:  
9.1.1 any breach of these Terms;  
9.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and  
9.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.  
9.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.  
9.3 Nothing in these Terms excludes or limits the liability of the Seller:  
9.3.1 for death or personal injury caused by the Seller's negligence; or  
9.3.2 under section 2(3), Consumer Protection Act 1987; or  
9.3.3 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or  
9.3.4 for fraud or fraudulent misrepresentation.  
9.4 Subject to condition 9.2 and condition 9.3:  
9.4.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and  
9.4.2 the Seller shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.  
10. Force Majeure  
10.1 The Seller 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 Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control:  
10.1.1 act of God, explosion, flood, tempest, fire or accident;  
10.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;  
10.1.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;  
10.1.4 import or export regulations or embargoes;  
10.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);  
10.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;  
10.1.7 power failure or breakdown in machinery.  
11. Insolvency of Buyer  
11.1 This condition 11 applies if:  
11.1.1 the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986); or  
11.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or  
11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or  
11.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.  
11.2 If this condition applies then, without limiting any other right or remedy available to the Seller, the Seller may 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. Export terms  
12.1 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, but if there is any conflict between the provisions of INCOTERMS and these Terms, the latter shall prevail.  
12.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this condition 12 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provision of these Terms.  
12.3 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 on them.  
12.4 Unless otherwise agreed in writing between the Buyer and the Seller, the Goods shall be delivered FOB the air or sea part of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.  
12.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller 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.  
12.6 Unless otherwise required by the Seller, payment of all amounts due to the Seller shall be made by an irrevocable letter of credit, in a form acceptable to the Seller, to be opened by the Buyer in favour of the Seller and confirmed by a bank in the United Kingdom acceptable to the Seller within 14 days after the Contract is concluded.  
13. General  
13.1 A notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business.  
13.2 No waiver by the Seller 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 the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.  
13.4 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.  
13.5 The Contract shall be governed by the laws of England, and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.

AR Engineering Industries Ltd

Unit 11 Bybow Farm, Orchard Way, Wilmington, Kent DA2 7ER  
T: 01322 286 253 F: 01322 319 122  
E: info@AREngineeringindustries.co.uk  
W: www.AREngineeringindustries.co.uk

Registered Office: 3 Enterprise House, 8 Essex Road, Dartford, Kent, DA1 2AU

Company No.: 7031300 VAT No.: 980 8614 88