

Terms and Conditions of Sale

1. Conditions of Sale

- a. All quotations and orders received, including those given verbally, on an email, fax or written are subject to the following Conditions of Sale.
- b. In these Conditions:
- c. "The Company" means ACUVENT Engineering Group Ltd.
- d. "The Contract" means the acceptance by a Customer of a quotation given by the Company to a Customer.
- e. "The Customer" means any person, firm or corporation placing an order with the Company for the supply of Goods or Services.
- f. "The Goods" means the Goods to be supplied to the Customer by the Company under the Contract.
- g. "The Service" means the Service to be supplied to the Customer by the Company under the Contract.

2. GENERAL

- a. Quotations by the Company, unless otherwise stated in them, shall be open for acceptance within thirty days of the date of the quotation.
- b. Each order or acceptance of a quotation by the Customer shall be deemed to be an offer by the Customer to the Company subject to these conditions.
- c. The acceptance by the Company of all orders placed by the Customer is subject to these Conditions to the exclusion of all other terms and conditions (including any terms and conditions the Customer purports to apply under any Purchase Order, confirmation of order, specification or any other document) and no variation of or addition to these condition may be made unless confirmed in writing by the Company.
- d. The Customer acknowledges that it has not relied on any statement, promise, representation made or given on behalf of the Company which is not set out in the Contract.
- e. The employees or agents of the Company are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of Contract, any such representations which are not so confirmed.

3. PRICES

- a. The price shall be the Company's quoted price and shall be payable in pounds sterling. The price is exclusive of VAT which shall in addition be due at the date of the Company's Invoice.

- b. The Company shall have the right to adjust its prices for any increase in materials, parts, labour, transport, changes to work, all costs or charges incurred in relation to packaging, loading, unloading, carriage or insurance, delivery schedules or quantities or any other costs of any kind arising for any reason after the date of the Contract which shall be paid by the Customer.
- c. C Price changes shall take effect on the date on which the Company notifies the Customer in writing of the change.

4. TERMS OF PAYMENT.

- a. All invoices must be paid when due in accordance with clause 2(A). When more than one consignment is made against a Customer's Order, each consignment will be invoiced at the date on which notification is provided by the Company to the Customer that the Goods are ready for collection. Each month invoices will be treated as a separate account and be payable accordingly. All payments shall quote the Company's Invoice number and other reference numbers.
- b. Time for payment shall be of the essence and no payment shall deem to have been received until the Company has received cleared funds.
- c. An additional storage charge, at the Companies discretion, may be charged for storage of the Goods subject to the Contract at the rate of £5 per square foot per month after fourteen days from the date of delivery if a Customer has failed to take delivery from the place of business of the Company.
- d. In the event that the Customer fails to make payment for the Goods on the due date or otherwise commits a breach of these conditions, the Company may (in its absolute discretion and without prejudice to any other rights which the Company may have):
 - i. Suspend all future deliveries to the Customer under the Contract without liability upon the part of the Company.
 - ii. Not provide any further Goods.
 - iii. Require payment in advance for any future and completed but unpaid Goods.
 - iv. The Customer shall be liable to pay interest to the Company on such sum from the due date for payment at an annual rate of 5% above the base lending rate from time to time of BANK, accruing on a daily basis until payment is made, whether before or after any judgement. The Company reserves the right to claim interest under Late Payment of Commercial Debts (Interest) Act 1998.
 - v. Reserve the right to terminate the Contract.
 - vi. Reserve the right to dispose of the goods and seek full recovery costs incurred but not limited to legal fees and court costs.
 - vii. The Customer further accepts that if payment is not made on or before the payment due date, the Company shall be entitled to

charge an administration fee of £250 in addition to the agreed charges.

- e. All payments payable to the company under the Contract shall become due immediately on its termination despite any other provision.

5. DELIVERY

- a. Time is not of the essence for dates of deliveries.
- b. Any timescales given by the Company are commercial estimates only and are not contractual obligations of the Company. The Company will make every endeavour to deliver or perform by the time or date given but will not accept cancellation or any liability whatsoever for failure or delay in despatch.
- c. Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place from the Company's place of business.
- d. Delivery is deemed to be effected:
 - i. If the Customer is to collect the goods upon notification they are ready for collection: or
 - ii. In any other case as soon as the Goods are despatched from the Company's place of business.
- e. The Customer shall provide at the delivery point at which the goods are to be delivered by the Company and at its expense, adequate and appropriate equipment and manual labour for unloading the goods.
- f. Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence).
- g. Delivery may be suspended pending any contingency beyond the Company's control (such as fire, accident, war, strike, breakdown, lockout, government priority order, transport, difficulty or delay, force majeure, shortage of labour, fuel or raw materials or otherwise) thus preventing or delaying the manufacture or despatch of Goods and all Contracts are accepted on the condition that the Company shall be exempt from all liabilities arising from any such occurrence.

6. NON-DELIVERY

- a. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

7. STORAGE

- a. If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licenses or authorisations;
 - i. Risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence).
 - ii. The Goods shall be deemed to have been delivered; and
 - iii. The Company may store the Goods until delivery and charge the Customer in accordance with clause 3C; and
 - iv. If the Customer has not taken delivery of the Goods after sixty days from the date of delivery the Company may sell the Goods at the best price readily obtainable and charge the Customer for any shortfall below the price under contract.
 - v. The Company reserves the right to charge storage, at the rate of £5 per sq. foot per month, for free issue material which has not been worked within the agreed lead-time due to failure of the Customer to supply adequate instruction.

8. DELIVERY BY INSTALLMENTS

- a. The failure of the Customer to pay for any one or more of the instalments of the Goods on the due date shall entitle the Company without notice to suspend delivery of the Goods pending payment by the Customer and/or to treat the Contract as repudiated by the Customer.
- b. The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced.
- c. Each instalment shall be a separate contract and no cancellation or termination of any one contract relating to an instalment shall entitle the Customer to repudiate any other contract or instalment.

RISK AND PROPERTY

- a. The Goods are at the risk of the Customer from the time of delivery.
- b. Notwithstanding delivery and the passing of risk in the Goods or any other provision of these conditions, the property and ownership in the Goods shall not pass to the Customer until the amount due under the invoice for them (including interests and costs) has been paid in full and any other sums owed to the Company the Customer on any account whether delivery has been made or not.
- c. Until ownership of the Goods has passed to the Customer shall:
 - i. Hold the Goods on a fiduciary basis as the Company's Bailee;
 - ii. Store the Goods (at no cost to the Company) separately from all other goods of the Company or any third party in such a way that they remain readily identifiable as the Company's property and store and maintain the Goods in a satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the satisfaction of the Company. On request

the Customer will produce the policy of insurance to the Company.

- iii. Ensure that if the Goods are to become affixed to any land,¹⁰ building, fixture, vehicle or any other item they shall be capable of being removed without material injury to such land, building, fixture, vehicle or any other item and to take all necessary steps to prevent title to the Goods from passing to the landlord (if any) of such land or building or owner of any such fixture, vehicle or any other item. The Customer warrants to repair and make good any damage caused by the affixation of the Goods to or their removal from any land, building, fixture, vehicle, or any other items and to indemnify the Company against all loss, damage or liability it may incur or sustain as a result of such affixation or removal.
- iv. Not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods.
- d. The Company may at any time before title passes and without liability to the Customer;
 - i. Repossess and dismantle or use or sell all or any of the Goods and by doing so terminate the Customer's right to use, sell, or otherwise deal in them and
 - ii. For that purpose the Customer at no charge grants the¹¹ Company, its agents and employees an irrevocable license to enter any premises where the Goods may be stored.
- e. Until title passes, the entire proceeds of the sale of the Goods shall be held in trust for the Company and shall be held in a separate designated account and not mingled with other monies or paid into any overdrawn bank account and shall be at all times identified as the Company's money.
- f. The Company may maintain an action for the price of any Goods notwithstanding that the title in them has not passed to the Customer.
- g. The Customer shall not 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 Customer does so all monies owing by the Customer to the Company to the Customer shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- h. Where the Company is unable to determine whether any goods are the Goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all Goods of the kind sold by the Company to the Customer under the Contract.
- i. Where the Company is unable to determine whether any goods are the Goods in respect of which the Customers right to possession has

terminated, the Company may recover any similar goods to those Goods provide under the Contract.

DEFECTS IN THE GOODS

- a. Following delivery, the Company's liability is limited to making good any defects in Goods manufactured arising solely as a result of defects in materials supplied by the Company or in its workmanship or at the Company's absolute discretion refund the sums actually paid by the Customer under the Contract and then only if notice in writing of any such defects is served on the Company by the Customer within seven days of delivery and payment in full having been made.
- b. If required by the Company, the Goods claimed to be defective are returned to the Company at the expense of the Customer.
- c. No claim against the Company shall be entertained for any defect arising from any design or specification provided or made by the Customer or if any adjustments, alterations or other work have been done to the Goods by any person other than the Company.
- d. Where the Goods have not been stored in a satisfactory condition as set out in 8C(ii) then the Company shall not be obliged to make good any defects in the Goods or offer a refund as set out in clause 9A at any time before or after payment has been made by the Customer to the Company.

LIABILITY

- a. Except in the case of death or personal injury caused by the Company's negligence, the Company's liability under or in connection with the Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever, shall not exceed the sums paid by the Customer under the Contract to the Company.
- b. The Company shall not be liable to the Customer in contract, tort, negligence, breach of statutory duty nor otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the Customer of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill.
- c. The Customer shall indemnify and hold harmless the Company from and against all Claims and Losses arising from loss, damage, liability, injury to the Company employees and third parties, infringement of third party intellectual property, or third party losses by reason of or arising out of any information supplied to the Customer by the Company, its employees or suppliers, or supplied to the Company by the Customer within or without the scope of this Agreement. "Claims" shall mean all demands, claims, proceedings, penalties, fines and liability (whether criminal or civil, in Contract, tort or otherwise); and "Losses" shall mean all losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever.

- d. The Company and Customer acknowledge that in entering into the Contract, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in the Contract, and any conditions, warranties or any other terms implied by statute or common law are excluded from the Contract to the fullest extent permitted by law.
- e. The Company shall not be liable for the acts or omissions of any third parties to the Contract.
- f. No person who is not a party to the Contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Contract.

12. FREE ISSUE MATERIALS

- a. Although every care is taken in handling Customers free issue materials (being all free issue materials of third parties delivered to the Company by or on behalf of the Customer), the Company is not responsible for the behaviour of the materials during bending. If the material collapses, distorts, fractures or breaks during bending the Company shall not accept any claims whatsoever for its loss and for the avoidance of doubt the Customer shall remain responsible for payment. Free issue materials are handled and bent entirely at the Customers own risk.
- b. The Customer acknowledges and agrees that when supplying the free issue materials to the Company they shall:
 - i. Cooperate with the Company as the Company requires.
 - ii. Provide to the Company such information and documentation as the Company reasonably requires.
 - iii. Instruct the Customer’s staff and agents to cooperate and assist the Company:
 - iv. Provide the Company, in a timely manner, such free issue materials, as the Company may require.
 - v. Ensure that the free issue materials supplies are safe to bend, without any risks to health or safety; and
 - vi. Notify the Company in writing of any special precautions which need to be taken.
- c. The Company may charge the Customer for any additional reasonable costs and expenses incurred by the Company caused by the Customer’s instructions, failure to provide instructions, or failure to comply the above clause.
- d. If the Company’s performance of its obligations under the contract is prevented or delayed by any act or omission of the Customer, its agents, sub-contractors, consultants or employees, the Company shall not be liable for any costs, charges, or losses sustained or incurred by the Customer arising directly or indirectly from such prevention or delay.

13. SUITABILITY OF GOODS

- a. The Customer must satisfy themselves that the Goods they require are suitable for the purpose for which they are intended.

MATERIAL CERTIFICATION

- a. The Company has no metallurgical facilities and is reliant on material suppliers supplying materials to correct specification. Any claims for non-specification materials represents no negligence by the Company and will be passed on to the material supplier.

TOLERANCES

- a. All items will be supplied to commercial tolerances associated with the fabrication and construction industry.
- b. The Customer must state at the enquiry stage, the required tolerances and request clarification of the Company’s tolerances before commencement of work.

16. CANCELLATION

- a. No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss as a result of cancellation, included payment in full for the Goods.
- b. For the avoidance of doubt payment shall be required in full unless the Company gives its written consent to cancelation.

17. GENERAL

- a. The company may sub-contract the performance of the Contract in whole or in part.
- b. The customer shall not, without the prior written consent of the Company, assign, transfer, charge, mortgage, sub-contract, declare a trust of or deal in any other manner with all or any of its rights or obligations under the contract.
- c. The Company may at its discretion suspend or terminate the supply of any Goods if the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other document with the Company or becomes insolvent, has an administrative receiver appointed of its business or is compulsorily or voluntarily wound up or the Company bona fide believes that any

of those events may occur and in the case of termination may forfeit any deposit paid.

- d. If the Goods are manufactured in accordance with any design or specification provided or made by the customer, the Customer shall compensate the Company in full on demand for all claims, expenses and liabilities of any nature in connection with them, including any claim, whether actual or alleged, that the design or specification infringes the rights of any third party.
- e. Except for any which is expressly agreed to be included in the Goods all tools, patterns, materials, drawings, specifications and other data provided by the Company shall remain its property and all technical information, patentable or un-patentable, copyright and registered designs arising from the execution of any orders shall become the property of the Company.
- f. The Customer may not withhold payment or other amount due to the Company by reason of any reason of set off or counter claim which the Customer may have or allege to have or for any reason whatever.
- g. The Company shall be entitled to a general lien on all Goods of the Customer in the Company's possession (including Goods of the Customer which have been paid for) for the unpaid price of all Goods sold to the Customer by the Company under this or any other Contract.
- h. No failure or delay by the Company in exercising any right, power or privilege under the Contract shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power or privilege. The rights and remedies provided in the Contract are cumulative and not exclusive of any rights and remedies provided by law.
- i. Either the Company or the Customer shall at the request and expense of the other or any of them execute and do any deeds and or other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.
- j. If any provision of the Contract is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Contract and rendered ineffective as far as possible without modifying the remaining provisions of this agreement and shall not in any way affect any other circumstances of or the validity or enforcement of the Contract.
- k. The Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Company and the Customer other than the contractual relationship expressly provided for in the Contract. The Company and the Customer shall not have, nor represent that it has, any authority to make any commitments on the other's behalf.

- l. The Contract may only be amended in writing signed by duly authorised representatives of the Company.

SCOTTISH LAW

These conditions and the Contract shall be subject to and construed in accordance with Scottish law.