

## 1. Interpretation

1.1. In these Terms:

<b>Affiliate</b>	any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;
<b>Customer</b>	means the person who accepts the Supplier's Written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Supplier;
<b>Contract control</b>	means the contract for the supply of the Goods and/or Services in accordance with these Terms; shall be as defined in section 1124 of the Corporation Tax Act 2010;
<b>Excluded Loss</b>	means any of the following: (a) loss of profit; (b) loss of anticipated profit; (c) loss of production; (d) loss of, product use; (e) loss of turnover; (f) loss of business opportunity; (g) loss of goodwill; in each case whether the same shall arise directly or indirectly, or any indirect, special or consequential loss or damage, costs, expense or claims for compensation whatsoever;
<b>Force Majeure Event</b>	means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors;
<b>Free Issue Materials</b>	means all materials, tools and equipment to be provided by the Customer to the Supplier (if any) as described in the order;
<b>Goods</b>	means the goods (including any instalment of the goods or any parts for them) which the Supplier is to supply in accordance with these Terms and which are described in the Supplier's sales quotation;
<b>Intellectual Property Rights</b>	means any patent, registered design, copyright, database right, design right, topography right, trade mark, service mark, application to register any of the aforementioned rights, trade secret, right in unpatented know-how, right of confidence any other intellectual or industrial property right of any nature whatsoever in any part of the world;
<b>Services</b>	means the services which the Supplier is to supply in accordance with these Terms and which are described in the order agreed between the Supplier and the Customer;
<b>Supplier Terms</b>	means BEL Engineering (UK) Limited registered in England and Wales under number 07970363; 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 Customer and the Supplier;
<b>Writing and any similar expression</b>	includes facsimile transmission and comparable means of communication and, unless expressly stated otherwise, electronic mail.

1.2. A reference in these Terms to a provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3. The headings in these Terms are for convenience only and shall not affect their interpretation.

## 2. Basis of the contract

- 2.1. The Supplier shall sell and the Customer shall purchase the Goods and/or Services in accordance with the Supplier's Written order acknowledgement subject 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 Customer.
- 2.2. No variation to these Terms shall be binding unless agreed in Writing between the authorised representatives of the Customer and the Supplier.
- 2.3. The Supplier's employees or agents are not authorised to make any representations concerning the Goods and/or Services unless confirmed by the Supplier in Writing. In entering into the Contract the Customer 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 advice or recommendation given by the Supplier or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Supplier is followed or acted upon entirely at the Customer's own risk, and accordingly the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.5. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.
- 2.6. All of these Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified.

## 3. Orders and specifications

- 3.1. No order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in Writing by the Supplier's authorised representative.
- 3.2. The Customer shall be responsible to the Supplier for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Supplier any necessary information relating to the Goods and/or Services within a sufficient time to enable the Supplier to perform the Contract in accordance with its terms.

## 4. Goods

- 4.1. The quantity, quality and description of the Goods and any specification for them shall be as set out in the engineering drawings and supporting information completed by the Customer and agreed by the Supplier in writing.
- 4.2. Where the Customer specifies in any specification the materials to be used by the Supplier in the manufacture of the Goods the Supplier shall presume that those materials that have been specified are suitable having regard to the intended use and service conditions of the Goods in question, and the Supplier shall have no liability to the Customer should the use of those materials have any adverse affect on the performance, functionality, durability or design of the Goods.

- 4.3. In the event that the Supplier shall propose the materials to be used in the manufacture of the Goods, and the Customer shall have failed to provide all information requested by the Supplier relating to the environmental conditions in which the Goods will be operated, then if the specification is agreed by the Customer and the Supplier shall proceed to manufacture the Goods using the materials that it has proposed then the Customer shall be deemed to have confirmed that the use of those materials is appropriate for the intended environmental conditions in which the Goods are intended to be operated, and that the use of the Goods in those conditions shall not result in the breach of any applicable law or regulation.
- 4.4. The Customer shall indemnify the Supplier and keep the Supplier indemnified from and against all costs, claims, demands, liabilities, expenses, damages or losses arising out of or in connection with the failure by the Supplier to provide adequate information regarding the environment in which it is intended to use the Goods, and from the manufacture of the Goods using materials specified by the Customer.
- 4.5. If the Goods are to be manufactured or any process is to be applied to the Goods by the Supplier in accordance with a specification submitted by the Customer, the Customer shall indemnify the Supplier against all loss, damages, costs and expenses awarded against or incurred by the Supplier in connection with, or paid or agreed to be paid by the Supplier in settlement of, any claim for infringement of any Intellectual Property Rights of any other person which results from the Supplier's use of the Customer's specification.
- 4.6. The Supplier 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 Supplier's specification, which do not materially affect their quality or performance.
- 4.7. No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in Writing of the Supplier and on terms that the Customer shall indemnify the Supplier 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 Supplier as a result of cancellation.
- 4.8. The Intellectual Property Rights in the Goods, unless otherwise agreed in Writing by the Supplier, belong to the Supplier. Any invention, discovery, or improvement, whether patentable or not, made by the Supplier, its employees or agents, in connection with the Contract, shall belong wholly and exclusively to the Supplier. The Supplier shall retain the Intellectual Property Rights in all documents, data, and other materials supplied or produced to the Customer in connection with the Contract, and it shall be a condition of such supply or productions that such documents, data and materials, and any part thereof shall not be communicated either directly or indirectly to any other person, firm or company without the Supplier's consent.

## **5. Delivery**

- 5.1. Delivery of the Goods shall be made by the Customer collecting the Goods at the Supplier's premises at any time after the Supplier has notified the Customer that the Goods are ready for collection or, if some other place for delivery is agreed by the Supplier, by the Supplier delivering the Goods to that place.
- 5.2. Any dates quoted for delivery of the Goods, are approximate only and the Supplier 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 Supplier in Writing. The Goods may be delivered by the Supplier in advance of the quoted delivery date on giving reasonable notice to the Customer.
- 5.3. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Supplier to deliver any one or more of the instalments in accordance with these Terms or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 5.4. If the Supplier fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the Supplier's reasonable control or the Customer's fault, and the Supplier is accordingly liable to the Customer, the Supplier's liability shall be limited to the excess (if any) of the cost to the Customer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 5.5. If the Customer fails to take delivery of the Goods or fails to give the Supplier adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Supplier's fault) then, without limiting any other right or remedy available to the Supplier, the Supplier may:
  - 5.5.1. store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; or
  - 5.5.2. sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

## **6. Risk and property**

- 6.1. Risk of damage to or loss of the Goods shall pass to the Customer:
  - 6.1.1. in the case of Goods to be delivered at the Supplier's premises, at the time when the Supplier notifies the Customer that the Goods are available for collection; or
  - 6.1.2. in the case of Goods to be delivered otherwise than at the Supplier's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods.
- 6.2. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, the property in the Goods shall not pass to the Customer until the Supplier 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 Supplier to the Customer for which payment is then due.
- 6.3. Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier's property, but the Customer may resell or use the Goods in the ordinary course of its business.
- 6.4. Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold or irrevocably incorporated into another product), the Supplier may at any time require the Customer to deliver up the Goods to the Supplier and, if the Customer fails to do so forthwith, enter on any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
- 6.5. The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Supplier, but if the Customer does so all moneys owing by the Customer to the Supplier shall (without limiting any other right or remedy of the Supplier) forthwith become due and payable.

## **7. Supply of Services**

- 7.1. The Supplier shall endeavour to meet any performance dates for the Services specified in the purchase order but any such dates shall be estimates only and the Supplier shall not be liable for any delay in the performance of the Services howsoever caused. Time shall not be of the essence for performance of the Services unless previously agreed by the Supplier in Writing.

- 7.2. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirements, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any event.
- 7.3. The Supplier may suspend or cease performance of the Contract, or any part of the Contract, or withhold any necessary documentation to be provided as part of the Contract, in the event that any sums owed to the Supplier or any of its Affiliates (in respect of any contract in place between the Supplier or any of its Affiliates and the Customer) are overdue.

## **8. Price of the Goods and Services**

- 8.1. Subject to the provisions of clause 8.2, the price of the Goods and Services shall be the Supplier's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which time they may be altered by the Supplier without giving notice to the Customer.
- 8.2. The Supplier reserves the right, by giving Written notice to the Customer at any time before delivery, to increase the price of the Goods and/or Services to reflect any increase in the cost to the Supplier which is due to any factor beyond the control of the Supplier (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 and/or Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier accurate or adequate information or instructions.
- 8.3. Except as otherwise stated in the Supplier's Written quotation and unless otherwise agreed in Writing between the Customer and the Supplier, all prices are given by the Supplier on an ex works basis, and where the Supplier agrees to deliver the Goods otherwise than at the Supplier's premises, the Customer shall be liable to pay the Supplier's charges for transport, packaging and insurance.
- 8.4. The price is exclusive of any applicable value added tax, which the Customer shall be additionally liable to pay to the Supplier.

## **9. Terms of payment**

- 9.1. Subject to any special terms agreed in Writing between the Customer and the Supplier, Supplier may invoice the Customer for the price of the Goods and Services on or at any time after the Supplier has notified the Customer that the Services have been completed and/or the Goods are ready for collection (provided that where Supplier agrees to deliver the Goods at a location other than the Supplier's premises the Supplier shall be entitled to invoice the Customer for the price at any time after the Supplier has tendered delivery of the Goods at that location).
- 9.2. The Customer shall pay the price of the Goods and/or the Services within 30 days of the date of the Supplier's invoice, unless otherwise agreed in Writing, and the Supplier shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will only be issued upon request.
- 9.3. The Supplier shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 9.4. If the Customer fails to make any payment on the due date then, without limiting any other right or remedy available to the Supplier, the Supplier may:
  - 9.4.1. cancel the Contract;
  - 9.4.2. suspend work in the Contract, and/or suspend any further deliveries to the Customer;
  - 9.4.3. appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Supplier) and/or Services as the Supplier may think fit (notwithstanding any purported appropriation by the Customer); and
  - 9.4.4. charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 6 per cent per annum above National Westminster Bank plc 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 Supplier reserves the right to claim interest under the Late Payment of Commercial Debt (Interest) Act 1998.

## **10. Free Issue Materials**

- 10.1. The Customer shall provide the Supplier with the Free Issue Materials.
- 10.2. The Customer warrants to the Supplier that the Free Issue Materials will be free from defects and suitable for their intended purpose.
- 10.3. The Supplier shall inspect the Free Issue Materials within a reasonable period following receipt from the Customer and shall notify the Customer as soon as reasonably practicable if there are any defects, deficiencies, shortages or damage in the Free Issue Materials. The Customer shall replace any such Free Issue Materials as soon as reasonably possible and the Supplier shall not be obliged to commence the Services until it is in receipt of complete and suitable Free Issue Materials. The Supplier shall not be liable for any failure or delay in the provision of the Services or the delivery of the Goods arising from any defect, deficiency, shortage or damage to the Free Issue Materials.
- 10.4. In the event that any defects or deficiencies in any Free Issue Materials were not reasonably apparent on inspection and are discovered by the Supplier during the performance of the Services, the Supplier shall cease all work and the Customer shall be liable to pay the Supplier for the work carried out to the time of such discovery.
- 10.5. Upon completion of the Services or earlier termination, the Supplier shall, if so requested by the Customer, return any surplus Free Issue Materials to the Customer.

## **11. Warranties and liability**

- 11.1. Subject to the following provisions the Supplier warrants that:
  - 11.1.1. 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 delivery; and
  - 11.1.2. the Services will be provided using reasonable care and skill.
- 11.2. The above warranties are given by the Supplier subject to the following conditions:
  - 11.2.1. the Supplier shall be under no liability in respect of any defect in the Goods and/or Services arising from any defect in any Free Issue Materials;
  - 11.2.2. the Supplier shall be under no liability in respect of any defect in the Goods and/or Services arising from any drawing, design or specification supplied by the Customer;

- 11.2.3. the Supplier 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 Supplier's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Supplier's approval;
- 11.2.4. the Supplier shall be under no liability under the above warranties (or any other warranty, condition or guarantee) if the total price for the Goods and/or Services has not been paid by the due date for payment;
- 11.2.5. the above warranties do not extend to parts, materials or equipment not manufactured by the Supplier, in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Supplier.
- 11.3. Subject as expressly provided in these Terms, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 11.4. A claim by the Customer which is based on any defect in the quality or condition of the Goods and/or Services or their failure to correspond with specification shall (whether or not delivery is refused by the Customer) be notified to the Supplier within 48 hours 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. If delivery is not refused, and the Customer does not notify the Supplier accordingly, the Customer shall not be entitled to reject the Goods and the Supplier shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods and/or Services had been delivered in accordance with the Contract.
- 11.5. Where a valid claim in respect of any of the Goods and/or Services which is based on a defect in the quality or condition of the Goods or their failure to meet specification is notified to the Supplier in accordance with these Terms, the Supplier may replace the Goods (or the part in question) and/or re-perform the Services free of charge or, at the Supplier's sole discretion, refund to the Customer the price of the Goods and/or Services (or a proportionate part of the price), in which case the Supplier shall have no further liability to the Customer.
- 11.6. Nothing in these Terms shall limit or exclude the liability of the Supplier for:
  - 11.6.1. death or personal injury caused by its negligence or the negligence of its employees, agents or subcontractors;
  - 11.6.2. fraud or fraudulent misrepresentation;
  - 11.6.3. breach of the terms implied by section 2 of the Sale of Goods and Services Act 1982; or
  - 11.6.4. breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- 11.7. Subject to the provisions of clause 11.6:
  - 11.7.1. the Supplier shall not be liable to the Customer in any circumstances whether in contract, tort (including negligence), breach of statutory duty or otherwise on the part of the Supplier for any Excluded Loss arising under or in connection with the Contract; and
  - 11.7.2. the entire liability of the Supplier arising under or in connection with the Contract whether in contract, tort (including negligence) breach of statutory duty or otherwise shall not exceed the price of the Goods and/or Services that are the subject of the claim in question, except as expressly provided in these Terms.

## **12. Indemnity**

- 12.1. The Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including legal costs) suffered or incurred by the Supplier arising out of or in connection with any claim that:
  - 12.1.1. the provision of the Services infringes; and/or
  - 12.1.2. the Goods infringe, or that their use or resale infringesthe Intellectual Property Rights of any third party, to the extent that such claim arises from the use of a drawing, design, instruction or specification supplied by the Customer.

## **13. Termination**

- 13.1. Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if:
  - 13.1.1. the Customer commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing of the breach;
  - 13.1.2. the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
  - 13.1.3. the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 13.1.4. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
  - 13.1.5. a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - 13.1.6. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
  - 13.1.7. a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
  - 13.1.8. a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
  - 13.1.9. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in 10.1.2 to 10.1.8 (inclusive); or
  - 13.1.10. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business.
- 13.2. Without limiting its other rights or remedies, the Supplier shall have the right to suspend all further deliveries of Goods and/or performance of the Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 13.1.2 to 13.1.9 inclusive, or the Supplier reasonably believes that the Customer is about to become subject to any of them and if the Goods have been delivered or the Services completed but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### **14. General**

##### 14.1. Force majeure

14.1.1. The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

14.1.2. If the Force Majeure Event prevents the Supplier from supplying any of the Goods for more than 5 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate the Contract immediately by giving written notice to the Customer

14.2. 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 or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. The service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution shall not be permitted by electronic mail.

14.3. No waiver by the Supplier of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

14.4. 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.

14.5. A person who is not a party to this Agreement has no right under the Contracts (Right of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

14.6. The Customer shall not be entitled to assign or otherwise transfer the Contract or any of its rights or obligations thereunder without the prior consent in writing of the Supplier.

#### **15. Governing law and jurisdiction**

15.1. This Contract shall be governed by and construed in all respects in accordance with the law of England and Wales.

15.2. The English courts shall have non-exclusive jurisdiction to settle any dispute, controversy or claim arising out of or relating to the Contract, including any question regarding its breach, existence, validity or termination or the legal relationships established by the Contract.