

CONDITIONS OF PURCHASE

1. DEFINITIONS

In these Conditions of Purchase (“the Conditions”):-

- 1.1 “the Company” means Pailton Engineering Limited whose registered office is at Phoenix House, Holbrook Lane, Coventry CV6 4AD.
- 1.2 “the Supplier” means the person, firm or company to whom this document is addressed.
- 1.3 “the Goods” means the goods or services (as applicable) to be purchased by the Company under the Contract in which these Conditions are incorporated (“the Contract”).
- 1.4 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being made under it. Words in the singular mean the plural and in the plural include the singular. Clause headings do not affect the interpretation of these Conditions.

2. APPLICATION OF CONDITIONS

- 2.1 These Conditions shall apply both to contracts for the purchase by the Company of goods and to contracts for the purchase by the Company of services, and shall be interpreted accordingly.
- 2.2 The Company will have no liability under any contract to purchase Goods except a contract which is made in accordance with the Company’s order form duly signed on behalf of the Company (“the Order”)
- 2.3 These Conditions are the only terms and conditions upon which the Company will procure the Goods from the Supplier. These Conditions shall supersede and override any terms or conditions of sale, business or delivery, or other terms on any printed form or other document which may have been or may be issued, provided or referred to by the Supplier or subject to which the Supplier purports to accept the Order, and such conditions shall have no effect whatsoever and be excluded except in so far as they confirm the terms of this Order. These Conditions do not affect the Company’s statutory or other legal rights.
- 2.4 The Order may be cancelled by the Company at any time if it is not unconditionally accepted by the Supplier within 7 days of its date.
- 2.5 No variation to the Order or these Conditions shall be binding unless confirmed in writing and duly signed on behalf of the Company.
- 2.6 Where the Order states that MOD defence conditions (DEFCONs) or other Government terms and conditions of procurement are applicable to the Contract, due to the Goods being required by the Company to meet MOD or other Government requirements, the Supplier and the Contract shall be subject to the DEFCONs or other terms and conditions (and any relevant specifications stated therein) stated in the Order, and in the event of any conflict between these Conditions or such DEFCONs or other terms and conditions, the latter shall prevail.

3. THE GOODS

- 3.1 The quantity, quality and description of the Goods to be supplied shall be as specified in the Order and/or in any applicable specification or drawing supplied by the Company to the Supplier or agreed in writing by the Company.
- 3.2 Quantities of Goods required by the Company, unless detailed on the face of the Order, will be confirmed in schedules issued from time to time and the Company will not be liable to pay for Goods delivered in excess of those requirements.
- 3.3 The Company's inspector or representative and any inspector or representative of the Company's customer or its agent or of any government department concerned shall be entitled on the Company's authority to inspect the Goods or work which are the subject matter of the Order, during manufacture, processing or storage, at any reasonable time at the Supplier's works or at the works of any of its sub-contractors, and the Supplier shall provide the Company and such other persons with all access and facilities reasonably required for such inspection and testing.
- 3.4 If as a result of inspection or testing the Company or its customer or any government department concerned is not satisfied that the Goods comply or will comply with the requirements of the Contract, the Company may notify the Supplier, the Supplier shall take such steps as are necessary to ensure compliance and the Company may in its discretion invoice the Customer for (and of so the Customer shall pay) an administration charge for the time spent on such inspection and testing, which administration charge shall cover any out of pocket costs incurred by the Company and a charge at the rate of £40 per hour for the time incurred in such work by the Company's personnel. Such inspection or testing shall be without prejudice to the Company's right to reject the Goods under the conditions of this Contract or terminate the Contract under Clause 10.2.
- 3.5 The Goods shall be packed and secured properly and in accordance with any specific instructions communicated by the Company.

4. PRICES AND PAYMENT

- 4.1 The prices shown in the Order are fixed and firm for the duration of the Contract except where agreed by the Company in writing and duly signed on behalf of the Company. Prices are exclusive of any applicable Value Added Tax, and unless otherwise agreed, inclusive of all charges for packaging, carriage, insurance and delivery.
- 4.2 The Supplier shall be entitled to invoice the Company on or at any time after delivery of the Goods and each invoice shall state clearly the Order number, quantity, Company part number and Supplier's name. Invoices not in accordance with these requirements will be rejected and returned to the Supplier.
- 4.3 Subject to Clause 4.2 above and unless otherwise agreed by the Company in writing, payment by the Company will be made in sterling, or other currency by arrangement, on or before 30 days after the end of the month in which the Goods were delivered.
- 4.4 Interest charges will not be accepted.

4.5 The Supplier shall:-

4.5.1 on the day of dispatch for each consignment send to the Company such advice(s) of despatch and invoice(s) as may be indicated on the Order;

4.5.2 send the Company a monthly statement of account quoting the invoice numbers applicable to each item.

If the Supplier fails to comply sub-clause 4.5.1 or 4.5.2 or with Clause 5.4, this may result in delay in payment but no prompt payment discount shall be forfeited by the Company on account of any such failure.

5. DELIVERY

5.1 The Goods shall be delivered to the place specified in this Order on the date or within the period stated in the Order. Time of delivery of the Goods is of the essence.

5.2 Where the date of delivery is to be specified after the placing of the Order, the Company shall give the Supplier reasonable notice of its delivery requirements in the form of a date or delivery schedules.

5.3 The Supplier shall furnish such information with respect to the timing of manufacture and delivery of the Goods as the Company may reasonably require and the Supplier shall give notice to the Company as soon as practicable if any aspect of manufacture or delivery is likely to be delayed.

5.4 The Supplier shall mark clearly the Company's Order number on the consignment package and any packing note, advice note, invoices, monthly statements and all other correspondence relating to the Order.

5.5 All Goods are to be delivered to the Company carriage paid to its premises or to such other address(es) as the Company may stipulate in writing. If goods are incorrectly delivered the Supplier shall be responsible for any additional expense incurred in delivering them to their correct destination.

5.6 Without prejudice to any right of the Company to cancel the Contract, Goods not dispatched in time to reach the Company by the dates specified in the Order shall be delivered at the Supplier's expense by such service as the Company instructs the Supplier to use.

5.7 Where this Contract applies to the purchase of services, all references in these Conditions to delivery of the Goods shall where the context admits mean the completion of supply of the relevant services.

6. RISK AND PROPERTY

6.1 Risk of damage to or loss of the Goods shall pass to the Company upon delivery.

6.2 The property in the Goods shall pass to the Company upon delivery, or on payment by the Company for the Goods if payment is made in full prior to delivery. Where property in Goods passes to the Company prior to delivery, the Supplier grants the Company, its agents and employees an irrevocable licence (which the Company may exercise in the event of the occurrence of any of the events listed in Clauses 10.2.1,

10.2.2 and 10.2.5 below) at any time to enter any premises where the Goods are or may be stored in order to recover them. The passing of property to the Company shall be without prejudice to any other rights and remedies of the Company including without limitation under Clause 8 below.

7. VARIATIONS

The Supplier shall not alter any of the Goods, except as directed in writing by the Company but the Company shall have the right from time to time during the execution of the Contract, by notice in writing to direct the Supplier, to add to or omit, or otherwise vary the Goods, and such event the Supplier shall carry out such variations and be bound by the same conditions, as far as applicable, as though the said variations were stated in the Contract. Where the Supplier receives any such direction from the Company which would occasion an amendment to the contract price the Supplier shall, with all possible speed, advise the Company in writing to that effect giving the amounts of any such amendment ascertained and determined consistent with the basis of pricing as that contained in the original Contract. If, in the opinion of the Supplier, any such direction is likely to prevent the Supplier from fulfilling any of his obligations under the Contract he shall so notify the Company and the Company shall decide as soon as practicable whether or not the same shall be carried out and shall confirm its instructions in writing and modify the said obligations to such an extent as may be justified. Until the Company so confirms its instructions they shall be deemed not to have been given.

8. WARRANTIES AND LIABILITIES

- 8.1 The Supplier warrants to the Company that for a period of 24 months from receipt of the Goods the Goods (a) shall comply (if a "PELMS" specification is stated in the Order) with the current version (as shown on the Company's web-site at the date of the Order) of the relevant "PELMS" specification for the particular Goods stated in the Order (b) shall comply with any other agreed contract, specification or description or any agreed sample or design in respect of the Goods, (c) shall otherwise be free from defects in design, material and workmanship and will be of satisfactory quality and fit for any purpose for which they are designed or any purpose which is specified by the Company or may reasonably be inferred from the Contract or dealings between the parties relating thereto, (d) shall, in the case of services, be supplied in accordance with the highest standards of skill, care and workmanship accepted in the relevant trade, and (e) comply with all national, local and other applicable laws and regulations and with all health and safety, labeling and other applicable regulations, relevant European and British Standards and best accepted industry practices.
- 8.2 Without prejudice to any other remedy of the Company, if Goods are not supplied in accordance with the Contract (whether due to a breach of any part of Clause 8.1 or otherwise), then the Company shall be entitled to reject the Goods within a reasonable time after delivery to the Company. All Goods so shall be notified by the Company to the Supplier in writing and unless the Supplier confirms within 10 days of such notification that the rejected Goods should be returned at his risk and expense, the Company shall be free to dispose of them. The making of payment by the Company shall not prejudice its right of rejection.
- 8.3 The Supplier will replace the rejected Goods free of charge and will in addition pay all reasonable costs, expenses and charges (including without limitation costs, expenses and charges in relation to overtime, inspection, transport, storage and/or

repair) incurred by the Company in rectifying any faults in the Goods.

- 8.4 The Company will raise a Debit Note on the Supplier to cover all rejected Goods and reserves the right without reference to the Supplier to return the rejected Goods and debit the Supplier with such expenses as may be incurred.
- 8.5 The Supplier shall on the Company's request use reasonable endeavours to assign to the Company the benefit of any warranty which the Supplier may have from sub-contract manufacturers of the Goods, any supplier of raw materials or components used in the Goods or any providers of the services in relation to the Goods.
- 8.6 The Supplier shall indemnify the Company and keep the Company indemnified in full:-
 - 8.6.1 against all liability, loss, damages, claims, proceedings, costs and expenses (including legal expenses) awarded against or suffered, incurred or paid by the Company as a result of or in connection with any claim that the Goods infringe or their use or resale infringes the patent, copyright, design right, trade mark or other intellectual property right of any other person.
 - 8.6.2 against all liability, loss, damages, claims, proceedings, costs and expenses (including legal expenses) (including without limitation physical damage to property, loss or injury to any person, financial losses, loss of profits and any claims or charges from the Company's customers) which may be suffered or incurred by the Company arising from (a) any Goods failing to comply with any part of Clause 8.1 above, (b) any Goods otherwise being defective or causing loss or damage under applicable law, (c) any late or incomplete delivery or performance or any other breach of the Contract by the Supplier, (d) any negligent act of the Supplier, its employees, agents or contractors or (e) cancellation of the Order or the Contract by the Company pursuant to Clause 10.2.
- 8.7 In the event of circumstances beyond the Company's reasonable control, including without limitation acts of God, governmental actions, war or national emergency, adverse weather conditions, acts of terrorism, protests, riot, civil commotion, fire, explosion, lock-outs, strikes or other labour disputes (whether or not relating to the Company's workforce) which may prevent or hinder the use of, or reduce the Company's requirement for, the Goods or work the subject matter of the Order, the Company shall not be liable to the Supplier or be in breach of this Contract by reason of such circumstances and the delivery or quantities of such Goods or the completion of such work and the payment therefore may be suspended, postponed or reduced at the Company's option until the circumstances or circumstance preventing or hindering the use of, or reduce the Company's requirement for, such Goods or work has ceased.

9. COMPANY'S PROPERTY, CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

- 9.1 All drawings, patterns, tooling, materials, specification or other items provided by the Company for the execution of this Contract remain the Company's property, shall be used by the Supplier solely for the purposes of completing the Contract and such drawings, patterns, tooling, materials, specification and other items shall be returned in good condition forthwith upon the Company's request.

- 9.2 Drawings, specifications or other data supplied by the Company must in any event be treated as confidential and must not be either shown to or supplied to any third party without the Company's prior written permission. It is a condition of the Order that the Supplier undertakes not to supply to any third party any Goods in accordance with such drawings or specifications or otherwise of the Company's design, and to refer to the Company any enquiry for the same.
- 9.3 All information in the Order and the subject matter thereof shall be treated as confidential and shall not be disclosed by the Supplier or any subcontractor of the Supplier to any third party or used by the Supplier or any such sub-contractor for advertisement, display or publication without the Company's prior written consent.
- 9.4 Any goods, materials, patterns, tooling, drawings or other items which the Company provides to the Supplier are to be insured by the Supplier in the full value thereof against fire or any other damage occurring or against theft while in the custody of the Supplier. The Supplier must, if requested by the Company, provide proof of such insurance policy.
- 9.5 The Supplier shall allow representatives of the Company to enter its premises during normal working hours or at such other reasonable times provided notice has been given by the Company, for the purpose of identifying and if the Company wishes removing the Company's property. Such property shall include materials, patterns, tooling, gauging and any other equipment.
- 9.6 Ownership of any patent, design, copyright or other similar industrial or intellectual property right belonging to the Company and used in the design or manufacture of the Goods shall remain the property of the Company and the Supplier shall not use the same for any purpose other than the supply of the Goods to the Company.

10. TERMINATION

- 10.1 The Company shall be entitled to terminate the Order and the Contract in respect of all or any part of the Goods by giving notice to the Supplier at any time, in which event the Company's sole liability shall be the cost of work in progress calculated in accordance with the then current delivery schedules but not exceeding three months in total less the value of all materials retained by the Supplier. The Company shall not be liable for any other loss or damage, including without limitation loss of profits or any indirect or consequential loss whatsoever.
- 10.2 The Company shall without prejudice to any other rights be entitled to terminate the Order and the Contract without liability to the Supplier by giving notice to the Supplier at any time:-
 - 10.2.1 if the Supplier convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any

proceedings are commenced relating to the insolvency or possible insolvency of the Supplier, or if the Supplier suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against him/it, or fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Supplier, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Supplier ceases to trade;

10.2.2 if any Goods to be supplied are not received by the Company or (in the case of services) the work to be carried out is not completed by the date specified in the Contract;

10.2.3 if any Goods supplied or (in the case of services) the work to be carried out fails to comply with any part of Clause 8.1,

10.2.4 if as a result of inspection or testing referred to in Clause 3.3 the Company or its customer or any government department concerned is not satisfied that the Goods will comply with the requirements of the Contract, or

10.2.5 if the Company is in breach of a material provision of the Contract.

10.3 In the event of termination of the Contract by the Company pursuant to Clause 10.1, 10.2 or 8.7, the Company shall be entitled to enter any premises of the Supplier and take possession of any items or materials described in Clause 9 or of any Goods title to which has passed to the Company prior to delivery pursuant to Clause 6.2.

11. GENERAL

11.1 This Contract is personal to the Supplier and the Supplier shall not assign or transfer to any other person any or all of its rights or subcontract any or all of its obligations under the Contract, without the consent of the Company.

11.2 Any indulgence, forbearance or other concession by the Company to the Supplier shall not in any way constitute a waiver or otherwise prejudice the Company's rights under the Contract.

11.3 Notices relating to the Goods or the Contract shall be in writing and may be delivered by hand or sent by prepaid mail or registered mail or facsimile to the Company or the Supplier (as the case may be) at its registered office or its principal place of business.

11.4 The Contract shall be governed by and construed and performed in accordance with the law of England. The Supplier agrees, for the Company's exclusive benefit, that the English courts shall have sole jurisdiction to hear all claims or proceedings connected with the Goods or the Contract. The Company may nevertheless bring claims in any other courts of competent jurisdiction.