

CONDITIONS OF SALE

1. INTERPRETATION

1.1 In these conditions the following words have the following meanings:

Company: Turbo Systems Limited;

Contract: any contract between the Company and the Customer for the sale and purchase of the Goods, incorporating these conditions;

Customer: the person(s), firm or company who purchases the Goods from the Company;

Delivery Point: the place where delivery of the Goods is to take place under condition 4.1;

Goods: any Goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them);

Services: any design or other services to be provided by the Company pursuant to the Contract whether in relation to the supply of Goods or otherwise and where the Contract is for or includes work or work and materials or the supply of labour.

1.2 In these conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these conditions headings will not affect the construction of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract will be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by a Director of the Company. Nothing in this condition will exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order for Goods and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to purchase Goods and/or Services subject to these conditions.

2.5 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company.

2.6 The Customer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.7 Any quotation is given on the basis that no Contract will come into existence until the Company despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. **DESCRIPTION**

3.1 The description of the Goods and/or Services shall be as set out in the Company's quotation.

3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They will not form part of this Contract.

3.3 The Company accepts no responsibility whatsoever for the accuracy of drawings and/or design specifications supplied by the Customer, nor for any claim of whatsoever nature which may arise as a result of using such drawings or specifications.

4. **DELIVERY**

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.

4.2 The Customer will take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

4.4 Subject to the other provisions of these conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like 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), nor will any delay entitle the Customer to terminate or rescind the Contract.

4.5 If for any reason the Customer will not 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, licences or authorisations:

(a) risk in the Goods will pass to the Customer (including for loss or damage caused by the Company's negligence);

(b) the Goods will be deemed to have been delivered; and

(c) the Company may store the Goods until delivery whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.6 The Customer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading the Goods.

4.7 Unless otherwise provided in the Contract where the Contract is for the delivery of goods outside the United Kingdom deliveries shall be made Ex-Works Turbo Systems Limited, 1 Gillet Street, Hull, HU3 4JA (as Ex-Works is defined in Incoterms 2000).

4.8 Where Goods are to be delivered out of the United Kingdom and unless otherwise Ex-Works is agreed in accordance with condition 4.7, all packing cases are charged extra and are non returnable.

4.9 The Company shall be entitled to make delivery of the Goods by instalments and to invoice the Customer for each instalment dispatched. Where the fulfilment of any order involves delivery by instalments each instalment shall be deemed to be sold under a separate Contract and any failure to deliver any instalment shall not entitle the Customer to repudiate the Contract or any part thereof.

5. **NON-DELIVERY**

5.1 The quantity of any consignment of Goods as recorded by the Company upon 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.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 14 days of the date when the Goods would in the ordinary course of events have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.

6. **RISK/TITLE**

6.1 The Goods are at the risk of the Customer from the time of delivery.

6.2 Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- (a) the Goods and/or Services; and
- (b) all other sums which are or which become due to the Company from the Customer on any account.

6.3 Until ownership of the Goods has passed to the Customer, the Customer must:

- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other Goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
- (e) hold the proceeds of the insurance referred to in condition 6.3(d) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

6.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

- (a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and

- (b) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.

6.5 The Customer's right to possession of the Goods shall terminate immediately if:

- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) 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 Customer or notice of intention to appoint an administrator is given by the Customer 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 Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- (c) the Customer encumbers or in any way charges any of the Goods.

6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

6.7 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

7. **PRICE**

7.1 Unless otherwise provided in the Contract the price of the Goods does not include the cost of cases or other packing materials which shall remain the property of the Company and will be returnable at the Customer's expense at the request of the Company. Any such cases or packing materials not returned by the Customer within 30 days of such request shall be paid for by the Customer at their then value.

7.2 The price of the Goods and/or Services is exclusive of Value Added Tax and all charges in relation to carriage, handling, delivery, insurance and offloading.

7.3 If after the date of the Company's acceptance of order any increase occurs in the costs necessarily incurred by the Company in supplying the Goods and/or Services including but not limited to Goods, materials, labour, transport or other items including currency fluctuations or overheads which the Company has to pay or incur in the performance of the Contract, then the amount of any increase in such costs shall be added to the Contract price. A certificate of the Company's auditors certifying the amount of such increase shall be conclusive and binding on the Customer and the Company.

7.4 Where the price has been quoted in the Company's quotation or estimated based on production runs or specific delivery periods, the Company reserves the right to vary the price for the Goods should the Customer order different quantities from those stated and/or require delivery over a different period.

7.5 The cost of any variation or modification in the design, specification, materials or drawings of the Goods and/or Services, or any development thereof requested by the Customer after the date of the Company's acceptance of order shall, if such variations or modifications are accepted by the Company, be borne by the Customer.

8. PAYMENT

8.1 Payment of the price for the Goods and/or Services is due (for Contracts not involving installation or commissioning) no later than 30 days from the date of delivery of supply of the Goods and/or Services.

8.2 Where Goods and/or Services are delivered or performed by instalments, the Customer shall be obliged to pay for each instalment upon the terms set Condition 8.1.

8.3 Payment of orders over £5,000 shall be paid as follows:-

- (a) 40% deposit with order;
- (b) 50% prior to despatch of goods; and
- (c) 10% within 30 days from date of invoice.

8.4 VAT will be charged in addition to the prices quoted where applicable.

8.5 Time for payment shall be of the essence and failure to pay within the period specified shall entitle the Company upon expiration of 3 days notice in writing to the Customer to suspend further performance of the Contract pending payment and in addition the Company shall be entitled without liability wholly or partially to cancel the Contract or any other contract between the Company and the Customer without prejudice to any other remedy available to the Company.

8.6 No payment shall be deemed to have been received until the Company has received cleared funds.

8.7 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

8.8 Where the Company specifies that payment will be made by Letter of Credit, the Customer must establish and maintain in favour of the Company an irrevocable and unconditional Letter of Credit with or confirmed by a bank of England satisfactory to the Company. All bank charges in connection with the Letter of Credit and the opening thereof shall be borne by the Customer. If for any reason the bank is liable to make payment to the Company under any Letter of Credit established for that purpose and fails to do so, the Customer shall nevertheless remain liable to pay for the Goods supplied and/or Services performed.

8.9 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

8.10 If the Customer fails to pay the Company any sum due pursuant to the Contract the Customer will be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of Barclays Bank Plc base rate, accruing on a daily basis until payment is made, whether before or after any judgement.

9. QUALITY

9.1 Where the Goods are not manufactured or supplied directly by the Company and are delivered direct to the Customer by, or collected by the Customer from, the manufacturer or supplier the

Company shall not be liable for any damage to or loss of the Goods whatsoever or whensoever occurring.

- 9.2 The Company warrants that (subject to the other provisions of these conditions) upon delivery the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1994.
- 9.3 The Company shall not be liable for a breach of any of the warranty in condition 9.2 unless:
- (a) the Customer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within 3 days of receipt of the Goods; and
 - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 9.4 The Company shall not be liable for a breach of the warranty in condition 9.2 if:
- (a) the Customer makes any further use of such Goods after giving such notice; or
 - (b) for any damage or defect that shall have arisen by accident or from improper use of the Goods by the Customer; or
 - (c) the Customer alters or repairs such Goods without the written consent of the Company.
- 9.5 Subject to conditions 9.3 and 9.4, if any of the Goods do not conform with the warranty in condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the *pro rata* Contract rate provided that, if the Company so requests, the Customer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.
- 9.6 If the Company complies with condition 9.5 it shall have no further liability for a breach of the warranty in condition 9.2 in respect of such Goods.
- 9.7 Any Goods replaced will belong to the Company.

10. **INTELLECTUAL PROPERTY**

- 10.1 The Customer warrants that any Goods or part of Goods manufactured to the design of the Customer do not infringe any intellectual property right including, without limitation, any patent, trademark, registered design or any other like protection, or the provisions of any statute, statutory instrument or regulation for the time being in force in any country and agrees to indemnify and hold harmless the Company against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any right or provision.

11. **LIMITATION OF LIABILITY**

- 11.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these conditions; and
 - (b) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

- 11.2 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.
- 11.3 Nothing in these conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 11.4 Subject to conditions 11.2 and 11.3:
- (a) the Company'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 this Contract shall be limited to 100% of the Contract price; and
 - (b) the Company shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

12. RESPONSIBILITY FOR CUSTOMERS GOODS AND MATERIALS

- 12.1 All hire work and processing and other work carried out on the Customers' Goods or materials shall be carried out at the Customer's risk and the Company shall not be liable for any damage to such Goods or materials howsoever arising.

13. LIEN

- 13.1 Without prejudice to any other rights and remedies which the Company may have under the Contract, the Company shall in respect of all debts of the Customer to the Company have a general lien on all Goods and property belonging to the Customer in its possession (whether worked on or not) and shall be entitled upon the expiration of fourteen days notice to the Customer, to dispose of such Goods or property as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.

14. HEALTH AND SAFETY

- 14.1 The attention of the Customer is drawn to the provisions of Section 6 of the Health & Safety at Work etc Act 1974. The Company will make available such information as is appropriate relating to the Goods and materials supplied as is in its possession to ensure that as far as is reasonably practicable they are safe and without risk to health when properly used.
- 14.2 The Customer hereby undertakes pursuant to Section 6 (8) of the Health & Safety at Work etc Act 1974 to take such measures as are communicated in writing to the Customer by the Company and to take such other steps as are sufficient to ensure, so far as is reasonably practicable, that the Goods will at all times be safe and without risk to health when properly used. The Goods and materials shall not be regarded as properly used when they are used without regard to any relevant information or advice relating to their use which has been communicated to the Customer pursuant to this condition.
- 14.3 The Customer shall indemnify and keep indemnified the Company in respect of any liability, monetary penalty or lien in respect of or in connection with the Goods or Services incurred directly or indirectly by the Company under the Health & Safety at Work etc. Act 1974 or any regulations orders or directions made thereunder.

15. INSTALLATION

- 15.1 Where installation is to be carried out by the Company the following provisions shall apply:

- (a) the Customer shall be responsible for obtaining all planning bye-law and any other requisite consents;
- (b) the Customer shall arrange for the carriage of the Goods from the delivery vehicle to the building or room in which the same are to be installed;
- (c) the Company will notify the Customer of the date when installation is to be commenced and the estimated time installation will take. The Customer shall ensure that the site of installation is both clear and ready and in particular that the floors thereof are level and even;
- (d) the Customer shall procure that, whilst installation is taking place, the site of installation is clean and unobstructed, adequately heated and lit, provided with electric power points suitable for electric tools; and
- (e) the Company shall be entitled to make an extra charge to the Customer for any extra costs incurred by the Company arising from any failure by the Customer to comply with the obligations set out above.

16. **CONTRACT FOR SERVICES**

- 16.1 If the Contract is for Services or includes Services to be performed by the Company, whether of installation, commissioning, repair, rectification or improvement, then the Company shall be obliged to carry out such services only during normal working hours. If the Customer requests that overtime is worked and the Company agrees thereto such overtime shall be paid for by the Customer in addition to the Contract price at the Company's overtime rates and a certificate of the Company's auditors certifying the amount payable for such overtime shall be conclusive and binding on the Customer and Company.
- 16.2 If the Services are to be performed on the premises of the Customer or at his request at the premises of any other person then the Customer undertakes to provide or to procure the provision free of charge of:
- (a) proper and safe storage and protection of all Goods, tools, plant and materials on site;
 - (b) free and safe access to the site and to the point at which the Services are to be performed; and
 - (c) all facilities and services necessary to enable such Services to be performed safely and expeditiously.

17. **TEST**

- 17.1 If the Contract provides for testing and inspection of the Goods or Services, such testing and inspection shall be conclusive. If requested in writing arrangements will be made for the Customer's representative to be present at such tests and inspection. The Customer will be deemed to have accepted the Goods and Services as satisfactory after the completion of such testing and inspection unless written notice to the contrary specifying the matters complained of is received by the Company within 3 days of completion of such testing and / or inspection.

18. **ASSIGNMENT**

- 18.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 18.2 The Company may assign the Contract or any part of it to any person, firm or company.

19. **SEVERANCE**

19.1 If at any time any one or more of the provisions of these Conditions become invalid, illegal or unenforceable in any respect under any law, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

20. **FORCE MAJEURE**

20.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 180 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

21. **GENERAL**

21.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

21.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

21.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

21.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

21.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

21.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

22. **COMMUNICATIONS**

22.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:

(a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or

(b) (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Customer.

22.2 Communications shall be deemed to have been received:

(a) if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

- (b) if delivered by hand, on the day of delivery;
- (c) if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.