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TERMS AND CONDITIONS OF BUSINESS

1. Interpretation

1.1 The definitions and rules of interpretation in this condition 1 apply in these conditions:

Customer: the person, firm or company who purchases Goods and/or Services from the Company;

Company: Apsley Precision Engineering Limited a company registered in England and Wales with company number 07143653 whose registered office is at High Post, Salisbury, Wiltshire, SP4 6AT;

Company's Equipment: any equipment, including tools, machinery and materials provided by the Company or its subcontractors and used directly or indirectly in the supply of the Services;

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

Delivery Point: the place where delivery of the Goods and/or the supply of the Services are to take place under condition 4 which shall be the Customer's principal place of business, or residential address (as appropriate), unless otherwise agreed;

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

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

Price: the total price payable for the Goods and/or Services in accordance with condition 7;

Quotation: a quotation provided by the Company to the Customer for the provision of Goods and/or Services; and

Services: the services to be provided by the Company under the Contract to the Customer.

1.2 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 in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular and a reference to one gender includes a reference to the other gender.

1.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.5 A reference to writing or written includes e-mails and hand written letters.

1.6 References to conditions are to the conditions of the Contract. Condition headings do not affect the interpretation of these conditions.

2. Application of terms

2.1 Subject to any variation under condition 2.3, the Contract shall 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 on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to the provision of Goods and/or Services by the Company and any variation to these conditions and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed by a director of the Company.

2.4 The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract.

2.5 Each order for Goods and/or Services or acceptance of a Quotation shall be deemed to be an offer by the Customer to buy Goods and/or Services from the Company subject to these conditions.

2.6 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, the Company delivers the Goods to the Customer or commences the Services (whichever is earlier).

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

2.8 A Quotation is valid for a period of 30 days only from its date unless otherwise stated, provided that it has not previously been withdrawn.

3. Description

3.1 The quantity and description of the Goods and Services shall be as set out in the Company's Quotation or acknowledgement of order. The accuracy of such information is the responsibility of the Customer.

3.2 Unless expressly stated drawings submitted with a Quotation shall not be binding as to detail and all samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them and they shall not form part of the Contract.

4. Delivery and completion

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods and/or the supply of the Services shall take place at the Delivery Point. The Services will commence within a reasonable period following delivery of the Goods or, if goods are not being supplied by the Company, within a reasonable time of the Company's acceptance of the Customer's order.

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

4.3 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 and/or completion of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 90 days.

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- 4.4 If the Company is unable to deliver the Goods on time because the Customer refuses to take delivery or has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Customer (including for loss or damage caused by the Company's negligence) on the date of attempted delivery;
 - (b) the Goods shall be deemed to have been delivered;
 - (c) the commencement of the Services shall be delayed (without any liability to the Company); and
 - (d) the Company may store the Goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (Including, without limitation, storage and insurance).
- 4.5 The Customer shall not be entitled to reject the Goods if the Company delivers up to and including 5% more or less than the quantity of Goods ordered. The Company will invoice the Customer at the pro rata Contract Price for any excess Goods.
- 4.6 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment or Contract.
- 5. Customer's obligations**
- 5.1 The Customer shall:
- (a) co-operate with the Company in all matters relating to the Goods and Services;
 - (b) provide the Company, its agents, subcontractors and employees, in a timely manner and at no charge, with uninterrupted access to the Delivery Site as required by the Company;
 - (c) inform the Company of all health and safety rules and regulations and any other reasonable security requirements that apply at the Delivery Point;
 - (d) be responsible (at its own cost) for preparing and maintaining the Delivery Site for the delivery of the Goods and the supply of the Services;
 - (e) obtain and maintain all necessary licences and consents and comply with all relevant legislation in relation to the Goods and Services, in all cases before the date on which the Goods are to be delivered or the date on which the Services are to commence (whichever is earlier).
- 5.2 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by the Company, its employees, agents or subcontractors and any other confidential information concerning the Company's business, its products or services which the Customer may obtain.
- 5.3 All materials, equipment, tools, drawings, specifications and data supplied by the Company to the Customer (including the Company's Equipment) shall, at all times, be and remain the exclusive property of the Company, but shall be held by the Customer in safe custody at its own risk until returned to the Company, and shall not be disposed of or used other than in accordance with the Company's written instructions or authorisation.
- 5.4 In the event of the Company's Equipment being damaged, destroyed or stolen while at the Delivery Point, the Company shall be entitled to full payment in respect thereof from the Customer. In addition, the Company shall be entitled to full payment in respect of the cost of restoration or reinstatement of any work undertaken by it, which is damaged, destroyed or lost. Any such amounts shall be payable by the Customer in addition to the original Quotation price, provided that the Customer shall not be responsible for any loss occasioned solely by the negligence of the Company or its employees, agents or subcontractors.
- 5.5 The Customer shall be liable to pay to the Company, on demand, all reasonable costs, charges or losses sustained or incurred by the Company (including, without limitation, any direct, indirect or consequential losses, loss of profit and loss of reputation, loss or damage to property and those arising from injury to or death of any person and loss of opportunity to deploy resources elsewhere) arising directly or indirectly from the Customer's fraud, negligence, failure to perform or delay in the performance of any of its obligations under the Contract, subject to the Company confirming such costs, charges and losses to the Customer in writing.
- 6. Risk/title**
- 6.1 Subject to condition 4.4, 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;
 - (b) the Services; and
 - (c) 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 shall:
- (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; and
 - (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.
- 6.4 The Customer's right to possession of the Goods shall terminate immediately if:
- (a) any of the events specified in condition 11.1(c) to 11.1(m) (inclusive) occur in relation to the Customer;
 - (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer; or
 - (c) the Customer encumbers or in any way charges any of the Goods.
- 6.5 The Company shall be entitled to recover payment for the Goods and Services notwithstanding that ownership of any of the Goods has not passed from the Company.

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- 6.6 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.
- 6.7 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this condition 6 shall remain in effect.
- 7. Price**
- 7.1 Unless otherwise agreed by the Company in writing, the Price for the Goods and Services shall be the price set out in the relevant Quotation. If no price is quoted, the price shall be the price set out in the Company's published price list in force as at the date of delivery. Additional rates will be charged for any work authorised by the Customer or its representative or agent in addition to that set out in the Company's original Quotation.
- 7.2 The Price for the Goods and Services shall be exclusive of value added tax and all costs or charges in relation to carriage, insurance, packaging, travel and services properly provided by third parties and materials (at cost), all of which amounts the Customer shall pay in addition when it is due to pay for the Goods and Services.
- 7.3 The Company, by giving notice to the Customer at any time up to 14 days before delivery of the Goods, increase the price of the Goods and Services to reflect any increase in the Company's costs that is due to:
- (a) any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered or Services required, or the specification of the Goods and/or Services; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.
- 7.4 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.
- 8. Payment**
- 8.1 The Company may invoice the Customer at any time on or after delivery of the Goods and completion of the Services. However, the Company reserves the right to request payment in advance and/or to provide interim invoices before delivery of the Goods or completion of the Services. All such invoices will be payable in full (in cleared funds) within 30 days. Payment shall be made by cheque or bank transfer to the bank account nominated in writing by the Company.
- 8.2 Time for payment shall be of the essence.
- 8.3 The Customer shall make all payments due under the Contract in full 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.
- 8.4 Without prejudice to any other right or remedy that it may have, if the Customer fails to pay an amount due to the Company on the due date, the Company may:
- (a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank, accruing on a daily basis until payment is made, whether before or after any judgment and the Customer shall pay the interest immediately on demand. The Company may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
 - (b) suspend the delivery of the Goods and/or supply of the Services until payment has been made in full.
- 9. Quality**
- 9.1 Where the Company is not the manufacturer of the Goods the Company shall endeavour to transfer to the Customer the benefit of any warranty or guarantee given to the Company.
- 9.2 The Company warrants that (subject to the other provisions of these conditions) on delivery the Goods shall be of satisfactory quality and free from material defects within the meaning of the Sale of Goods Act 1979 and the Services will be provided with reasonable skill and care (the "Warranty").
- 9.3 The Company shall not be liable for a breach of the Warranty unless:
- (a) the Customer gives written notice of the defect to the Company within 30 days of the time when the Customer discovers or ought to have discovered that the Goods and/or Services do not comply with the Warranty; and
 - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods.
- 9.4 The Company shall not be liable for a breach of the Warranty if:
- (a) the Customer makes any further use of such Goods after giving such notice;
 - (b) the defect arises because the Customer failed to follow the Company's oral or written instructions as to the use or maintenance of the Goods or (if there are none) good trade practice;
 - (c) the Customer alters or repairs such Goods without the written consent of the Company;
 - (d) the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer; or
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.
- 9.5 Subject to condition 9.3 and 9.4, if any of the Goods or Services do not conform with the Warranty the Company shall at its option repair or replace such Goods (or the defective part) or re-perform the Services. These conditions will apply to any repaired or replacement Goods or Services the Company supply to the Customer.
- 9.6 If the company complies with condition 9.5 it shall have no further liability for a breach of the Warranty in respect of such Goods and Services.

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9.7 Except as set out in these conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

10. Limitation of liability—READ THIS CONDITION CAREFULLY.

- 10.1 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;
 - (b) any use made or resale by the Customer of any of the Goods;
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract; and
 - (d) any breach of the Contract.
- 10.2 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.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence;
 - (b) for any liability incurred by the Customer as a result of any breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
 - (d) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (e) for fraud or fraudulent misrepresentation.
- 10.4 Subject to this condition 10.1(d):
- (a) the Company shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract; and
 - (b) 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 the Contract shall be limited to the [Price].

11. Termination

- 11.1 Without prejudice to any other rights or remedies, which the parties may have, either party may terminate the Contract (or the Company may suspend delivery of the Goods and the Services) without liability to the other immediately on giving notice to the other if:
- (a) the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - (b) the other party commits a material breach of any of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach;
 - (c) the other party 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a natural person) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
 - (d) the other party 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;
 - (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of that other party;
 - (f) 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 other party;
 - (g) a floating charge holder over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
 - (i) a creditor or encumbrancer of the other party 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;
 - (j) the financial position of the Customer deteriorates to such an extent that in the opinion of the Company the capability of the Customer to adequately to fulfil its obligations under the Contract has been placed in jeopardy;
 - (k) the Customer (being an individual) is the subject of a bankruptcy petition or order;
 - (l) the Customer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
 - (m) the other party suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.

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- 11.2 On termination of the Contract for any reason:
- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods and/or Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
 - (b) the Customer shall return all of the Company's Equipment. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
 - (c) the accrued rights and liabilities of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.
- 11.3 On termination of the Contract (however arising), conditions 5.2 to 5.5 (inclusive), 10, this condition 11, 12, 14.7 and 14.8 shall survive and continue in full force and effect.
- 12. Intellectual Property Rights**
- As between the Customer and the Company, all Intellectual Property Rights (and all other rights relating to the Goods and Services) shall be owned by the Company. The Company licenses all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the Goods and the Services.
- 13. Force majeure**
- The Company shall have no liability to the Customer under the Contract if it is prevented from, or delayed in delivering the Goods or performing the Services or from carrying on 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, restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials or default of suppliers or subcontractors, provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 14. General**
- 14.1 The Customer acknowledges and agrees that its personal data will be processed by and on behalf of the Company.
 - 14.2 The Company may assign the Contract or any part of it to any person, firm or company. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
 - 14.3 No variation of the Contract or these conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties.
 - 14.4 A waiver of any right under the Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that (or any other) right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that (or any other) right or remedy.
 - 14.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
 - 14.6 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
 - 14.7 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract). Nothing in this condition 14.7 shall limit or exclude any liability for fraud.
 - 14.8 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, the Contract or its subject matter or formation (including non-contractual disputes or claims).
 - 14.9 All communications between the parties about the Contract shall be in writing. This condition 14 shall not apply to the service of any in any proceedings or other documents in any legal action.