

Terms & Conditions of Sale

1. General

1.1 In these Conditions

1.1.1 the following expressions shall have the following meanings;

"Buyer" means the individual firm company or other party from whom an Order to Supply Goods is received by the Seller;

"Conditions" means the individual terms and conditions of sale of the Seller as set out herein and includes any additional terms and conditions of sale agreed in Writing by the Seller;

"Contract" means a contract for Supply of Goods by the Seller to the Buyer whether made verbally or in Writing;

"Goods" means the goods which the Seller is to supply under the Contract and where the context so admits includes raw materials, processed materials and/or fabricated products whether manufactured by the Seller or not;

"Intellectual Property Rights" All patents, copyright, design right, trademarks and other similar rights (whether registered or unregistered), whether existing now and/or in the future and wherever existing in the world together with the rights to apply for protection of the same;

"Order" means an order placed by the Buyer for the Supply of Goods whether verbally or in Writing;

"Recommendations for Use" means the recommendations (if any) relating to the storage handling application and/or use of the Goods contained in the published literature of the Seller (or, if relevant, a Supplier) or any recommendations made in Writing by an authorised representative of the Seller (or, if relevant, a Supplier);

"Seller" means Atecnic Limited and any subsidiary, holding company, or associate of the said company and also, where the context so permits, any sub-contractor, subsidiary, or holding company or associate of such sub-contractor;

"Supplier" means any person, firm or company who or which supplies the Goods to the Seller in substantially the form in which they are supplied and/or provided to the Buyer;

"Supply" includes, where the context so admits, lease, hire or loan of the Goods and "supplied" shall be construed accordingly;

"Writing" includes facsimile transmission, electronic communication and comparable means of communication

1.1.2 words importing the singular number shall include the plural and vice versa, words importing the masculine shall include the feminine and neuter and vice versa, and words importing persons shall include bodies corporate, unincorporated associations and partnerships;

1.2 The Seller reserves the right where there has been no previous course of dealings with the Buyer to insist that the Buyer notifies it in Writing of the full name and address of the Buyer and all its branches and where the Buyer is a limited company the full names and addresses of all its directors and the names and addresses of three persons firms or companies with whom the Buyer has had trade dealings and the names and addresses of the Buyer's bankers and accountants or auditors (as applicable) together with authority in Writing for the Seller to contact all of the same for appropriate reference. If the information is not provided within 5 (five) working days of a request from the Seller or, if following the provision of such information, the Seller is unable to obtain satisfactory trade indemnity or similar cover in respect of its dealings with the Buyer, the Seller may terminate the Contract and the rights and liabilities of the parties shall be the same as if the Contract had been cancelled in accordance with the provisions of Condition 7.

2. Orders and Contract

2.1 Notwithstanding that the Seller may have given a detailed quotation or estimate either verbally or in Writing no Order shall be binding on the Seller unless and until it has been acknowledged in Writing by the Seller or the Goods are delivered by the Seller to the Buyer pursuant to the Order.

2.2 These Conditions are incorporated in the Contract and together with any additional terms and conditions set out on the reverse of this document contain the entire obligations between the Seller and the Buyer. In the case of any inconsistency between any letter or quotation incorporating or referring to these Conditions and any Order, letter or form of contract sent by the Buyer to the Seller, whatever may be their respective dates, the provisions of these Conditions shall prevail. In the event of the Seller entering into the Contract without the Seller having submitted a written quotation or other letter or document incorporating or referring to these Conditions but in circumstances where the Buyer has had prior notice of these Conditions then all Goods supplied shall be subject to these Conditions.

2.3 No variation of the Contract by the Buyer shall be binding upon the Seller unless made in Writing and signed on behalf of the Seller. In the event of such variation the Buyer shall indemnify the Seller in full against all loss, which term shall include (but without prejudice to the generality thereof) loss of profit, costs (including the cost of labour and materials), damages, charges and expenses incurred (directly or indirectly) by the Seller as a result of such variation.

2.4 Any representations or warranties made by or on behalf of the Seller prior to the Contract are hereby expressly excluded and shall be of no effect, unless confirmed by a director of the Seller in Writing.

3. Design, Specifications and Intellectual Property Rights

3.1 Where Goods are made cut or otherwise supplied to the Buyer's own specification pattern or design the Buyer warrants and undertakes full responsibility:

3.1.1 for the suitability and fitness of the specification pattern or design;

3.1.2 that such specification pattern or design does not infringe any third party Intellectual Property Rights; and,

3.1.3 for the accuracy of any specification or details provided by the Buyer to the Seller in any Order.

3.2 The Buyer shall indemnify the Seller in full for any loss damage or expense whatsoever (including costs) which the Seller may incur in or arising from the performance of the Contract by reason of any infringement of any such Intellectual Property Rights and the Buyer acknowledges that the Seller shall be under no liability of any description to the Buyer if the Goods prove to be unsuitable for whatever reason for application or use notwithstanding that the Seller may, at the request of the Buyer, have given in good faith technical or other advice in relation to the proposed application or use of the Goods and the Buyer hereunder undertakes to indemnify the Seller against any and all liability of any kind arising out of or connected with the application or use of the Goods in accordance with the Buyer's specification pattern or design or otherwise.

3.3 The Seller reserves the right to change the Buyer's specification pattern or design as required to ensure that the Goods comply with any health, safety or other statutory requirement or provision.

3.4 The Seller will be the sole owner of all Intellectual Property Rights in all documents and drawings made or produced by it (or by any person who would or might become a Supplier if an Order were to be placed by the Buyer) in preparing a quotation for the Buyer or in the course of work on any Contract with the Buyer.

3.5 The Buyer hereby warrants to and undertakes with the Seller that the Buyer will not utilize any such inventions, formulations, designs, documents or drawings as are referred to in Condition 3.4 which come to its knowledge or into its possession during negotiations or the preparation of a quotation for the Supply of Goods by the Seller to the Buyer whether or not a Contract is entered into or during the execution of a Contract or thereafter other than in respect of the use or re-sale of such Goods by the Buyer in the ordinary course of its business without the prior consent in Writing of the Seller.

4. Price

4.1 The price payable for the Goods shall be the list price of the Seller current at the date of delivery of the Goods, subject to any other terms agreed in Writing. Any price set out in any quotation shall be considered to have been given solely for information and shall not constitute an obligation on the part of the Seller that it will deliver the Goods at that price.

4.2 Unless otherwise stated in Writing the price does not include Value Added Tax which will be charged at the rate applicable at the date of invoice.

4.3 Unless otherwise stated in Writing the price does not include the cost of packaging. Where packaging is included, unless otherwise agreed, it will be to the Seller's standard specification which should be adequate for the normal incidence of competent handling, covered transport and short term indoor storage in a temperate climate. If additional protection is required, the Buyer must specify this before the Contract is made and the Seller reserves the right to charge for any additional costs incurred.

4.4 Unless otherwise stated in Writing the price does not include the cost of carriage to the contracted place of delivery nor the cost of off-loading the Goods when delivered by the Buyer at the site and any additional costs of unloading and any other expenses if requested by the Buyer to do so by the Buyer who must specify in Writing the means of transport to be used in default of which the Seller shall use such delivery service as it is in its absolute discretion sees fit but the Buyer shall reimburse the Seller for all additional costs the Seller incurs thereby.

4.5 The Seller reserves the right at any time prior to delivery to increase the price to reflect any increase in its costs of performing the Contract including, but not limited to, any foreign exchange fluctuation, currency regulation, alteration of duties, changes in quantities or specification for the Goods requested by the Buyer or any significant increase in the costs of manufacture of the Goods.

4.6 The Buyer also agrees to pay for any loss or extra cost incurred by the Seller through the Buyer's faulty instructions, lack of instructions or any failure or delay of the Buyer in taking delivery or any act or default on the part of the Buyer, its servants, agents or employees.

4.7 Unless otherwise agreed in Writing Goods to be delivered to a Buyer whose address is outside the United Kingdom will be sold F.O.B.

5. Delivery

5.1 Delivery of Goods shall be deemed to be effected by the Seller upon arrival for unloading at the Buyer's premises or at premises nominated by the Buyer or at the nearest accessible road point.

5.2 The Seller will make every reasonable effort to complete the Contract by the date or dates therein specified for delivery of Goods such date or dates shall not be guaranteed and time for performance of the Contract by the Seller shall not be of the essence.

5.3 The Seller's failure to so deliver by the due date or dates shall not constitute a breach of Contract and the Seller shall not be responsible for any direct or consequential loss resulting therefrom.

5.4 The Seller may wholly or partly suspend deliveries of Goods and the Buyer shall accept late delivery of such Goods unless the Buyer has cancelled the Contract in accordance with the provisions of Condition 7.

5.5 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

6. Terms of Payment

6.1 Unless otherwise agreed in Writing the price shall be due and payable at the Seller's offices in pounds sterling 30 (thirty) days after the date of the Seller's invoice.

6.2 Time for payment shall be of the essence. However, the Seller reserves the right to require payment immediately on delivery of the Goods or on sending notification that the Goods are in a deliverable state if the Buyer has previously failed to make any payment owing to the Seller on the due date or if the Buyer has failed to provide the information referred to in Condition 1.2 in accordance with the provisions of that Condition or if the Seller has received unsatisfactory credit rating information relating to the Buyer.

6.3 Interest shall be due and payable on any unpaid sum from the required day until the actual date of payment (before and after judgment) at either:

6.3.1 4% per annum over the base rate of Lloyds Bank plc from time to time in force which shall accrue on a daily basis; or

6.3.2 the prevailing rate under the Late Payment of Commercial Debts (Interest) Act 1998 (as amended);

at the absolute discretion by the Seller.

6.4 The Seller shall have a lien on any Goods in its possession and it shall be entitled to retain them and/or suspend work on any Contract in respect of all sums due from the Buyer to the Seller.

6.5 The Buyer shall not be entitled to withhold payment of any amount due to the Seller by reason of any disputed claim by the Buyer in connection with the Contract nor shall the Buyer be entitled to set off against any amount payable under the Contract to the Seller any amount which is not then due and payable by the Seller or for which the Seller disputes liability.

7. Suspension and Cancellation

7.1 Cancellation or suspension of the Contract by the Buyer may be accepted at the sole discretion of the Seller and unless otherwise agreed in Writing only on condition that any costs charges or expenses (both direct and consequential) incurred by the Seller by reason of such cancellation or suspension will be reimbursed by the Buyer to the Seller immediately. Any such acceptance made by the Seller will only be binding upon the Seller if it is made in Writing and shall not be considered as an acceptance of any subsequent cancellation or suspension.

8. Matters beyond the Sellers Control

8.1 If the Seller is unable to complete the Contract either wholly or in part for any reason whatsoever beyond its reasonable control then performance shall be suspended for the period during which the Seller is so prevented provided that in the event of the Contract being suspended for a continuous period of more than three months then either party may give the other notice in Writing to terminate the Contract immediately and the Buyer shall pay for all Goods supplied to the date of such termination such payment to be immediately due and payable upon termination. The Seller shall be under no liability whatsoever to the Buyer for any direct or consequential loss or damage suffered by the Buyer as a result.

8.2 If the Seller is prevented from or delayed in delivering Goods as a result of delay or default on the part of the Buyer or any other reason beyond the Seller's reasonable control the Contract is not cancelled in accordance with the other provisions of this Condition 7 the Seller shall be entitled to reschedule the date or dates for such delivery of Goods to an alternative date at the discretion of the Seller.

8.3 The Seller shall be entitled to be paid storage charges for Goods in the event of any delay or default by the Buyer and notwithstanding Condition 12 such Goods shall be held at the sole risk of the Buyer.

8.4 The Seller shall have no liability to the Buyer for any delay in accordance with Conditions 7 or 8.2.

9. Additional Goods

9.1 Where the Buyer requires Goods to be provided in addition to those set out in the Contract but as part of the Contract the Buyer shall place an Order in Writing and upon acceptance in Writing by the Seller of such Order the provisions of these Conditions shall apply to those additional Goods.

10. Claims for Damage in Transit/Shortages

10.1 The Seller shall make up any shortages or to repair or at its discretion replace free of charge any Goods lost, partially lost or damaged in transit to the contracted place of delivery in which event the time for the delivery of the same shall be extended for such period as the Seller may reasonably require.

10.2 No claims for non-delivery, partial loss or damage to Goods will be accepted by the Seller unless:

10.2.1 they are notified in Writing by the Buyer to the Seller (email to customerservice@atecnic.co.uk) with a copy to the carrier if the Seller's own vehicles were not used by 5pm the next working day following date of delivery in the case of externally recognisable partial loss or damage; and

10.2.2 they are notified in Writing by the Buyer to the Seller (email to customerservice@atecnic.co.uk) with a copy to the carrier if the Seller's own vehicles were not used by 5pm the next working day following date of delivery in the case of externally non-recognisable partial loss or damage to Goods or 10 (ten) working days following the date of the invoice in the case of non-delivery; and

10.2.3 the Goods in respect of which a claim is made together with the packing are preserved intact as received for a period of 15 (fifteen) working days from notification of any such claim and the Buyer permits the Seller or its servants or agents full and free right of access to inspect the Goods and investigate the claim.

11. Warranties and Limitations of Liability

11.1 The Seller shall use its reasonable endeavours to pass on to the Buyer such benefits relating to warranties in respect of or guarantees of the Goods which the Seller has under contract with third party manufacturers. Save as aforesaid any warranties conditions or undertakings whether express or implied by statute common law or otherwise howsoever in respect of such Goods are, subject to Section 6(1) of the Unfair Contract Terms Act 1977, hereby expressly excluded.

11.2 Notwithstanding the foregoing provisions of this Condition if the Contract is with a person who deals as consumer as defined by Section 12 of the Unfair Contract Terms Act 1977 nothing herein contained shall operate to exclude any liability for breach of such obligations as are mentioned in Section 6(2) of such Act.

11.3 The Buyer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer (including by maintaining an adequate stock of such Goods).

11.4 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.

11.5 Subject to the above Conditions 11.1 to 11.4.

11.5.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price payable for the Goods as referred to in Condition 4.1;

11.5.2 the Seller shall not be liable to the Buyer 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;

11.5.3 to the extent that any liability of the Seller to the Buyer would be met by the insurance of the Seller, then the liability of the Seller shall be extended to the extent that such liability is met by such insurance.

12. Risk and Title

12.1 The Goods are at the risk of the Buyer from the time of delivery.

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

12.2.1 the Goods; and

12.2.2 all other sums which are or which become due to the Seller.

12.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:

12.3.1 hold the Goods on a fiduciary basis as the Seller's Bailee;

12.3.2 store the Goods (at the Buyer's cost) separately from all other goods held by the Buyer or any third party so that they remain readily identifiable as the Seller's property;

12.3.3 not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

12.4 The Buyer shall insure the Goods and/or any products made wholly or partly therefrom for the full amount of the price payable under the contract with an insurance office of repute from the time of delivery of the Goods until the date title in the Goods passes to the Buyer and procure that the interest of the Seller as the owner of the Goods is noted on the policy of such insurance and produce such policy to the Seller for inspection on demand.

12.5 The Buyer shall hold the proceeds of any insurance policy transferred to in clause 12.4 on trust for the Seller and not mix them with any other funds nor pay into any overdraw account.

12.6 The Buyer may sell the Goods before ownership has passed to it solely on the following conditions:

12.6.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and

12.6.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.

12.7 The Buyer's right to possession of the Goods shall terminate immediately if:

12.7.1 the Buyer 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 a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or

12.7.2 the Buyer 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/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or

12.7.3 the Buyer encumbers or in any way charges any of the Goods.

12.8 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.

12.9 The Buyer 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 Buyer's right to possession has terminated, to recover them.

12.10 For the purposes of Condition 12.1 the expression "the Buyer" includes any subsidiary or holding company or associate of the Buyer.

13. General

13.1 The Seller reserves the right to correct any clerical or typographical errors made by its employee's servants or agents at any time.

13.2 The attention of the Buyer is drawn to the provisions of Section 6 of the Health and Safety Act 1974. The Seller shall use its best endeavours to pass on to the Buyer upon request such information on the design and construction of the Goods provided by the manufacturer to ensure that as far as is reasonably practicable they are safe and without risk to health when properly used. It is the responsibility of the Buyer to take such steps as are necessary to ensure that such information relevant to the Goods which is appropriate is made available to its servant's agents or any person to whom the Buyer supplies them and to any other person to whom the Buyer reasonably considers any such information should be given.

13.3 The Goods shall not be used in any country other than that for which the Seller was aware they were originally ordered, without the Seller's consent in Writing.

13.4 If Goods are to be supplied under the Contract to be used outside the United Kingdom the Buyer shall be deemed to have satisfied itself that such Goods comply with the safety regulations of any country or state in which the goods are to be so used and the Buyer shall indemnify the Seller in full for any loss or damage whatsoever which the Seller may incur if such Goods do not comply with such safety regulations.

13.5 The Buyer warrants to the Seller that:

13.5.1 the Buyer will install, operate or otherwise use or store the Goods strictly in accordance with any Recommendations for Use and with all relevant or applicable statutory or other regulations governing the installation, operation, use or storage of the Goods; and

13.5.2 any collection vehicle, container, ship or other means of transport provided by the Buyer or any agent of the Buyer will comply with all relevant legislation and regulations relating to health and safety requirements; and

13.5.3 the storage and transport facilities of the Buyer and all parts thereof and all equipment used in connection therewith is suitable for storage (both short term and long term) and transport of the goods and complies with any statute, regulation, bye law or other rule having the force of law and relating to the storage of goods of the nature of the goods; and

13.5.4 the Buyer will ensure that the Goods are stored at temperatures appropriate to goods of that nature and will comply with any recommendations as to the storage of Goods notified to it by the Seller from time to time.

13.6 The Buyer shall indemnify the Seller against any claim, loss or damage (including, without limitation, damage to the reputation of the Seller) arising directly or indirectly from any breach of the warranty contained in Condition 13.5.

13.7 If at any time any one or more of the provisions of these Conditions becomes or is invalid illegal or unenforceable in any respect under any law or is held by a court to be invalid illegal or unenforceable the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

13.8 In the event of a dispute arising between the Seller and the Buyer concerning the sum or sums to which the Seller is entitled in addition to the Contract price as provided in these Conditions then a certificate from the Seller's auditors certifying such sum or sums shall be conclusive and binding upon the Seller and the Buyer. Any sum certified by such auditors shall be paid by the Buyer on or before 30 (thirty) days from its receipt of such certificate together with the cost of obtaining such certificate.

13.9 The Seller reserves the right to assign sub-contract or sub-let the fulfilment of the Contract or any part thereof. The Buyer shall not be entitled to assign the benefit or the burden of the contract without the consent in Writing of the Seller.

13.10 Any notice required or permitted to be given by either party to the other under these Conditions 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.

13.11 No waiver by the Seller of any breach of any provision of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision and the Seller shall not be prejudiced by any forbearance or indulgence granted by it to the Buyer.

13.12 These Conditions and each and every Contract made pursuant thereto shall be governed by and construed in all respects in accordance with the laws of England and Wales and the Seller and the Buyer hereby agree to submit to the exclusive jurisdiction of the English Courts.

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