

TERMS AND CONDITIONS OF PURCHASE

1. INTERPRETATION

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

Company: AGD Equipment Limited;

Company Materials: any and all materials, documents, data and equipment provided by the Company to the Supplier in order to enable the Supplier to fulfil its obligations under the Contract;

Conditions: these Terms and Conditions of Purchase;

Confidential Information: information (in any form whatsoever) that is disclosed to the Supplier and is confidential to the Company or to any third party to whom the Company owes a duty of confidentiality, (or should reasonably be supposed to be so confidential), including the provisions of the Contract, the Company Materials and any and all information relating to the Goods, but excluding confidential information which, at the time of its disclosure to the Supplier, is in the public domain otherwise than by breach of the provisions of the Contract, any third-party agreement or law (other than by virtue of any confidentiality undertaking signed by or on or behalf of the Supplier before the date of the Contract);

Contract: the Order and the Supplier's acceptance of the Order;

Goods: any goods and/or services agreed in the Contract to be purchased by the Company from the Supplier (including any part or parts of them);

Intellectual Property Rights: any design rights, utility models, patents, inventions, logos, business names, trademarks, domain names, copyright, moral rights, rights in databases, source codes, reports, drawings, specifications, know how, trade secrets, rights in software, rights in the nature of unfair competition and the right to sue for passing off and any other equivalent or similar rights to any of the foregoing in any jurisdiction, whether registered or unregistered;

Order: the Company's written instructions to supply the Goods, incorporating these Conditions. For the avoidance of doubt, an Order for goods shall include an Order for services and these Conditions shall apply, without limitation, to services as well as to goods;

Supplier: the person, firm or company who accepts the Order;

1.2 A reference to a particular 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.

1.4 A reference to one gender includes a reference to the other gender.

1.5 A reference to '**parties**' is a reference to the Company and the Supplier and '**party**' shall be construed accordingly.

1.6 Condition headings do not affect the interpretation of these Conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under Condition 2.4, these Conditions are the only conditions upon which the Company is prepared to deal with the Supplier and they shall govern the Contract to the exclusion of all other terms or conditions.

2.2 Each Order for Goods by the Company from the Supplier shall be deemed to be an offer by the Company to buy Goods subject to these Conditions and shall not be deemed to be accepted until the Supplier accepts the offer either expressly by giving notice of acceptance, or impliedly by fulfilling the Order.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's Terms

and Conditions of Sale or Supply, quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

2.4 These Conditions apply to all of the Company's purchases and any variation to these Conditions shall have no effect unless expressly agreed in writing by the Company.

2.5 The Supplier shall have no power or authority to bind or pledge the Company and shall not hold itself out, or permit itself to be held out, as having any such power or authority.

3. QUALITY AND DEFECTS

3.1 The Goods shall be of the best quality and workmanship, be in accordance with any design and be in any material specified by the Company, be without fault, be capable of any and all standards of performance requested by the Company, be fit for any purpose made known to the Supplier expressly or by implication, comply with any relevant current legislation and conform to any tolerances specified by the Company and in all respects with the Order and specification specified, advised by or provided by the Company to the Supplier.

3.2 The Company's rights under these Conditions are in addition to the statutory conditions implied in favour of the Company by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982.

3.3 At any time prior to delivery of the Goods to the Company, the Company shall have the right to inspect and test the Goods.

3.4 If the results of such inspection or testing cause the Company to be of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any specifications and/or patterns supplied or advised by the Company to the Supplier, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity and in addition the Company shall have the right to require and witness further testing and inspection.

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

4. SERVICE STANDARDS

4.1 If the Contract requires the Supplier to provide services to the Company, then the Supplier shall, throughout the duration of the Contract and without limitation:

- (a) perform the services in a good and workmanlike manner;
- (b) employ competent staff, and ensure that such staff are subject to adequate supervision and that they discharge their duties diligently, and supply to such staff full and proper instructions regarding anything required to perform the Supplier's obligations under the Contract; and
- (c) observe any reasonable instructions given to it by the Company in connection with the performance of its obligations under the Contract.

4.2 The Company shall have the right at any time to inspect any services performed by the Supplier pursuant to the Contract and the Supplier shall allow all reasonable access and assistance to the representatives of the Company to enable such representatives to carry out the inspection promptly, including providing the Company with any information that may be reasonably required.

4.3 The Supplier may not subcontract anything required to fulfill the Supplier's obligations under the Contract (which, for the avoidance of doubt, includes any such obligation with respect to any goods, as well as services), without the prior written consent of the

Company.

5. INDEMNITY

- 5.1 The Supplier shall keep the Company indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Company as a result of or in connection with:
- (a) any failure of the Goods to comply with any of the requirements of Condition 3.1;
 - (b) any failure to fulfil any obligation set out in Condition 4.1;
 - (c) any infringement or alleged infringement of any Intellectual Property Rights caused by the use, production or supply of the Goods; and
 - (d) any claim made by or against the Company in respect of any liability, loss, damage, injury, cost or expense sustained by the Company or its employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises as a direct or indirect consequence of a breach of, or negligent performance of, or failure or delay in the performance of any of the Supplier's obligations under the Contract.
- 5.2 The Supplier shall, throughout the Contract, maintain a policy of insurance which shall contain terms appropriate to provide adequate coverage for any and all risks contemplated in Condition 5.1 above and which shall also be of an amount sufficient to provide adequate coverage for any and all such risks. The Supplier shall, upon request by the Company, produce such policy of insurance to the Company for inspection.

6. DELIVERY

- 6.1 The Goods shall be delivered, carriage paid, to the Company's place of business or to such other place of delivery as is agreed by the Company in writing prior to delivery of the Goods. The Supplier shall off-load the Goods at its own risk as directed by the Company.
- 6.2 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 14 days of the date of the Order.
- 6.3 The Supplier shall invoice the Company upon, but separately from, despatch of the Goods to the Company.
- 6.4 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 6.5 Time for delivery shall be of the essence.
- 6.6 Unless otherwise stipulated by the Company in the Order, deliveries shall only be accepted by the Company within normal business hours.
- 6.7 If the Goods are not delivered on the date for delivery then, without prejudice to any other rights which it may have, the Company reserves the right to:
- (a) cancel the Contract in whole or in part;
 - (b) refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - (c) recover from the Supplier any expenditure reasonably incurred by the Company in obtaining the Goods in substitution from another supplier; and
 - (d) claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.

- 6.8 If the Supplier requires the Company to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to the Company and any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 6.9 Where the Company agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the Company at its option to treat the whole Contract as repudiated.
- 6.10 If the Goods are delivered to the Company in excess of the quantities ordered the Company shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 6.11 The Company shall not be deemed to have accepted the Goods until it has had 30 days to inspect them following delivery. The Company shall also have the right to reject the Goods as though they had not been accepted for 30 days after any latent defect in the Goods has become apparent. Any Goods rejected by the Company shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.

7. RISK AND PROPERTY

- 7.1 The Goods shall remain at the risk of the Supplier until delivery to the Company is complete (including off-loading and stacking) when ownership of the Goods shall pass to the Company.
- 7.2 The Supplier shall, throughout the Contract, maintain a policy of insurance which shall contain terms appropriate to provide adequate coverage for any and all risks, damage and loss contemplated in Condition 7.1 above and which shall also be of an amount sufficient to provide adequate coverage for any and all such risks damage and/or loss. The Supplier shall, upon request by the Company, produce such policy of insurance to the Company for inspection.

8. PRICE

- 8.1 The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of value added tax but inclusive of all other charges.
- 8.2 No variation of the price nor any extra charges shall be accepted by the Company.

9. PAYMENT

- 9.1 The Company will pay the price of the Goods by the date agreed with the Supplier for payment, but time for payment shall not be of the essence of the Contract.
- 9.2 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Supplier to the Company against any amount payable by the Company to the Supplier under the Contract.

10. CONFIDENTIALITY

- 10.1 Without prejudice to any confidentiality undertaking signed by or on or behalf of the Supplier before the date of the Contract, the Supplier undertakes, in favour of the Company that the Supplier shall:
- (a) treat Confidential Information as strictly confidential;
 - (b) not disclose, communicate, disseminate, distribute or otherwise make available Confidential Information to any third party except:

- (i) to such of the Supplier's employees, agents or sub-contractors (if bound by equivalent obligations of confidentiality) as reasonably need to know the same in connection with the obligations under the Contract; or
 - (ii) if required to be disclosed by applicable law or order of a court of competent jurisdiction or other competent authority; and
 - (c) not use Confidential Information for any purpose whatsoever other than to fulfil the Supplier's obligations under the Contract.
- 10.2 Without limiting the generality of Condition 10.1, the Supplier shall not without the prior consent of the Company in writing mention the Company's name in connection with the Contract in any publicity material or other similar communications to third parties.
- 10.3 Without limiting the generality of Condition 5.1, the Supplier furthermore agrees to promptly and fully indemnify and hold the Company harmless against any liability, loss, damage, cost, charge or expense arising directly or indirectly from any breach of Conditions 10.1 or 10.2.
- 10.4 The Supplier's obligations with respect to possession of any materials embodying Confidential Information upon termination of the Contract are set out in Condition 13.3.

11. NON-SOLICITATION

- 11.1 The Supplier covenants with the Company that it shall not, in competition with the Company, on its own account, or as a director, employee, employer or agent of any other party, directly or indirectly throughout the duration of the Contract and for a period of 12 months from the date of termination or expiration of the Contract, transact business with or solicit for business any customers of the Company who are customers at the date of termination or expiration of the Contract or within 12 months immediately preceding that date, or solicit or entice or endeavour to entice away from the Company throughout the duration of the Contract or for a period of 12 months from the date of termination or expiration of the Contract, any employees or suppliers of the Company.
- 11.2 Without limiting the generality of Condition 5.1, the Supplier furthermore agrees to promptly and fully indemnify and hold the Company harmless against any liability, loss, damage, cost, charge or expense arising directly or indirectly from any breach of Condition 11.1.

12. USE OF COMPANY MATERIALS AND INTELLECTUAL PROPERTY RIGHTS

- 12.1 As and between the Company and the Supplier, all Company Materials shall at all times be and shall remain the exclusive property of the Company and shall be surrendered to the Company upon demand and in the condition in which they were originally provided to the Supplier and are to be used by the Supplier solely in order to fulfill the Supplier's obligations under the Contract. The Supplier agrees that no copy of any Company Materials shall be made without the consent in writing of the Company and that no Company Materials may be disclosed, communicated, disseminated, distributed or otherwise made available to any third party. Until the Supplier returns the Company Materials to the Company, they shall be held by the Supplier at the Supplier's risk and shall be insured by the Supplier at the Supplier's own expense against any risk of loss, theft or damage. Any loss of, or damage to, any Company Materials shall be made promptly and fully good by the Supplier, at the Supplier's expense and the Supplier furthermore agrees to promptly and fully indemnify and hold the Company harmless against any liability, loss, damage, cost, charge or expense arising directly or indirectly from any other breach of this Condition 12.1, in either case without limiting the generality of Condition 5.1.

- 12.2 To the extent that any Intellectual Property Rights are owned by the Supplier or licensed to the Supplier by any third party and any such Intellectual Property Rights are to be utilised by the Company, the Supplier grants a perpetual, royalty-free licence or sub-licence in any such Intellectual Property Rights to the Company and warrants that the use of any such Intellectual Property Rights by the Company will not infringe the rights of any third party. The Supplier's obligations with respect to possession of Company Materials upon termination of the Contract are set out in Condition 13.3.

13. TERMINATION

- 13.1 The Company shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the Company shall pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 13.2 The Company shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract forthwith without liability to the Supplier if:
- (a) the Supplier commits a material breach of any of the terms and conditions of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of being notified in writing of the breach; or
 - (b) the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or
 - (c) any distress, execution or other process is levied upon any of the assets of the Supplier; or
 - (d) the Supplier has a bankruptcy order made against it or makes an arrangement or composition with its 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 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
 - (e) the Supplier ceases or threatens to cease to carry on its business; or
 - (f) the financial position of the Supplier deteriorates to such an extent that in the opinion of the Company the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy.
- 13.3 Upon termination of the Contract, however arising, the Supplier shall promptly deliver up to the Company, or otherwise permanently delete or dispose of at the Company's direction, all Company Materials and any other materials embodying Confidential Information that may be in the Supplier's possession or control.
- 13.4 The termination of the Contract, however arising, shall be without prejudice to the rights of

the Company accrued prior to termination. Any Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

14. REMEDIES

- 14.1 Without prejudice to any other right or remedy which the Company may have, the Company shall be entitled to avail itself of any one or more of the following remedies at its discretion:
- (a) to rescind the Order;
 - (b) to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;
 - (c) at the Company's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
 - (d) to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
 - (e) to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and
 - (f) to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Contract.

15. ASSIGNMENT

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

16. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered 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.

17. GENERAL

- 17.1 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.
- 17.2 The Contract constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements and understandings between the parties.
- 17.3 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.
- 17.4 Failure or delay by the Company in enforcing or partially enforcing any provision of the

- Contract shall not be construed as a waiver of any of its rights under the Contract.
- 17.5 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 17.6 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.
- 17.7 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.

18. COMMUNICATIONS

- 18.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or email:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Supplier by the Company; or
 - (b) (in the case of the communications to the Supplier) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Supplier set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Supplier.
- 18.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - (b) if delivered by hand, on the day of delivery; or
 - (c) if sent by fax or email, on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.