

STANDARD TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

Applied Technical Products Ltd

1 DEFINITIONS

In this document the following words shall have the following meanings:

- 1.1 "Agreement" means these Terms and Conditions together with the terms of any applicable Specification Document;
- 1.2 "Customer" means the organisation or person who purchases goods and services from the Supplier;
- 1.3 "Order": the Customer's order for the supply of Goods and/or Services
- 1.3 "Intellectual Property Rights" means all patents, registered and unregistered designs, copyright, trade-marks, know-how and all other forms of intellectual property wherever in the world enforceable;
- 1.4 "Specification Document" means the most recent revision of a statement of work, quotation or other similar document, in every case headed "quotation" describing the goods and services to be provided by the Supplier;
- 1.5 "Supplier" means Applied Technical Products Ltd.

2 GENERAL

- 2.1 These Terms and Conditions shall apply to all contracts for the supply of goods and services by the Supplier to the Customer.
- 2.2 Before the commencement of the services the Supplier shall submit to the Customer a Specification Document which shall specify the goods and services to be supplied and the price payable. The Customer shall notify the Supplier immediately if the Customer does not agree with the contents of the Specification Document. All Specification Documents shall be subject to these Terms and Conditions.
- 2.3 The Supplier shall use all reasonable endeavours to complete the services within estimated time frames but time shall not be of the essence in the performance of any services.

3 Basis of contract

- 3.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 3.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 3.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
- 3.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 3.5 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
- 3.7 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

4 PRICE AND PAYMENT

- 4.1 The price for the supply of goods and services are as set out in the Specification Document. The Supplier shall invoice the Customer in accordance with the Specification document.
- 4.2 Invoiced amounts shall be due and payable in accordance with the Specification document. The Supplier shall be entitled to charge interest on overdue invoices from the date when payment becomes due from day to day until the date of payment at a rate of 7% per annum above the base rate of the Bank of England and compounding quarterly. Any forbearance under this clause by the Supplier shall not be construed as a right to extend the payment terms.
- 4.3 In the event that the Customer's procedures require that an invoice be submitted against a purchase order, the Customer shall be responsible for issuing such purchase order before the goods and services are supplied.
- 4.5 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 4.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

5 SPECIFICATION OF THE GOODS. **THE CUSTOMER'S ATTENTION IS SPECIFICALLY DRAWN TO THIS CLAUSE**

- 5.1 All goods shall be required only to conform to the specification in the Specification Document. For the avoidance of doubt no description, specification or illustration contained in any product pamphlet or other sales or marketing literature of the Supplier and no representation written or oral, correspondence or statement shall form part of the contract and have no contractual force. Further, the specification is subject to change in accordance with Clause 9
- 5.2 The effectiveness of weather covers, on their own, to protect against frost are influenced by many external factors such as ground temperature, humidity, wind chill, air ambient temperature, cloud cover, shading, grass coverage, availability of undersoil heating and pitch construction. The Supplier anticipates that in ideal conditions the cover will provide a good measure of protection down to temperatures in the region of -2C to -4C but, because of the many variables cannot guarantee protection to a specific temperature point. The system should not be deployed, as frost protection, on already frozen or icy ground as it will merely seal in the icy conditions.
- 5.3 When using any weather covers, regular monitoring of the pitch should be carried out for signs of damage to the surface, which can occur particularly during hot and cold periods. If covers are left on the pitch during hot conditions the surface can become damaged. If the surface is allowed to freeze to the cover then the cover should not be removed until that adhesion has melted otherwise damage to the surface may result. Snow, standing water and debris should be removed from the cover before it is taken off the pitch. It is the Customers' responsibility to ensure any lifting and moving of covers is done in accordance with their own safe systems of work.
- 5.4 Typical deployment times and deployment manpower requirements depend upon each covers individual specification. If these factors are of importance to you please contact us and we will give you written guidance in relation to your specific choice of cover. It is solely the Customers' responsibility to satisfy themselves that the products are fit for the purpose for which they are chosen

6 DELIVERY & INSTALLATION

6.1 The date of delivery / installation specified by the Supplier is an estimate only. Time for delivery / installation shall not be of the essence of the contract and the Supplier shall not be liable for any loss, costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods.

6.2 All risk in the goods shall pass to the Customer upon delivery / installation.

7 TITLE & RISK

7.1 Title in the Goods shall not pass to the Customer until the Supplier has been paid in full for the Goods. Until title to the Goods has passed to the Customer, the Customer shall:

7.1.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

7.1.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

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

7.1.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

7.1.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 13.1; and

7.1.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time,

If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.1 or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7.2 The risk in the Goods shall pass to the Customer on completion of delivery

8 CUSTOMER'S OBLIGATIONS

8.1 To enable the Supplier to perform its obligations under this Agreement the Customer shall:

8.1.1 Co-operate with the Supplier;

8.1.2 Provide the Supplier with any information reasonably required by the Supplier;

8.1.3 Obtain all necessary permissions and consents, including any local regulations over and above any CE approval, for the installation site which may be required before the commencement of the services; and

8.1.4 Comply with such other requirements as may be set out in the Specification Document or otherwise agreed between the parties.

8.2 The Customer shall be liable to compensate the Supplier for any expenses incurred by the Supplier as a result of the Customer's failure to comply with Clause 8.1.

8.3 Without prejudice to any other rights to which the Supplier may be entitled, in the event that the Customer unlawfully terminates or cancels the goods and services agreed to in the Specification Document, the Customer shall be required to pay to the Supplier as agreed damages and not as a penalty the full amount of any third party costs to which the Supplier has committed and in respect of cancellations on less than five working days' written notice the full amount of the goods and services contracted for as set out in the Specification Document, and the Customer agrees this is a genuine pre-estimate of the Supplier's losses in such a case. For the avoidance of doubt, the Customer's failure to comply with any obligations under Clause 8.1 shall be deemed to be a cancellation of the goods and services and subject to the payment of the damages set out in this Clause.

8.4 In the event that the Customer or any third party, not being a sub-contractor of the Supplier, shall omit or commit anything which prevents or delays the Supplier from undertaking or complying with any of its obligations under this Agreement, then the Supplier shall notify the Customer as soon as possible and:

8.4.1 The Supplier shall have no liability in respect of any delay to the completion of any project;

8.4.2 If applicable, the timetable for the project will be modified accordingly;

8.4.3 The Supplier shall notify the Customer as soon as reasonably practicable if it intends to make any claim for additional costs.

9 ALTERATIONS TO THE SPECIFICATION DOCUMENT

9.1 The parties may at any time mutually agree upon and execute new Specification Documents. Any alterations in the scope of goods and / or services to be provided under this Agreement shall be set out in the Specification Document, which shall reflect the changed goods and / or services and price and any other terms agreed between the parties.

9.2 In exceptional circumstances the Supplier may need to alter the sizes, specification and functionality of the installed equipment to accommodate the site conditions or as part of continuing product development and or procurement. Such modifications will be made at the absolute discretion of the Supplier and without notice to the Customer to achieve what the Supplier considers to be the optimum solution for the installation site.

10 WARRANTY

10.1 The Supplier warrants that on delivery, and for a period of 12 months from the date of delivery (Warranty Period), the Goods shall:

(a) conform in all material respects with the Specification;

(b) be free from material defects in design, material and workmanship;

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(d) be fit for any purpose held out by the Supplier subject to these conditions.

10.2 Subject to clause 10.3, if:

(a) the Customer gives notice in writing during the Warranty Period within 7 days of discovery that some or all of the Goods do not comply with the warranty set out in clause 10.1;

(b) the Supplier is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, supply repair materials or replacement parts or refund the price of the defective Goods in full.

10.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 10.1 if:

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 10.2.a;

(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;

(c) the defect arises as a result of the Supplier following any drawing, design or Goods Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of the Supplier;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, wind or abnormal working conditions;

(f) the Goods differ from Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

10.4 Except as provided in this clause 10, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 10.1.

10.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Supplier under clause 10.2 save that the 12 months warranty period for such repaired or replacement goods shall run from the date of delivery of the original goods supplied under the contract .

11 INDEMNIFICATION

The Customer shall indemnify the Supplier against all claims, costs and expenses which the Supplier may incur and which arise, directly or indirectly, from the Customer's breach of any of its obligations under this Agreement, including any claims brought against the Supplier alleging that any goods and/or services provided by the Supplier in accordance with the Specification Document infringes a patent, copyright or trade secret or other similar right of a third party.

12 Limitation of liability: **THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 12.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 12.1.2 fraud or fraudulent misrepresentation;
 - 12.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - 12.1.4 breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - 12.1.4 defective products under the Consumer Protection Act 1987.
- 12.2 Subject to clause 12.1
- 12.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and
 - 12.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 75% of the Contract Price
 - 12.2.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 This clause 12 shall survive termination of the Contract.

13 TERMINATION

- 13.1 Either party may terminate this Agreement forthwith by notice in writing to the other if:
- 13.1.1 The other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect;
 - 13.1.2 The other party ceases to carry on its business or substantially the whole of its business; or
 - 13.1.3 The other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets
- 13.2 .Without limiting its other rights or remedies, the Supplier may terminate the Contract:
- 13.2.1 by giving the Customer 30 days' written notice;
 - 13.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.

14 CONSEQUENCES OF TERMINATION

- 14.1 On termination of the Contract for any reason:
- 14.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods or Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 14.1.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
 - 14.1.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
 - 14.1.4 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

15 INTELLECTUAL PROPERTY RIGHTS

- 15.1 All Intellectual Property Rights produced from or arising as a result of the performance of this Agreement shall, so far as not already vested, become the absolute property of the Supplier, and the Customer shall do all that is reasonably necessary to ensure that such rights vest in the Supplier by the execution of appropriate instruments or the making of agreements with third parties.
- 15.2 The Matchsaver system is patent protected and the Supplier holds all Intellectual property rights in relation thereto. The Customer shall not directly or indirectly either alone or in conjunction with others facilitate, encourage, allow or take any action whatsoever that infringes such rights.

16 INDEPENDENT CONTRACTORS

The Supplier and the Customer are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. The Supplier may, in addition to its own employees, engage sub-contractors to provide all or part of the services being provided to the Customer and such engagement shall not relieve the Supplier of its obligations under this Agreement or any applicable Specification Document.

17. GENERAL

- 17.1 Force majeure:
- (a) For the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, adverse weather, or default of suppliers or subcontractors.
 - (b) The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
 - (c) If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Goods for more than one week, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 17.2 Assignment and subcontracting:

(a) The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

(b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.3 Notices:

(a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

(b) Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.

(c) This clause 17.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

17.4 Waiver and cumulative remedies:

(a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. 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.

(b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.

17.5 Severance:

(a) If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

17.6 No partnership:

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.

17.7 Third parties:

A person who is not a party to the Contract shall not have any rights under or in connection with it.

17.8 Variation:

Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by an officer of the Supplier.

17.9 Governing law and jurisdiction:

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, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

19 IMPORTANT LIMITATIONS

18 ENTIRE AGREEMENT

This Agreement contains the entire agreement between the parties relating to the subject matter and supersedes any previous agreements, arrangements, undertakings or proposals, oral or written. Unless expressly provided elsewhere in this Agreement, this Agreement may be varied only by a document signed by the Customer and an authorised Officer of the Supplier.