

ADDEV MATERIALS AEROSPACE LIMITED - UK CONDITIONS OF SALE

1. Interpretation

1.1. In these Conditions the following words have the following meanings:

"the Buyer" the firm or company who purchases Goods from the Company;

"Cash Buyer" any Buyer who is not a Credit Account Buyer;

"the Carrier" the carrier nominated by the Company to make delivery of the Goods in accordance with Condition 3.2 or such other carrier nominated by the Buyer to accept delivery of the Goods in accordance with Condition 3.3, as may be agreed between the Company and the Buyer from time to time

"Conditions" the terms and conditions set out in this document as amended from time to time in accordance with Condition 2.2.

"the Company" ADDEV Materials Aerospace Limited (a company registered in England under number 04421963) and whose registered office is at Towngate House, 2-8 Parkstone Road, Poole, Dorset, BH15 2PW;

"Contract" the contract between the Company and the Buyer for the sale and purchase of Goods in accordance with these Conditions;

"Credit Account Application" the application for a credit account completed by a Credit Account Buyer which has been submitted to and accepted by the Company prior to placing an order for Goods;

"Credit Account Buyer" a Buyer who has submitted a Credit Account Application and who has been accepted for and provided with a credit account by the Company for the purposes of placing and paying for orders of Goods with the Company;

"Force Majeure Event" has the meaning given in Condition 12;

"Goods" any goods to be supplied to the Buyer by the Company (including any part or parts of them) pursuant to a Contract; and

"Working Day" any day which is not a Saturday, Sunday or a bank or public holiday.

1.2. In these Conditions, reference to:

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

1.2.2. a party includes its successors and permitted assigns;

1.2.3. writing or written includes fax and email.

1.3. The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Application of Terms

2.1. Subject to any variation under Condition 2.2, a Contract will be governed by these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports or seeks to apply under any purchase order, confirmation of order, specification or other document and any which are implied by law, trade, custom, practice or course of dealing).

2.2. These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Director of the Company.

2.3. Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.4. No order placed by the Buyer shall be deemed to be accepted by the Company and no Contract shall come into existence until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods pursuant to Condition 3.

2.5. The Buyer must ensure that the terms of its order for Goods and any applicable specification are complete and accurate in all respects.

2.6. Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures or its websites are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of any Contract nor have any contractual force.

3. Delivery

3.1. Any dates specified by the Company for delivery of the Goods are intended to be an estimate only and time for delivery shall not be of the essence nor can the time for delivery be made of the essence by notice. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

3.2. In the event that the Carrier is nominated by the Company, delivery of the Goods shall take place when the Carrier delivers the Goods to the Buyer's premises or the premises set out in the order for Goods (as applicable). For the avoidance of doubt, where no address for delivery is specified by the Buyer in the order, the Goods shall be delivered to the Buyer's last known premises. Where the Carrier is nominated by the Company in accordance with this Condition 3.2, delivery of the Goods shall occur once the Goods have been unloaded at the Buyer's premises or the premises set out in the order for Goods (as applicable).

3.3. In the event that the Carrier is nominated by the Buyer and agreed with the Company, the Company will make delivery of the Goods by making the Goods available for collection by the Carrier at the Company's premises. Where the Carrier is nominated by the Buyer in accordance with this Condition 3.3, delivery shall occur upon the Company making the goods available for loading by the Carrier.

3.4. If for any reason the Buyer or the Carrier (where the Carrier is nominated by the Buyer in accordance with Condition 3.3) will not or are not able to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods because the Buyer has not provided appropriate instructions, documents, licences or authorisations then, at the time of such non-acceptance of delivery or inability to deliver:

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

3.4.2. the Goods will be deemed for all purposes to have been delivered; and

3.4.3. the Company may store the Goods until actual delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage, insurance and any recovery costs).

3.5. The Buyer will provide at its expense if requested by the Company at the place where delivery of the Goods is to take place, adequate and appropriate equipment and manual labour for unloading the Goods.

3.6. The quantity of any consignment of Goods as recorded by the Company upon receipt from the Company'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.

3.7. The Company may deliver the Goods by instalments. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

3.8. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 5 Working Days of the date of delivery of the invoice to the Buyer. Where such notice is given the Company's liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by:

3.9. by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4. Risk/Title

4.1. The Goods shall be at the risk of the Buyer from the time delivery occurs pursuant to Condition 3.2, 3.3 or 3.4 (as applicable).

4.2. Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cleared funds) all sums due to it in respect of:

4.2.1. the Goods; and

4.2.2. all other sums which are or which become due to the Company from the Buyer on any account.

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

4.3.1. hold the Goods on a fiduciary basis as the Company's bailee;

4.3.2. store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;

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

4.3.4. maintain the Goods in a satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and

4.3.5. hold the proceeds of the insurance referred to in Condition 4.3.4 on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

4.4. 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.

5. Price

5.1. Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the Company's written acknowledgement of order issued in accordance with Condition 2.4.

5.2. The Company may, by giving notice to the Buyer at any time up to 5 Working Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

5.2.1. 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);

5.2.2. any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or any specification applicable to the Goods; or

5.2.3. any delay caused by any instructions of the Buyer or failure of the Buyer's to give the Company adequate or accurate information or instructions.

5.3. The price for the Goods shall be exclusive of:

5.3.1. any value added tax which the Buyer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice; and

5.3.2. the costs of packaging, insurance, carriage, delivery and/or customs, import and export charges. Any costs and charges payable by the Buyer in relation to the packaging, insurance, carriage and delivery of the Goods will be set out in the written acknowledgement of order issued pursuant to Condition 2.4, and the Buyer shall be additionally liable to pay the Company those amounts, in addition to the price of the Goods, at the same time that the Buyer is required to pay for the Goods to which those amounts relate.

6. Payment

6.1. Payment of the price for the Goods, together with any VAT and packaging, insurance, carriage, delivery and/or customs, import and export charges pursuant to Condition 5.3, shall be due for payment:

6.1.1. where the Buyer is a Cash Buyer, in advance of the delivery; or

6.1.2. where the Buyer is a Credit Account Buyer in accordance with the payment terms set out in the Credit Account Application.

6.2. Time for payment of all amounts owed by the Buyer to the Company shall be of the essence.

6.3. All payments due from the Buyer to the Company shall be made in the manner specified in the Credit Account Application or as otherwise agreed between the Company and the Buyer in writing from time to time. No payment shall be deemed to have been received until the Company has received cleared funds.

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

6.5. The Buyer shall make all payments due under a Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise (other than any deduction or withholding of tax as required by law).

6.6. If the Buyer fails to pay the Company any sum due pursuant to a Contract on the due date for payment, the Buyer will be liable to pay interest to the Company on such sum from the due date for payment at the rate of 7% per annum above the base lending rate from time to time of Barclays Bank Plc (but shall be 7% per annum for any period when that base rate is below 0%), accruing on a daily basis until payment is made, whether before or after any judgement.

7. Claims for Damaged Goods

7.1. The Buyer shall inspect the Goods immediately following delivery having occurred in accordance with Condition 3.2 or 3.3 (as applicable).

7.2. Any claim that the Goods were damaged prior to delivery having occurred in accordance with Condition 3.2 or 3.3 (as applicable) must be notified by the Buyer to the Company in writing within 3 Working Days of delivery occurring, such written notice containing full details of the claim.

7.3. The Company must be afforded a reasonable opportunity and facilities to investigate any claims made under this Condition 7. The Buyer, if so requested by the Company, must promptly return the Goods which are the subject of any claim, securely packed and carriage paid, to the Company for examination and in any event must cease to use the Goods.

7.4. Subject to the Buyer having complied with the requirements in Conditions 7.2 and 7.3 above, in circumstances where the Goods were damaged prior to delivery having occurred in accordance with Condition 3.2 or 3.3, the Company may, at its option and acting in its sole discretion, either repair the Goods and/or make good such damage, replace the Goods or, where neither a repair or replacement is possible, refund the Buyer all amounts paid by the Buyer for the Goods which have been damaged. Where the Company opts to refund the Buyer in accordance with this Condition 7.4, such refund shall be made by the Buyer issuing a credit note to the credit account of the Buyer (where the Buyer is a Credit Account Customer) or by issuing a cash refund to the Buyer by BACS (where the Buyer is a Cash Buyer).

7.5. The Company will have no liability with regard to any claim in respect of which the Buyer has not complied with the claims procedures in these Conditions.

7.6. These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

8. Limitation of Liability

8.1. Save as expressly provided 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 any Contract.

8.2. In circumstances where the Goods are manufactured other than by the Company, the Company shall use reasonable endeavours to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

8.3. The restrictions on liability in this Condition 9 apply to every liability arising under or in connection with any Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

8.4. Nothing in these Conditions excludes or limits the liability of the Company for:-

8.4.1. death or personal injury caused by the Company's negligence;

8.4.2. fraudulent misrepresentation; or

8.4.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979.

8.5. Subject to Condition 9.4, the following types of loss are wholly excluded:

8.5.1. loss of profits;

8.5.2. loss of sales or business;

8.5.3. loss of agreements or contracts;

8.5.4. loss of anticipated savings;

8.5.5. loss of use or corruption of software, data or information;

8.5.6. loss of or damage to goodwill; and

8.5.7. indirect or consequential loss.

8.6. Subject to Conditions 9.4 and 9.5, the Company's total liability to the Buyer shall not in any circumstances exceed the higher of:

8.6.1. the price actually paid by the Buyer for the Goods to which the liability relates; and

8.6.2. the amount actually received by the Buyer from its insurers following a successful claim in relation to the Goods to which the liability relates.

8.7. This Condition 9 shall survive the termination of any Contract.

9. Compliance with Law

9.1. The Buyer warrants to the Company that it will, at all times after taking possession of the Goods, store and use the Goods in accordance with all relevant laws and regulations. These include but are not limited to - export regulations and controls, environmental and chemical regulations.

9.2. The Buyer shall indemnify the Company against any damages, losses, costs, claims or expenses incurred by the Company as a result of any breach by the Buyer of the terms of Condition 10.1.

10. Assignment and other dealings

10.1. The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under any Contract without the prior written consent of the Company.

10.2. The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under any Contract.

11. Force Majeure

11.1. The Company shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from an event beyond the reasonable control of the Company including, without limitation, acts of God, flood, drought, fire, explosion, earthquake or other natural disaster, epidemic or pandemic, governmental actions, terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations, nuclear, chemical or biological contamination or sonic boom, natural emergency, strikes or other labour disputes, industrial action, lockouts import restrictions, or restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, any law or any action taken by a government or public authority, non-performance by suppliers or subcontractors and/or interruption or failure of utility services (Force Majeure Event). In such circumstances:

11.1.1. the time for performance shall be extended by a period equivalent to the period during which the performance of the obligation has been delayed or failed to be performed; and/or

11.1.2. the Company may terminate the Contract by giving 5 Working Days written notice to the Buyer; and/or

11.1.3. the Company may reduce the volume of the Goods ordered by the Buyer;

in each case without liability.

12. Insolvency or other default of the Buyer

12.1. This Condition 13 applies if:

12.1.1. the Buyer fails to make payment when due or commits any other breach of a Contract; or

12.1.2. the Buyer makes any arrangements with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or

12.1.3. an encumbrancer takes possession of, or a receiver is appointed over, any of the property or assets of the Buyer; or

12.1.4. the Buyer ceases, or threatens to cease, to carry on business; or

12.1.5. the Company reasonable considers that any of the events listed in Conditions 13.1.2 to 13.1.4 inclusive is about to occur in relation to the Buyer and notifies the Buyer accordingly.

12.2. If this Condition 13 applies, the Company may in its absolute discretion suspend all further deliveries of Goods, and/or terminate the Contract, without liability to the Buyer. If the Goods have been delivered but not paid for, the price of the Goods, together with any VAT and packaging, insurance, carriage, delivery and/or customs, import and export charges arising pursuant to Condition 5.3, will become immediately due and payable.

12.3. Termination or expiry of the Contract, howsoever arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry.

12.4. Any provision of the Contract that expressly or by implication is intended to come into or continue force on or after termination or expiry of the Contract shall remain in full force and effect.

13. Confidentiality

13.1. Except as referred to in Condition 14.2, the Buyer will not disclose and will treat as strictly confidential any confidential information concerning the business, affairs, customers, clients or supplies of the Company including all pricing and financial information regarding the Company received or obtained as a result of entering into a Contract.

13.2. The Buyer may disclose information which would otherwise be confidential if and to the extent:-

13.2.1. that disclosure is required by law or any regulatory or governmental authority;

13.2.2. the information has come into the public domain through no fault of the Buyer;

13.2.3. the Company has given prior written approval to the disclosure.

13.3. The obligations imposed upon the Buyer by this clause shall survive the termination or expiry of a Contract.

14. Notices and communications

14.1. Any notice and/or other communication between the Buyer and the Seller under or in connection with these Conditions or the Contract shall be in writing and:

14.1.1. be delivered by hand or sent by pre-paid first class post or other next working day service to the receiving party's principal place of business (or such other address as that party may notify to the other in writing from time to time); or

14.1.2. be sent by fax or by e-mail.

14.2. Any notice and/or other communication shall be deemed to have been received:

14.2.1. if delivered by hand, at the time the notice or communication is left at the proper address;

14.2.2. if sent by pre-paid first-class post or other next working day service, at 9.00am on the second Working Day after posting (exclusive of the day of posting); or

14.2.3. if sent by fax or email on a Working Day prior to 4.00 pm, at the time of transmission or if sent by fax or email on a Working Day after 4.00pm, on the next Working Day after transmission.

14.3. This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15. General

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

15.2. If any provision of a 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 a Contract and the remainder of such provision shall continue in full force and effect.

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

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

15.5. Each Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. The Customer acknowledges and agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract and that shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

15.6. A person, firm or company who is not a party to a Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of a Contract but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

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