

**MIDLAND AEROSPACE LIMITED**

**Standard Terms and Conditions of Supply**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In these Conditions the following expressions shall have the following meanings: -

“Buyer” means the company or legal entity as is designated on the Order or in any quotations.

“Conditions” means the standard terms and conditions of sale set out in this document and includes any special terms and conditions that may be agreed between Seller and Buyer as stated in the Order.

“Force Majeure” means events proved to be beyond the Seller’s reasonable control including without limitation an act of God, fire, flood, explosions, earthquakes, any act of Government, war, insurrection or riots, import or export regulations or embargoes, strikes, lockouts or other industrial action whether involving its own workforce or a third party, non-availability of workmen, machinery or materials, default of Seller’s suppliers or sub-contractors, power failure or breakdown in machinery.

“Goods” means the goods (including any instalment of the goods or any parts for them) or services which the Seller agrees to supply in accordance with these Conditions.

“Intellectual Property” means information and data of all kinds, whether subject to statutory protection or not, including but not limited to inventions, drawings, designs, computer software, technical data packages, test results, manufacturing information, financial or commercial information, know-how and trade secrets or confidential information and all other proprietary information.

“Order” means the purchase order including the Conditions and those conditions appearing on the face of or otherwise incorporated in the Order.

“Order Acceptance” means the documentary or other mode of formal acceptance of an Order by the Seller.

“Price” means the price agreed and stated in the Order accounting for any price variation that may apply due to changes in agreed scope of supply or applicable economic conditions.

“Seller” means Midland Aerospace Limited, Company Number 4326476 whose registered office is at Castlewood Business Park, Farmwell Lane, Sutton-in-Ashfield, Nottinghamshire, NG17 1BX.

“Specification” means the Buyer’s written technical requirements or other agreed means of defining the technical requirements for the Goods referred to by the Order.

1.2 In the event of any conflict between the documents or requirements included within the Order they shall be interpreted in accordance with the following order of precedence: i) The Conditions; ii) The Specification; and iii) The Order.

1.3 Headings are for convenience only and shall not affect the interpretation of these Conditions of Sale.

## **2. WHOLE AGREEMENT**

2.1 The Order and these Conditions supersede all prior agreements, understandings, representations and collateral agreements whether written or oral between the Parties relating to the subject matter of the Order.

## **3. ORDER ACCEPTANCE AND VARIATION**

3.1 All Seller quotations are issued and all Orders are accepted only upon the Conditions. In no event shall Buyer’s conditional acceptance of any Conditions or proposal of its own or any other conditions of purchase be valid unless expressly agreed otherwise in writing and signed by a Director or authorised nominated representative of the Seller.

3.2 No quotation given by Seller shall constitute an offer for sale so as to create a contract and all Orders received from any Buyer shall require the Seller’s formal acceptance via Order Acceptance before a contract shall be deemed to be in effect. For the avoidance of doubt, all Order Acceptance shall be deemed to include these Conditions which shall form part of such contract.

3.3 Any advice or recommendations that may be provided by the Seller, its employees, agents or contractors is given without warranty or liability.

3.4 Any descriptive written or pictorial material issued or published by the Seller from time to time that may relate to the Goods that are subject of an Order under these Conditions shall not form part of any contract of sale.

3.5 Each accepted Order shall constitute an entire and separate contract to which these Conditions apply.

3.6 If trading is being conducted by interchange of electronic data, the contract is formed at the point that the Seller’s acceptance is transmitted from the Seller’s electronic system.

3.7 In no circumstances will Seller be bound by any addition or variation to these Conditions, or the scope of supply of Goods hereunder, unless such addition or variation is expressly agreed in writing by the Seller and signed by a Director or authorised nominated representative of the Seller.

## **4. PRICE OF GOODS & PAYMENT**

4.1 Unless otherwise agreed and stated in the Order Acceptance, Seller’s price of Goods shall be based on delivery terms as set out in these Conditions.

4.2 Prices quoted do not include UK Value-Added-Tax which, where applicable will be indicated separately on the invoice at the ruling rate and shall be paid by the Buyer.

4.3 The Seller reserves the right by giving notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture) or to any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.4 Unless otherwise stated in the Order Acceptance payment will be due (without deduction) strictly 30 days from the date of invoice. The Buyer shall pay all invoices without any other deductions, notwithstanding that delivery may not have taken place and the property in the Goods has not been passed to the Buyer. The due date of payment of the price shall be of the essence of the contract made under an Order. Receipts for payment to Seller will be issued only upon written request.

4.5 All payments due to Seller will be made without deduction or set-off by the Buyer whatsoever.

4.6 If any payment is overdue the Seller reserves the right to suspend any further deliveries and to charge interest on the amount due after as well as before judgment on a daily basis at the annual rate 4% above the Base Rate of the Bank of England from time to time applicable until the overdue amount including interest, is paid, (a part of a month being treated as a full month for the purpose of calculating interest). Furthermore, the Seller shall have the right to suspend or cancel the Order or any other Order under these Conditions in respect of undelivered Goods.

## 5. DELIVERY & RETURNS

5.1 Unless stated on the Order Acceptance any delivery date or period specified is an estimate only and the Seller shall not be liable for any loss or damage sustained by the Buyer as a result of failure to deliver Goods on such a date or period.

5.2 The Buyer will efficiently and without delay or charge to the Seller provide the Seller with all information, drawing, specifications, free issue materials delivery instructions and all other instructions relevant to the supply of the Goods in sufficient time to enable the Seller to deliver the Goods within the specified time.

5.3 Unless otherwise agreed and stated in the Order, Seller shall deliver Goods Ex Works, Seller's facility (Incoterms 2020) and point of delivery shall be upon notification to the Buyer that such Goods are available for collection. In any event, the Seller reserves the right to charge the Buyer separately for any special packaging, delivery requirements or consignments of small value.

5.4 If the Buyer fails to take delivery of the Goods or fails to give adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

- i) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Order(s).

5.5 Goods will not be accepted for return without the prior agreement of the Seller. Agreed returns must be accompanied by details giving the reason for the return, the date and number of the Company's Invoice upon which such Goods were charged, or any other information reasonably requested by the Seller.

## **6. SHORTAGES, DAMAGES & LOSS IN TRANSIT**

6.1 Any claim by the Buyer in relation to Goods found damaged upon delivery, parts shortage or non-delivery must be made in writing to the Seller within seven calendar (7) days of the agreed delivery date or the despatch date (if notified) whichever is earlier, or failing any such a date, the date specified by the Seller as the date of delivery. Failure of the Buyer to notify the Seller as stated above shall release the Seller of any liability related to such damage, parts shortage or non-delivery.

6.2 In the event of any claim for damage or shortfall the Buyer shall preserve any Goods received intact (including all packaging) for a period of thirty (30) days from the notification of the claim during which time the Seller or the authorised agent of the Seller including, if applicable, any carrier employed for the Goods in question shall have the right to attend the Buyers premises to investigate the validity of any such claim.

## **7. TITLE AND RISK**

7.1 Risk of loss or damage to the Goods passes to the Buyer at delivery point following notification of readiness to dispatch/collect at which point revenue recognition occurs and an invoice is raised.

7.2 Title in the Goods shall remain with the Seller until payment in full has been received from the Buyer (in cash or cleared funds).

7.3 Until such time as Title passes to the Buyer for any Goods, Buyer shall act as bailee for such Goods for the Seller and keep such Goods free of any charge, lien or other encumbrance. Buyer agrees to store the Goods separately from those supplied by other parties and in such a manner to be clearly identified as the property of the Seller.

7.4 Unless otherwise agreed in writing, all tools, dies, patterns, moulds and other equipment ("Tooling") wholly or partly acquired at the expense of the Seller shall be and remain the property of the Seller.

## **8. LIMITATION OF DAMAGES**

8.1 Nothing in this clause 8 shall be deemed or construed to limit Seller liabilities for claims that may arise in relation to death or personal injury, proven to be caused by negligence of the Seller, or any other liability that may not be limited under the applicable law of these Conditions.

8.2 Seller shall not be liable in contract or tort or otherwise for any claims for consequential, incidental, indirect, punitive or exemplary damages whatsoever, including but not limited to: loss of actual or anticipated profit or revenue; loss of good will; business interruption; third party claims; or other loss or suffering however so arising.

8.3 Subject to clause 8.1 above, Seller's liability in respect of any breach or non-performance of Sellers obligations under the Order shall in any event be limited to the Order line-item price value of the Goods against which such breach or non-performance arises.

## **9. WARRANTY**

9.1 The Seller warrants that the Goods shall at the time of delivery conform to the drawings and specifications stated in the Order by the Buyer and be free from material defects in workmanship and materials. In no event shall the Seller bear any risk or be liable for defects in design of the Goods, or fitness for purpose for the Buyer's intended use, regardless of whether such purpose is known to the Seller.

Conditions of Supply/Midland Aerospace Limited/v.2/2022-01-27

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Company registered in England & Wales 04326476 | VAT Number 789 144 974  
Registered Office: Castlewood Business Park, Farmwell Lane, Sutton-in-Ashfield, Nottinghamshire, NG17 1BX.

9.2 The warranty period shall be one year from the date of delivery of the Goods in accordance with these Conditions.

9.3 The warranty shall be conditional on the Buyer reporting any defect claim in writing within thirty (30) days of discovery and the Buyer shall obtain Seller's written authorisation prior to the return any Goods. Agreed returns must be accompanied by details identifying the Goods, giving the date of defect discovery with reason for the return and any other information reasonably requested by the Seller. The Seller shall be given the option to examine defective Goods on site prior to return under warranty. Misuse, damage/abuse by the Buyer, or modification of any Goods without the Seller's written prior consent will void all and any warranty. Warranty claims for fair wear and tear of Goods are excluded.

9.4 The Seller shall confirm that the Buyer's warranty claim is valid and for defects in Goods that are directly and solely attributable to the Seller and either, at its sole discretion repair or replace the defective Goods at Seller's facility. If it is not possible or practical to correct the defect, the Seller may elect to credit the Buyer with the corresponding invoice amount. In no event shall Seller be liable to the Buyer for reimbursement of any costs of removal, replacement or handling of warranted Goods and liability of the Seller is limited to the value of the item of Goods concerned should any dispute arise.

9.5 In the event that the Seller determines that the warranty claim is not valid or no fault is found with the Goods concerned, the Buyer shall pay Seller its charges, costs and expenses incurred in the investigation and/or correction of such Goods. Any such claim shall be provided in writing by the Seller to the Buyer for payment within 30 days of receipt.

9.6 The provisions under this warranty clause constitute the Buyer's sole remedy against the Seller regarding warranty claims for defective Goods and are provided by the Seller in lieu of all other claims for liability whether expressed or implied by statute or common law are excluded to the fullest extent permitted by law.

## **10. FORCE MAJEURE**

The Seller shall not be liable or responsible for any in performance or non-performance of any of its obligations due to an event of Force Majeure or for any loss or damage caused by delay. In the event of Force Majeure, the Seller will notify the Buyer in writing as soon as reasonably possible following discovery and the above exclusion shall apply until the Seller notifies Buyer that the Force Majeure event is no longer applicable.

## **11. INDEMNITY**

The Buyer will at its expense defend, hold Seller harmless and fully indemnify and keep indemnified the Seller against all losses, damages (including legal fees) claims and expenses which Seller may incur as a result of: any breach in copy or design right and or intellectual property infringement resulting from the manufacture of Goods to the Buyers specification; any claims by Buyer's customers, end users or other third parties; and any claims for death or personal injury or damage to tangible property caused by Buyer or its employees, agents or contractors.

## **12 EXPORT TERMS**

12.1 In these Conditions 'Incoterms' means the International Chamber of Commerce rules for the interpretation of trade terms as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.

12.2 Where the Goods are supplied to the Buyer for export from the United Kingdom, the provisions of this clause 12 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply, notwithstanding any other provisions of these conditions.

12.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and notifying to the Seller the requirements of any such legislation or regulations requiring action on the part of the Seller and for the payment of any duties in connection with the Goods.

### **13 CONFIDENTIALITY**

13.1 All confidential information received by either party from the other party shall be held in complete confidence by the receiving party and its directors, employees, advisers or representatives, and shall not without the prior written consent of the disclosing party be used for any purpose other than in connection with the fulfilment of the Order.

13.2 Confidential information does not include information which (i) has already passed into the public domain other than through breach of this confidentiality obligation; (ii) has been received from an independent third party other than through breach of a confidentiality obligation; or (iii) the disclosing party can demonstrate has been independently developed by that party prior to disclosure.

13.3 All advertising, press releases, public announcements and public disclosures by a party relating to the Order must be approved by both parties prior to release to any third party. This clause does not prevent a party from making such press releases, public announcements or public disclosures as may be required by law or otherwise are reasonably justified to protect a party's legitimate interests.

13.4 The termination of the Order will not affect the parties' obligations under this clause 13.

### **14 TERM AND TERMINATION**

14.1 These Conditions shall apply from acceptance of any Order by the Seller and remain in full force and effect until all obligations of each party have been executed and fulfilled, or longer when the context of the term or condition so requires.

14.2 The Seller shall be entitled to cancel or suspend performance of the Order if the Buyer: a) fails to make payment due to the Seller under the Order or due on any other account on the due date and/or; b) has a receiver appointed, enter liquidation or insolvency proceedings, or cease or threaten to cease trading. Upon any such cancellation, the Buyer shall make affected Goods in possession of the Buyer for which payment is outstanding, available for collection by the Seller (including the right for Seller to enter Buyer's premises to do so).

14.3 The Seller shall have no obligation to accept cancellation of any Orders by the Buyer, except in special circumstances and by mutual written agreement. In the event of Seller's agreement to any such Order cancellation request, then Buyer shall be liable for all Seller's costs incurred which may include, but not be limited to: initial material provisioning; material cancellation charges; work performed by Seller; subcontractor costs; or other claims.

14.4 In the event that the Seller shall cancel the contract under the provisions of Clause 14.2 above the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of such cancellation.

## **15 LAW AND JURISDICTION**

15.1 These Conditions and the Order shall be governed by English Law and the parties hereto submit to the exclusive jurisdiction of the English Courts in relation to all issues, disputes, or questions arising out of the contract made in accordance with these Conditions and all matters associated with or relating to it.

15.2 Seller may recover a debt owed by Buyer or seek specific performance, interim or final injunctive relief in any court of competent jurisdiction.

## **16. GENERAL**

### **16.1 THIRD PARTY RIGHTS**

The contract under these Conditions is for the benefit of the Seller and the Buyer only and is not intended to benefit or to be enforceable by any third party. The exercise of each party's rights under the Conditions or any Order is not subject to the consent of any third party.

### **16.2 NOTICES**

All notices and communications shall be in writing in English and shall be sent to the other party's registered office, as notified and updated from time to time. Such notices shall be sent by recorded delivery and deemed as served on the recorded day of receipt.

### **16.3 SEVERANCE**

If any term, condition or provision, or part thereof, of the Order is nullified or made void the remaining terms, conditions and provisions shall remain, as far as possible, in full force and effect.

### **16.4 WAIVER**

No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

### **16.5 ASSIGNMENT of RIGHTS**

16.5.1 The Seller shall be entitled to assign, transfer, sub-contract or otherwise deal with its rights and obligations in whole or in part to a third party.

16.5.2 The Buyer shall not assign its rights and obligations to a third party without the prior written consent of the Seller, such consent not to be unreasonably wi