

## GENERAL TERMS AND CONDITIONS OF SALE AND CONTRACT

These General Terms and Conditions of Sale and Contract, any special conditions or additional conditions agreed in writing by AEM Limited or any of its subsidiary companies (any of which shall be referred to hereafter as the "Company") constitute the entire agreement ("Conditions") between the Company and any person (the "Customer") to whom or for which the Company supplies or undertakes any goods or services (whether reconditioning, overhaul, repair, service, testing, inspection or otherwise howsoever) to the exclusion of all other terms, conditions and warranties whatsoever and represent the only terms on which the Company trades notwithstanding any terms and conditions that may be contained in any order or other form of the Customer. (Any communication from a Customer to the Company which purports to be an order for goods or services subject to any terms outside the Conditions shall be invalid to the extent of such terms.)

No employee or agent of the Company has any authority to give or make any representation or warranty relating to goods or services provided or to be provided by the Company unless such representation or warranty is in writing and signed on behalf of the Company by a Director or a Manager of the Company.

Any exclusion, waiver or variation of these Conditions may only be made in writing signed by a Director or other duly authorised representative of the Company.

### 1. QUOTATIONS

- 1.1 No estimate or quotation given by the Company constitutes an offer.
- 1.2 The Company reserves the right to withdraw or amend a quotation at any time before receipt of an unqualified order from the Customer and each quotation shall be deemed withdrawn unless so accepted within the period for acceptance stated in the quotation or, if no such period is stated, 30 (thirty) days from the date of the quotation.
- 1.3 Acceptance and receipt of an unqualified order from the Customer by the Company, or acknowledgement by the Company of goods or work provided to the Company, shall constitute an individually legally binding contract between the Company and the Customer incorporating the Conditions ("Order").
- 1.4 The Customer shall be responsible to the Company for ensuring the provision of, and accuracy of, any specifications or other information required for the Services within a sufficient time to enable the Company to perform the Order in accordance with its terms.

## **2. STRIP AND INSPECT**

Any delivery by the Customer to the Company of goods for reconditioning, overhaul, repair or service subject to quotation by the Company shall constitute the Customer's authority to the Company to strip and inspect such goods for the purpose of preparing the quotation. The Customer shall be liable to pay to the Company all costs incurred by the Company in stripping and inspection whether or not the Customer subsequently instructs the Company to proceed with the reconditioning, overhaul, repair or service.

## **3. PRICES**

3.1 Where a quotation has been given, the price is that stated in the Order but the Company reserves the right to increase such price to cover any of the following:

- (a) The cost of any additional special testing, or investigation, required by the Customer, or any Government, Regulatory Body or Original Equipment Manufacturer.
- (b) The cost of any amendments to the Order or variation between the Order and the original enquiry instigated by the Customer, if such amendments or variations are agreed in writing by the Company.
- (c) Any increase in labour costs and/or material prices outside the control of the Company.
- (d) The prior sale of any material (whether held by the Company or an outside supplier) the prices of which were used in the preparation of the quotation.
- (e) Any expense incurred by the Company as a result of any suspension of the contract by the Customer (if such suspension is agreed in writing by the Company), or lack of or delay in any instructions, or any change in the Customer's instructions; or any delay arising from a cause under the Customer's control; or lack of or delay in information required by the Company from the Customer.

Where a quotation has not been requested by the Customer, the price shall be that stated on the invoice.

3.2 All prices are subject to change without notice in the event of any changes in cost of materials or labour, specifications, quantities, delivery schedules, customs duties, other factors beyond the Company's control, or in the event of delays caused by instructions of the Customer, or failure of the Customer to give the Company adequate information. Further, prices payable by the Customer shall be subject to immediate increase, should the Company, as a result of governmental action or regulation, incur additional duties, tariffs or restrictions on products sold hereunder, or on the raw materials that are used in making such products. In no event shall prices include any amounts imposed on the Customer in connection with the Customer's purchases from the Company, such as taxes, including but not limited to Value Added Tax (VAT) or excise taxes, duties, tariffs, or any other costs assessed against the Customer by a governmental authority.

- 3.3 Without limiting the foregoing, all prices are subject to adjustment without notice at any time prior to shipment in the event that the prices or costs related to any component, materials, parts, or commodities utilised in the products or services have increased following the acceptance of any order for any products or services (a "Component Adjustment"). Any Component Adjustment, as determined by the Company shall be reflected in the invoice for products or services that is transmitted from the Company to the Customer in accordance with the terms and conditions hereof.
- 3.4 Without limiting the foregoing, all prices are subject to adjustment without notice at any time prior to shipment due to increases in inflation occurring following the acceptance of any order for any products or services (an "Inflation Adjustment"). The Inflation Adjustment for any products or services shall be made by multiplying (a) the ratio obtained by dividing the (i) Consumer Price Index (CPI) in place at the time of invoice by (ii) the CPI in effect at the time of acceptance of an order times (b) the price or cost for any applicable products/services as set forth in the order. Any Inflation Adjustment, as determined by the Company, shall be reflected in the invoice for products or services transmitted from the Company to the Customer in accordance with the terms and conditions hereof.
- 3.5 The goods will be delivered in standard packing. Unless otherwise expressly stated, whether in these Conditions or otherwise, the costs of any special packing required, carriage, insurance, airport, dock or handling fees and other charges stated separately from the price are payable by the Customer at the same time, and shall be treated, as an additional part of the price.
- 3.6 Unless otherwise expressly agreed in writing, the price is exclusive of value-added tax and any other taxes, duties and impositions which, if applicable, shall be paid by the Customer in addition.

#### **4. CANCELLATION OF CONFIRMED ORDER**

In the event of cancellation of a confirmed Order the Customer will (without prejudice to any other right or remedy available to the Company) be charged for all costs incurred up to the date of receipt of the cancellation by the Company.

#### **5. PAYMENT**

- 5.1 All goods sold or services provided must be paid for in full by the end of the calendar month following the date of the invoice, unless agreed otherwise in writing by the Company (signed by a Director of the Company). The Company shall be entitled to invoice each part delivery as if it were a separate order or contract and the provisions of this clause shall apply to each such invoice.
- 5.2 The Customer must make all payments without set-off or counter-claim in United Kingdom sterling, unless the Company has stipulated for payment in another currency, and in immediately available cleared funds.

- 5.3 Time of payment is of the essence and the Company reserves the right to charge interest on any overdue amount, from the due date until actual payment, as well after as before judgement at the rate of 4 per cent per annum above Lloyds TSB plc base rate from time to time, calculated on a daily basis and compounded monthly.
- 5.4 Where the cost of goods or services sold or supplied to the Customer includes the cost of goods or services sold or supplied by a third party and no invoice from such party has been received by the Company by the time the invoice in respect of the goods or services sold or supplied to the Customer is raised, the Company shall, provided this is indicated on the initial invoice, be entitled to charge an estimated amount for such bought-out goods or services, subject to adjustment later.
- 5.5 If exchange units are being supplied, the Customer will become liable to pay the full sale cost of the replacement unit(s) if the units of the Customer (which must be like for like, including modification states and complete to DIS) being exchanged for units of the Company are not received within 30 days of the replacement units being delivered, unless an extension is expressly granted in writing by the Company. If not so received within such period, the Company shall be entitled to issue a supplementary invoice to cover the difference between the exchange and sale prices, or the value of the exchanged units.
- 5.6 If the Customer pays any amount without appropriating the amount in writing at the time of payment to the discharge of any specific debt(s), it shall be appropriated by the Company (who may attribute a partial payment to one or more specific items, rather than to all the items ordered by the Customer) and in the absence of any more specific appropriation by the Company shall be deemed to be appropriated to discharge debts not or no longer having the protection of any lien or the subject of reservation of property rights in favour of the Company before discharging debts having the protection of a lien or which are the subject of such reservation of rights.

## **6. TRANSPORT & DELIVERY**

- 6.1 Except where collected by the Company's own transport, goods sent to the Company for reconditioning, overhaul, repair, service, testing, inspection, or exchange shall be sent carriage paid. Where this involves goods shipped from outside the United Kingdom, the goods must be consigned DAP the Company's facility. Any freight forward charges incurred by the Company as a result of the Customer failing to comply with this requirement will be recharged to the Customer. These charges will be invoiced separately, payable before the goods or, as applicable, exchange goods will be released for return to the Customer.

- 6.2 For goods sent to the Company from outside the United Kingdom the Customer is responsible for ensuring that adequate documentation is provided for the importation of the goods into the United Kingdom, including details of part and serial numbers, component description, approximate value for customs purposes only and stating that the goods are for reconditioning, overhaul, repair, service, testing or inspection only and will be re-exported, or that they are for service exchange. Any delay caused by failure to comply with this Condition shall be the sole responsibility of the Customer and any charges incurred as a result, including any storage charges incurred at the port of entry while goods are being cleared by Customs and Excise (if accepted for payment by the Company, which it shall not be obliged to do) will be recharged to the Customer. These charges may be invoiced separately, together with any freight forward charges, payable before the goods or, as applicable exchange goods, will be released for return to the Customer.
- 6.3 Unless otherwise agreed in writing, delivery of goods shall be ex works. Delivery shall be deemed to have taken place when the goods in question are despatched from the Company's works.
- 6.4 The time quoted for delivery or completion is to be treated as an estimate only and while the Company will make all reasonable efforts to deliver or complete within the time quoted, it shall not be responsible or liable for any losses or damage caused to the Customer by later delivery or completion. Time for delivery shall not be of the essence of any Order unless previously agreed in writing by the Company.
- 6.5 If the Customer fails to take delivery of the goods, or fails to give adequate delivery instructions within 14 days after the same have been requested by the Company, the Company may, without prejudice to its other rights, dispose of the goods and (whether or not the goods are disposed of) charge the Customer with the cost of storage from the date the goods were tendered for delivery, the cost of any additional transport and (where the goods are disposed of) a sum equal to any loss suffered by the Company in any resale caused by the Customer's default.

## **7. WARRANTY**

- 7.1 Subject to the remaining provisions of this Condition 7 and to Condition 8, the Company warrants that:
- (a) all reconditioning, overhauling, repairing, servicing, testing and inspection work or services shall be performed or undertaken by it in accordance with the relevant practices and procedures laid down in the United Kingdom's Air Navigation Order (ANO) requirements and British Civil Aviation Authority (CAA) Requirements, European Aviation Safety Agency (EASA) Requirements, or, if required by the customer, the United States' Federal Aviation Regulations (FARs) and with any overhaul manuals or mandatory service bulletins or instructions;
  - (b) the condition of all goods sold or exchanged will be as stated on the Company's delivery documentation and if stated to be in new or overhauled condition the parts or components shall qualify for release in accordance with the conditions of the Air Navigation Order and European Aviation Safety Agency (EASA) Requirements.

- (c) for machining, plating and associated processes AEM has adopted the standard industry terms and conditions that are recommended and produced by the Surface Engineering Association. These terms and conditions are shown in appendix A.

7.2 If the Company is in breach of the warranty given by it under Condition 7.1:

- (a) in respect of goods reconditioned, overhauled, repaired, serviced, tested or inspected by the Company within a period being the shorter of:
  - (i) 500 hours of actual flying life;
  - (ii) twelve months following delivery to the Customer;
- (b) in respect of goods sold or supplied whether as part of another component or as a separate sale by the Company within a period being the shorter of:
  - (i) twelve months following delivery to the Customer;
  - (ii) the warranty period of the warranty given by the original supplier to the Company;

the Company shall free of charge to the Customer rectify such defect in any way it thinks fit, including (but not limited to) replacing such goods with comparable goods or equipment.

The Company shall have no further liability to the Customer for breach of the warranty given under Condition 7.1 other than that described in this Condition 7.2 above, whether under this contract, under any other terms or conditions purporting to establish liability or on any other basis including liability in tort, as a result of the supply of the goods or services and, in particular, the Company shall not be liable for any loss of profits, loss of business, increased cost of working or any other consequential loss.

7.3 Each warranty claim will be subject to in-house investigation by the respective (Operations Office) administrator. In the event of rejection of any claim a copy of the written report of the results of the investigation will be made available to the Customer on request.

7.4 The Company shall have no liability whatsoever under this Condition or this contract for goods which have been subjected to misuse or neglect or which have not been maintained and operated in accordance with any manufacturer's handbook/manual or instructions or (if higher) normal standards and practices applicable in the aviation industry, nor for any goods on which any locking device has been interfered with outside normal installation adjustments.

- 7.5 Whilst the Company shall seek to obtain for the Customer from third party suppliers of any part or parts the benefit of any warranty or guarantee for that part given by the third party supplier to the Company, the Company shall not (but without prejudice to any liability it may have under Condition 7.2 for any breach of Condition 7.1 (b)), be liable for any loss or damage arising directly or indirectly from the failure of such part.
- 7.6 The warranty contained in Clause 7.1 above shall apply to the exclusion of any other condition or warranty express or implied as to quality, workmanship, merchantability, correspondence with description or fitness for purpose or any other matter whatsoever of or relating to goods sold, reconditioned, overhauled, repaired, serviced, tested or inspected by the Company and all such conditions or warranties or other terms implied by statute or common law are hereby excluded to the fullest extent permitted by law.
- 7.7 Any warranty claim by the Customer shall (whether or not delivery is refused by the Customer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the services and the Company shall have no liability for such claim, and the Customer shall be bound to pay the price as if the Services had been delivered in accordance with the Order.
- 7.8 The Company shall not be liable to the Customer or be deemed to be in breach of the Order by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the services, if the delay or failure was due to any cause beyond the Company's reasonable control.

## **8. LIMITATION OF LIABILITY**

- 8.1 Should any goods delivered to the Company for reconditioning, overhaul, repair, service, testing or inspection be destroyed or damaged while such goods are on the Company's premises or under its control, the Company's liability in respect of such destruction or damage, subject to Clause 8.2 below, shall in no circumstances exceed an amount equal to the price of the repair and/or overhaul.  
In no circumstances will the Company be liable for and the Company accepts no responsibility for loss or damage or destruction of the Customer's goods while such goods are in transit to or from the Company's premises except where carriage is in one of the Company's vehicles.
- 8.2 Without prejudice to Clause 7.2 above, any liability of the Company to the Customer in any way arising out of any contract subject to these Conditions:
- (a) shall be limited to direct losses or damage only and shall not extend to loss of use or loss of profit or any indirect or consequential loss or damage howsoever arising and;
  - (b) shall not exceed an amount equal to the price in respect of the relevant Order.

- 8.3 Advice and information, in whatever form it may be given, is provided in good faith by the Company only, and without liability, and the Customer shall have no claim against the Company for any loss, damage, costs or expenses arising out of the Customer or any other party relying upon such advice or information.
- 8.4 Where goods supplied or reconditioned, overhauled, repaired, serviced, tested or inspected by the Company are incorporated by a third party into another component, the Company shall not be liable for any costs, loss, damage, liability or expenses suffered or incurred by the Customer or any third party arising directly or indirectly from or in respect of such goods or component and the Customer shall indemnify and keep indemnified the Company from and against all such costs, loss, damage, liability or expenses suffered or incurred by the Company as a result of any claim or demand in respect thereof by any third party.

## **9. PROPERTY AND RISK, RIGHT OF RECOVERY**

- 9.1 Risk in the goods arising under the goods/services shall pass to the Customer on delivery.
- 9.2 (a) Subject to Clause 10 below, any goods supplied by the Customer to the Company for reconditioning, overhaul, repair, service, testing or inspection shall remain the property of the Customer but the Company shall not accept any responsibility for them unless and until accepted by the Company at its premises.
- (b) If the Company removes any part of the goods delivered to it by the Customer in order to replace it, the Company shall be entitled, unless otherwise instructed by the Customer in writing, to dispose of such part within 7 days of its removal and to retain for its own benefit the proceeds of any sale or other disposal of same.
- 9.3 Notwithstanding delivery of the goods or any document representing them, any goods/services supplied by the Company to the Customer shall remain the property of the Company until:
- (a) receipt by the Company of payment in full for such goods/services; or
- (b) if later, receipt by the Company if payment in full for all other sums on any account whatsoever owed by the Customer to the Company.
- 9.4 The Company's rights under Conditions 9.3 (a) and/or (b) are subject, if arising earlier, to sale by the Customer of such goods to an independent third party on arm's length terms in the ordinary course of business (which sale shall be by the Customer as principal and not as an agent for the Company).
- 9.5 Where property in goods remains with the Company after delivery, the Customer may deal with those goods in the ordinary course of its business provided that all sums due to, or received by, the Customer in respect of the goods shall be held in a fiduciary capacity as trustee and agent for the Company.



- 9.6 If required to do so, the Customer will keep the goods separate from other stock in such a way as to be readily identifiable by the Company and the proceeds from any sale or contract, or other disposition of the goods in a separate account for the benefit of the Company and will assign to the Company the right to recover any such sums due in respect of such sale or other disposition of the goods.
- 9.7 Any failure by the Company to require strict compliance with this Conditions 9.5 or 9.6 shall not constitute a release waiver or variation of the Company's rights and the Customer's obligations under this Condition.
- 9.8 If the Customer takes delivery of the goods supplied to it by the Company before making full payment of the contract price, the Company shall be entitled to enter upon any premises of the Customer or any third party where such goods are stored and repossess the goods and thereafter to deal in any way with such goods free of any claim or right of the Customer therein if the Customer fails to pay for such goods/services on the due date therefore or at any other time if, before payment for such goods/services has been made:
- (a) the Customer becomes bankrupt or makes an assignment, agreement or composition with its creditors or suffers distress or process of execution to be levied on its property or goes into liquidation whether compulsorily or voluntarily (except for the purpose of reconstruction or amalgamation) or has a receiver appointed over any part of its undertaking, property or assets or it appears to the Company likely that any of the above events will occur;
  - (b) this contract is terminated by the Company pursuant to Condition 11 below.
- 9.9 If the goods/services supplied to it lose their identity by becoming part of other goods, then the Customer shall place such other goods into separate storage so as to be identifiable as being made from or with the Company's goods and the Company shall become owner, or part owner (as the case may be) of such other goods, which shall themselves be subject to the provisions of this Condition in respect of the Company's interests therein.

## **10. LIEN AND RIGHT OF RE-SALE**

- 10.1 The Company shall have a lien on all goods delivered by the Customer to it for reconditioning, overhaul, repair, service, testing or inspection for all monies (whether presently payable or not) payable by, and all debts and liabilities (whether or not the period for payment or discharge of the same shall have actually arrived) of the Customer to the Company under any contract and such lien shall cover such goods whether or not the Company shall at the time of exercise of the lien have begun or completed reconditioning, overhaul, repair, service, testing or inspection of such goods. The Company shall be entitled to refuse to deliver up any goods at any time unless all charges accrued due under this contract and all other sums (if any) then owed by the Customer to the Company under any contract or on any account whatsoever shall have previously been paid.

- 10.2 Without prejudice to any other rights of the Company whether under these Conditions, this Contract or the general law, if any sum due from the Customer shall not have been paid within 3 weeks after becoming due, the Company may upon giving 7 days' notice of its intention to do so unless such sums shall in the meantime have been paid sell (whether by auction or private treaty or in any other manner) any or all of the goods in the Company's possession on which the Company has a lien. The net proceeds of such sale after payment of the costs of such sale shall be applied in or towards payment or satisfaction of the debts or liabilities in respect whereof the lien exists so far as the same are presently payable and any residue shall (subject to a like lien for debts or liabilities not presently payable as existed upon the goods prior to sale) be paid to the Customer.

## 11. TERMINATION

### 11.1 If:

- (a) the Customer fails to pay any sum due to the Company within 3 weeks after the same shall have become due or;
- (b) the Customer becomes bankrupt or any steps are taken with a view to the Customer or any of its assets becoming subject to any form of winding-up, administration, receivership, scheme of arrangement, voluntary arrangement, administrative receivership, the rights of a mortgagee in possession, insolvency proceedings, arrangements with creditors generally, enforcement of security or legal process or repossession or;
- (c) it appears to the Company likely that one or more of the events in (b) above shall occur; or
- (d) anything analogous to the above occurs in any other jurisdiction;

### 11.2 then the Company may, at its discretion and without prejudice to its other rights:

- (a) suspend any deliveries to be made under or terminate the contract and any other contracts with the Customer; and/or
- (b) repossess and resell any goods the property in which remains with the Company; and/or
- (c) declare (whereupon there shall forthwith become) immediately due and payable any amounts owed by the Customer to the Company under any contract; and/or
- (d) to appropriate any payments made by the Customer under any other Order as the Company may think fit.

**12. PATENTS AND LIABILITY**

The Customer shall indemnify the Company against all damages, penalties, costs and expenses to which the Company may become liable as a result of any work done in accordance with the Customer's specification which involves any infringement of any copyright, patent or registered design.

**13. JURISDICTION**

13.1 These Conditions shall be governed by and construed in accordance with the laws of England and the Customer submits to the non-exclusive jurisdiction of the English courts.

13.2 Neither the Uniform Laws on International Sales nor the Convention on Contracts for the International Sale of Goods shall apply.

**14. MISCELLANEOUS**

14.1 If and in so far as in any case a term, or part of a term, shall be held or deemed to be invalid, unenforceable, void or illegal under any English legislation or common law, that term, or part of the term, shall to that extent only not apply, but without prejudice to the rest of the term, or terms which shall remain valid and enforceable, and each shall be separate and severable from each other.

14.2 Where the Company is under a liability to pay to the Customer any sum whether in respect of a contract or otherwise howsoever and at or shortly before the time the Customer is due to make such payment any sum then owing by the Customer to the Company whether under this contract, another contract or otherwise howsoever is unpaid, the Company shall, without prejudice to any other rights it may have whether under these Conditions, this contract or the general law, be entitled to set-off against any payment to be made by it an amount equal to such sum then owing by the Customer.

14.3 No person who is not a party to these Conditions will have any right under the Contracts (Rights of Third Parties) Act 1998 to enforce any of these Conditions, or the terms of any Order.

14.4 The Company is a member of a group of companies and accordingly the Company may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company.

**STANDARD CONDITIONS FOR WORK AND SERVICES  
PROVIDED BY THE FINISHING INDUSTRY**

Issued by:



**AEM Limited**  
Taylor's End  
Stansted Airport  
Essex  
CM24 1RB  
United Kingdom

In these Conditions:-

"The Company" means The Company carrying out the Contract  
"The Contract" means any contract formed between the Customer and the Company for the application of finishing to Goods.  
"The Customer" means the person firm or company placing any order with the Company for finishing services.  
"The Goods" means the goods (or any part of them) to which finishing is to be applied by the Company pursuant to the Contract.  
References herein to "finishing" and "finishing services" shall be deemed to include (but not be limited to) finishing, any associated processes and any other treatment or process applied by the Company.

**1. General**

- (a) Unless otherwise expressly agreed in writing by a director of the Company these Conditions are the only terms on which the Company accepts any order or Goods for finishing. These Conditions apply to all orders, whether or not these Conditions were specifically referred to at the time of ordering, to the exclusion of all other terms and conditions including any contained in an acceptance of a quotation, a form of order or any other document issued by the Customer. Delivery of the Goods to the Company or collection of the Goods by the Company (as the case may be) shall be deemed to be conclusive evidence of the Customer's acceptance of these Conditions.
- (b) The Company and the Customer acknowledge that the terms and conditions herein have been given due consideration and that they are considered fair and reasonable by both parties.

**2. Quotations and Order**

- (a) Unless previously withdrawn the Company's quotations are only open for acceptance within three months from the date thereof and where given without sight of the Goods are provisional only.
- (b) Each order placed by the Customer for finishing by the Company shall be deemed to be an offer by the Customer to purchase finishing services subject to these Conditions.
- (c) Without prejudice to condition 2(e) below, any representations to be binding upon the Company must be specifically agreed to in writing by the Company.
- (d) The Customer acknowledges that save in the circumstances provided for in condition 2(c) above no representation whether oral or in writing has been made by any of the Company's agents representatives or employees which has led the Customer to enter into the Contract.
- (e) Specifications, descriptions and illustrations contained in the Company's catalogues, brochures or other advertising materials in whatever form, whether hard copy format, electronic format or otherwise, are intended to give only a general idea of the services concerned and the possible result of any finishing and none of these shall form any part of the Contract or form any warranty or representation by the Company.
- (f) The Company may make any changes to the specification, materials or finishes which are required to conform with any applicable safety or other statutory requirements.
- (g) No order placed by the Customer which the Company has accepted may be cancelled or varied by the Customer except with the written agreement of the Company. The Customer shall be liable for all losses (including loss of profit) costs, damages, charges and expenses suffered or incurred by the Company as a result of such cancellation or variation.
- (h) After examination of samples of the Goods in bulk the Company has the right to amend any quotation or decline to accept Goods for finishing or not to proceed with any order, without any further liability to the Customer.
- (i) The Company may by giving notice to the Customer at any time up to receipt of the Goods by the Company for finishing increase any price quoted to reflect any increase in the cost of finishing which is due to any increase in cost of labour, materials or other manufacturing costs and transport costs.
- (j) Unless otherwise stated prices are quoted exclusive of VAT.

**3. Ownership**

The Customer hereby warrants that it is either the owner of the Goods delivered to or accepted by the Company for finishing or that it is authorised by such owner to accept these Conditions on such owner's behalf.

**4. Transportation of Goods**

- (a) If the price quoted by the Company includes transport of the Goods to and from the Company's works the Company will arrange transport by whatever method the Company considers appropriate (which may be transport by a third party carrier, rather than by the Company). The Goods will be at the Customer's risk during such transport to and from the Company's Works and the Customer will insure the Goods at all times during such transport. Neither the Company nor any third party carrier utilised by the Company shall be liable for the loss or destruction of or damage to Goods in transit whether as a result of its or their negligence or otherwise.
- (b) If the price quoted does not include transport of the Goods to and from the Company's works the Customer undertakes at its own expense and risk both to deliver the Goods to the Company's works on the date and at the time notified by the Company and to collect them within 5 days after notification by the Company that the finishing has been completed.
- (c) The Customer shall be responsible for the adequate packing of the Customer's Goods in transit to protect them against weather conditions, impact damage and other transport risks and for the provision of suitable stollages, pallets and other containers. The Customer shall use such packing materials as are suitable for re-use by the Company when returning the Goods to the Customer. No warranty whatsoever is given by the Company that packing materials, cases, cartons and pallets will be returned to the Customer but wherever possible these will be returned to the Customer

with the Goods.

**5. Variation in Prices**

- (a) In the event of suspension of work on the Goods at the Customer's request or through the inadequacy or inaccuracy of the Customer's instructions, any price quoted by the Company may be increased to cover any additional costs or expenses incurred by the Company as a result thereof.
- (b) If the Customer does not indicate to the Company plainly and correctly the type of Goods, including the make, brand, and grade of Goods to which finishing is to be applied and/or fails to give to the Company correct and complete instructions as to the processing, including the specification, required, the Customer shall be liable for any additional costs or expenses incurred by the Company and any loss or profit, loss of business or loss of use of processing lines suffered by the Company as a direct or indirect result thereof.
- (c) When prices are quoted which include delivery to and/or collection of the Goods from any delivery address outside the United Kingdom, any increase in insurance, packing or freight costs, import duty, internal taxes or any other charges incidental to the delivery of the Goods between the date of the Contract and the date of delivery and/or collection (as the case may be), together with all costs of any trans-shipment and/or deviation of voyage shall be paid by the Customer.
- (d) The Customer shall be liable for all costs charges and expenses whatsoever in connection with the opening, advising, confirmation, negotiation and operation of any letter of credit, the transfer of cash to the Company and the release of any shipping documents.
- (e) The cost of any variation or modification to the order requested by the Customer after the date of the acceptance of order shall, if such variation or modification is accepted by the Company, be borne by the Customer.

**6. Unsuitability of Goods for Metal Finishing**

It shall be the Customer's responsibility to ensure that the Goods are suitable for finishing. However if at any stage the Company in its sole discretion considers that the Goods are unsuitable for finishing (or, if finishing has begun, for further finishing) whether in accordance with the Company's quotation or otherwise, the Company will advise the Customer as soon as is reasonably practicable and shall be entitled to discontinue finishing forthwith. The Company shall thereupon notify the Customer of the Company's outstanding charges in respect of finishing carried out up to the date of such discontinuance and the Customer shall pay the same within 28 days of the date of such notification. Unless the Company agrees in writing to arrange transport the Customer will collect the Goods at its own expense and risk from the Company's works as soon as possible following notification of the discontinuance of the finishing.

**7. Carrying Out of Work**

Any times quoted for completion of the Contract are to be treated as estimates only. The Company shall not be liable for any loss (including loss of profit, costs, damages or expenses arising directly or indirectly out of any delay in delivery or failure to complete the Contract within such time, even if caused by the Company's negligence) and time shall not be of the essence. Such times quoted shall run from receipt by the Company of the Goods and of all information required by the Company in order to put the work in hand. In any event, the time for completion shall be extended by a reasonable period if completion of the finishing is delayed by the nature of or lack of instructions from the Customer, or by any cause beyond the Company's control.

**8. Sub-Contracting**

The Company may sub-contract the whole or any part of the finishing (unless specifically instructed otherwise in writing by the Customer, at or prior to the time the Contract is made) without affecting the Company's obligations under the Contract. The Company may also store all or any part of the Goods on premises other than the Company's premises.

**9. Force Majeure**

If the Company is in any way prevented from or delayed in performing any of the Company's obligations under the Contract by reason of decisions or actions of any Government or other authority, war or threat of war, fire, explosion, material damage to or failure of plant and equipment, severe weather conditions, materials shortages or inadequacies, interruption or reduction in communications or means of transport, power or utilities failure, failure or delay in obtaining materials required for finishing, any strikes, lock-outs or industrial disputes (whether or not involving the Company's work force), accident or any other cause beyond the Company's control the Company shall be entitled at the Company's absolute discretion partially or totally to suspend performance of the Contract for a period equal to the delay caused by such events and shall be in no way liable for such failure to perform its obligations under the Contract or for such delay. If the period for performance of the Contract is extended as a result of such suspension by more than one month the Contract may be terminated (as regards any Goods which have not undergone finishing) by either party by written notice to the other but such termination shall be without prejudice to the Company's rights to require the Customer to take delivery of and/or collect any Goods and to pay for the finishing of such Goods as are or may be available for delivery and/or collection and without prejudice to any rights which may have accrued to either party prior to the date of such termination. Furthermore if the Company is unable to meet the demands of all its customers as a result of any such event the Company may allocate the available capacity for finishing Goods among such customers as the Company in its absolute discretion considers fit and without incurring any liability whatsoever to any customers of the Company.

10. **Payment Terms**

- (a) Unless otherwise agreed in writing, payment in full of all sums due under the Contract shall be made in pounds sterling (or such other currency as the Company shall specify) within 30 days following the date of notification to the Customer that the finishing has been completed or (if the price includes transport) of delivery of the Goods following finishing to the Customer.
- (b) Time for payment shall be of the essence. Without prejudice to the Company's other rights and remedies, interest shall be payable at the rate of 4% per annum above the base rate from time to time and shall accrue from day to day on all overdue payments (as well after as before judgement).
- (c) Any payment due under the Contract shall be made in full without any deduction whether by way of set off, counterclaim or otherwise unless otherwise agreed by the Company in writing or unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- (d) Where the Company specifies that payment will be made by letter of credit, the Customer must establish and maintain in favour of the Company an irrevocable and unconditional letter of credit with or confirmed by a bank satisfactory to the Company. No delivery or collection of Goods will take place until a letter of credit has been opened and the Company is satisfied with all arrangements relating thereto. If for any reason the bank is liable to make payment to the Company under any letter of credit established for that purpose and fails to do so the Customer shall nevertheless remain liable to pay for the finishing of the Goods.
- (e) Each Contract shall be subject to the Company being satisfied as to the Customer's credit status both prior to and during the period of the Contract. If the Company becomes dissatisfied with the Customer's credit status at any time, the Company may suspend performance of the Contract or withhold delivery until the Customer satisfies the Company as to the Customer's creditworthiness or gives the Company such security as the Company shall deem appropriate.

11. **Duties and Responsibility**

- (a) The Customer is reminded of the associated hazards and effects of finishing, including (but not limited to) distortion, thread damage, overprocessing, chemical attack to base material, oven failure, mechanical damage during masking, electrical arcing during processing, embrittlement of high tensile steels and contamination of Goods in bulk processing. The Customer hereby acknowledges that the Contract is entered into in full knowledge awareness and acceptance of such hazards and effects.
- (b) The Company warrants that it will carry out its obligations under the Contract with reasonable care and skill. This warranty shall be the only warranty given in respect of such obligations. All other conditions and warranties express or implied by statute common law or otherwise are hereby excluded.
- (c) Subject to condition 11(h) below, the Company shall not in any event be liable for any breach of the warranty given in condition 11(b) above or for any breach of the Contract or breach of statutory duty or tort (including but not limited to negligence) misrepresentation or otherwise including, without limitation, failure to provide matching between different batches or for any damage to or loss of Goods as a result of finishing by the Company:-
- (i) unless the methods employed in manufacturing the Goods prior to finishing pursuant to the Contract have taken into account the current state of knowledge in the finishing industry and the Customer has ensured that the Goods are made from the correct material and designed to appropriate engineering standards and have not been subject to any process or treatment by any person other than the Company which renders them unsuitable for finishing and full information concerning the Goods as referred to in condition 5(b) above has been supplied to the Company before the commencement of finishing; and
- (ii) unless the Customer checks the quantity of Goods delivered to or collected by the Customer forthwith and notifies the Company in writing of any alleged shortfall of, damage to, or incorrect finishing of the Goods within 14 days thereafter in the case of defects which are reasonably obvious on inspection and in any event within 6 months of delivery; and
- (iii) unless the Customer thereafter affords the Company a reasonable opportunity to inspect the Goods and if so requested by the Company returns the allegedly damaged Goods or the Goods the subject of allegedly incorrect finishing to the Company's works at the Customer's expense for inspection to take place there; and
- (iv) unless the Customer has made no use of the Goods alleged to be damaged or the subject of allegedly incorrect finishing after it discovers or ought reasonably to have discovered that they were damaged or the subject of incorrect finishing; and
- (v) if the Goods have been subjected to misuse or improperly or incorrectly stored after delivery to or collection by the Customer; and
- (vi) unless and only to the extent that the allegedly damaged Goods or the Goods the subject of allegedly incorrect finishing exceed 2% of each batch (in the case of jigged or rack processed Goods) and 5% of each batch (in the case of bulk processed Goods) (losses of up to 5% of each batch being accepted as normal in the industry in processing large quantities of small parts).
- (d) The Company shall be under no obligation to ensure that any Goods are an exact match, or that one batch exactly matches another whether the colour or finish are defined by reference to a sample or by description. Where a colour or finish is specified in the Contract by reference to a sample or description the Customer shall accept as complying with the Contract all Goods which are a commercial match with the sample or correspond with the description, as the case may be, and are a commercial match with each other in accordance with the standard generally recognised in the industry.
- (e) In the light of the great disparity between the value of the Goods undergoing finishing and the charge for finishing made by the Company, the liability of the Company for any breach of the warranty given in condition 11(b) above and for any breach of the Contract or breach of statutory duty or tort (including but not limited to negligence) misrepresentation or otherwise is limited to three times the charge made for finishing of the relevant Goods under the Contract. In the case of breach of the warranty given in condition 11(b) above, instead of refunding or waiving the whole or the appropriate part of the charge for finishing the Company may at its option take such steps as the Company considers necessary so as to comply with the said warranty and thereupon this shall be the Company's only liability in respect of such breach of warranty.
- (f) The Company shall not under any circumstances be liable for loss of profit, loss of use, loss of business or loss of goodwill including (but not limited to) delay in delivery, or for any indirect or consequential loss, injury or damage of any kind whether caused by negligence or otherwise howsoever and whether or not such loss has been suffered by the Customer or by some third party to whom the Customer may be liable and whether or not such loss has been caused by reason of the Goods infringing any patent, registered or unregistered design, copyright, trade mark or service mark owned by a third party.
- (g) Goods are and remain at all times whilst at the Company's works at the entire risk of the Customer who shall be responsible for effecting and maintaining its own insurance cover in relation thereto, it being hereby acknowledged by the Customer that the charges of the Company do not include insurance.
- (h) Nothing in these Conditions shall purport to exclude or restrict the Company's liability for fraudulent misrepresentation or for death or personal injury resulting from the Company's negligence.

12. **Indemnity by Customer**

- The Customer shall indemnify and keep indemnified the Company in full from and against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal expenses on an indemnity basis) awarded against or suffered or incurred or paid by the Company as a result of or in connection with:
- (a) any claim that the Goods infringe any British or foreign patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right of any other third party;
- (b) any claim threatened or made against the Company in respect of any liability, loss, damage, cost or expense sustained or incurred by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, cost or expense was caused by, relates to or arises out of or in connection with the Goods;
- (c) any claim threatened or made against the Company by any third party relating to or arising out of or alleged to relate to or arise out of the finishing of the Goods;
- (d) any breach by the Customer of any of these Conditions;
- (e) any act or omission of the Customer or its employees, agents or sub-contractors in delivering and/or collecting the Goods; or
- (f) any claims or demands made against the Company to the extent only that such claims or demands exceed the Company's liability under these Conditions.

**Jigs or Tooling**

13. Any jigs or tools made by the Company for the purpose of the Contract shall remain the Company's property notwithstanding that the cost thereof may be included in whole or in part in the price charged for finishing. All drawings and information relating to such tools and jigs remain the Company's property and the Company's copyright and the Customer undertakes that it will not copy or make use of the same for the benefit of itself or any third party without the Company's prior written consent.

**Lien**

14. The Company shall in respect of all sums due or owing from the Customer under the Contract or any other contract between the Customer and the Company have a general lien on all Goods and property of the Customer in the Company's possession (although finishing of such Goods or some of them may have been paid for) and shall after the expiration of 14 days' notice to the Customer be entitled to dispose of such Goods and property as it deems fit and apply the proceeds towards such sums.

**Confidential Information**

15. All specifications, drawings, technical descriptions and details of finishing (hereinafter called "information") submitted with the Company's quotation or supplied to the Customer pursuant to the Contract are supplied in confidence. The Customer shall keep the information confidential and shall not (save as required by law or unless the same is already in the public domain other than as a result of the default of the Customer) disclose the same to any third party without the Company's prior written consent and shall use the same only for the purposes of the Contract. Nothing in this condition 15 shall prevent the Company from undertaking or offering to undertake for third parties any work or services similar to or designed to achieve the same results as the work or services provided under this Contract.

**Termination**

16. (a) The Customer cannot terminate the Contract without the written consent of the Company.
- (b) The Company shall be entitled to terminate the Contract or any other contract with the Customer forthwith by notice without prejudice to any of its other rights:-
- (i) if the Customer (whether under the Contract or any other contract between the Customer and the Company) is overdue with any payment or commits any breach of contract which is incapable of remedy or which if the same be capable of remedy the Customer fails to remedy within 14 days of the Company's written notice so to do; or
- (ii) if any distress or execution shall be levied on the Customer's assets or if the Customer shall make or offer to make any arrangement or composition with creditors or commits an act of bankruptcy or if any petition or receiving order in bankruptcy or any administration order shall be presented or made against the Customer or where the Customer is a limited company any resolution or petition to wind up the same (other than for the purposes of reconstruction or amalgamation of a solvent company) shall be passed or an administration order made or if a receiver, manager, administrative receiver or administrator is appointed in respect of the Customer's assets and undertaking or any part thereof or if the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or
- (iii) if the Company has reasonable doubts regarding the solvency of the Customer.
- (c) The Company shall without prejudice to its right to terminate be entitled to suspend further finishing of Goods under the Contract or any other contract between the Customer and the Company:
- (i) if any of the events mentioned in condition 16(b) above occur; or
- (ii) if and to the extent that the value of the Goods which have undergone finishing but are not paid for exceeds the Customer's credit limit whether or not advised to the Customer and whether or not payment is overdue.
- (d) Notwithstanding any termination or suspension in accordance with conditions 16(b) or 16(c) above the Customer shall pay the Company for all finishing done up to and including the date of suspension or termination and shall in addition indemnify the Company against any resulting loss damage or expense incurred by the Company in connection with such suspension or termination including, without limitation, the cost of any materials plant or tools used or intended to be used therefore and the cost of labour and other overheads including a percentage in respect of profit.

17. **Severability**

If at any time one or more of these Conditions (or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason at law the same shall be deemed omitted herefrom and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby.

18. **Waiver**

The rights and remedies of the Company under the Contract shall not be diminished waived or extinguished by the granting of any indulgence forbearance or extension of time by the Company nor by the failure or delay by the Company in asserting or exercising any such rights or remedies.

19. **Notices**

Notices to be served hereunder shall be in writing and sent by post, e-mail or fax to either party at its last known address. Notices shall be deemed served by post 5 working days after posting and by e-mail or fax, when received.

20. **Applicable Law**

The Contract and these Conditions shall in all respects be construed in accordance with and be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.