

**MUIRHEAD AVIONICS**

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TERMS AND CONDITIONS OF SALE**1. INTERPRETATION**

In these conditions:

- 'Acknowledgement' means the written acknowledgement of the Order given by the Company to the Purchaser whether before or after delivery of the Goods.
'Company' means Muirhead Aerospace Ltd. Muirhead Avionics
'Contract' means a contract for the supply of goods identified in an Order and created by the Company's acceptance of an Order.
'Purchaser' means the person, firm or company with whom the Contract is made.
'Goods' means Units, Parts, Support Equipment and Tools or any other items or services which are the subject of an order.
'Order' means a Purchase Order issued by the Purchaser which complies with and is expressed to be subject to the terms of this agreement.
'Quotation' means a written quotation given by the Company to the Purchaser or to a third party on the Purchaser's behalf.
'Services' means any services provided by the Company whether with or without goods.
'Writing' and 'written' shall include facsimile transmission.

2. FORMATION OF CONTRACT

- [a] All Quotations and Acknowledgements given by the Company shall be deemed to include these Conditions except (subject to the provisions of Paragraph 2[g]) insofar as they are inconsistent with any special terms or conditions contained in the Quotation of Acknowledgement.
[b] The Quotation is an invitation to the Purchaser to place an order in accordance with its terms.
[c] The Contract shall not come into effect until the Company has accepted the same in writing.
[d] Any terms or conditions contained in the order which are inconsistent with these conditions shall not form part of the Contract unless (subject to the provisions of Paragraph 2[g]) accepted by the Company in writing.
[e] Cancellation of the Contract by the Purchaser will be a breach of contract entitling the Company to compensation and the Purchaser shall indemnify the Company in full against all loss (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses paid or incurred or sustained by the Company as a result of the cancellation.
[f] Insofar as these Conditions are in any circumstances regarded as or held to constitute the terms of a counter offer, the Purchaser shall be taken to have accepted such counter offer by accepting physical delivery of any Goods from the Company.
[g] No variation to these Conditions shall be effective unless made in writing and signed by an authorised officer of the Company.
[h] Employees of the Company are not authorised to make oral representations as to the description quality or fitness for any particular purpose of any Goods or as to the skill and care which will be used by the Company in the provision of Services. If a representation is made or an opinion expressed orally which materially affects the Purchaser's decision to place an order for the Goods the Purchaser must ensure that such details are confirmed in writing by a duly authorised officer of the Company so as to form part of the Contract otherwise no liability can be accepted.
[i] All descriptions illustrations specifications drawings and other data and information
[j] contained in the Company's catalogues, price lists and other advertisement matter are intended to serve merely as a guide and accordingly none of these shall form part of the Contract or constitute a representation by the Company unless agreed in writing.
[k] (including the copyrights design rights and all other intellectual property rights comprised therein) prepared by the Company shall remain the property of the Company and shall be returned to it by the Purchaser on demand. All such copyright material and all other information and 'knowhow' whenever supplied shall be at all times treated by the Purchaser as confidential and shall not without the consent of the Company be used or disclosed by the Purchaser except for the purpose of the Contract and the operation of the Goods supplied.

3. PRICES AND PAYMENT

- [a] Unless otherwise stated in the Quotation or Acknowledgement all prices are the net price of the Goods excluding VAT unpacked ex-works and do not include packaging insurance delivery or installation.
[b] The Company shall be entitled without prior notice to adjust the price stated to take account of any change before the date of delivery in the cost to the Company of import or export duties or tariffs which directly affects the cost to the Company of supplying the Goods.
[c] Where carriage packing or other charges are stated separately from the price of the goods they will nevertheless be payable by the Purchaser at the same time as if they formed part of the price and shall be treated as such.
[d] Unless otherwise stated in the Quotation or Acknowledgement all prices quoted are Pounds Sterling and the price of each delivery shall be paid in full and received by the Company within thirty days of the date of the Company's invoice. The time of payment of the price shall be of the essence of the Contract.
[e] Any cost of clearing or discounting cheques, bills of exchange, bank giro payments or any other negotiable instruments shall be payable by the Purchaser.
[f] Without prejudice to its rights to claim damages the Company shall be entitled (without any or prior notification) to charge interest at the rate of four percent above National Westminster Bank plc Base Lending Rate for the time being in force on any sums which remain unpaid after the sums shall become due.
[g] The Purchaser shall not be entitled to withhold payment of any amount payable under the Contract because of any disputed claim of the Purchaser in respect of faulty goods or services or any other alleged breach of contract nor shall the Purchaser be entitled to set off against any amount payable under the Contract to the Company any monies which are not then presently payable by the Company or for which the Company disputes liability.
[h] The Purchaser will pay to the Company all additional costs charges and expenses which the Company pays incur or sustains in respect of or otherwise connected with the variation delay or suspension of the Contract (including any variations in the specifications) arising from any request to act or omission of the Purchaser or any employee agent or contractor of the Purchaser or by reason of any other circumstances for which the Company is not wholly responsible.

4. CANCELLATION AND SUSPENSION OF THE CONTRACT

Without prejudice to any other right or remedy available to the Company in any of the following circumstances the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Company and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

- [a] the Purchaser being in breach of any of its obligations under the Contract or any other Contract between the Purchaser and the Company;
[b] the Purchaser ceasing or threatening to cease to carry on business;
[c] the Purchaser becoming bankrupt going into liquidation having a receiver administrative receiver or administrator appointed over any of its property or assets or being otherwise insolvent;
[d] the Company reasonably apprehending that any of the circumstances set out in Paragraphs 4[b] or 4[c] are likely to occur and notifies the Purchaser accordingly.

5. TITLE

- [a] Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions
[i] the property in the Goods shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of the price of the Goods.
[ii] further to sub-paragraph 5[a] [i] the property in the Goods shall not pass to the Purchaser until the Company has received in cash or cleared funds payment in full of all sums due to the Company on any account.
[b] Until such time as the property in the Goods passes to the Purchaser, the Purchaser shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Purchaser and third parties and property stored protected and insured and identified as the Company's property. Until that time subject to the provisions of Paragraph 5[c] the Purchaser shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Company for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties and in the case of tangible proceeds properly stored protected and insured.
[c] Until the Company has received in cash or cleared funds payment in full of the price of the Goods the Purchaser shall not be entitled to dispose of any property in the Goods (by sale or otherwise) to the holding company of the Purchaser or to any subsidiary of the Purchaser or of any such holding company.
[d] Until such time as the property in the Goods passes to the Purchaser (and provided the Goods are still in existence and have not been resold) the Company shall be entitled at any time to require the Purchaser to deliver up the Goods to the Company and if the Purchaser fails to do so forthwith to enter upon any premises of the Purchaser or any third party where the Goods are stored and repossess the Goods.

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Registered in England and Wales No: 560015
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- [e] The Company shall be entitled to appropriate as it thinks fit any payment received from the Purchaser to any debt outstanding in respect of the Contract or any other contract between the Company and the Purchaser notwithstanding any purported appropriation by the Purchaser to the contrary.

6. DELIVERY

- [a] Whilst the Company shall use all reasonable endeavours to meet delivery dates they are approximate only. A delay in delivery shall not constitute a breach of contract and shall not entitle the Purchaser to avoid the Contract or to any other remedy.
[b] Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Purchaser in respect of any one or more instalments shall not entitle the Purchaser to treat the Contract as a whole as repudiated.
[c] The Company shall not be liable to the Purchaser or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control.

7. RISK

Risk or damage to or loss of the Goods shall pass to the Purchaser at the time of delivery or if the Purchaser wrongfully fails to take delivery of the Goods at the time the Company tenders delivery of the Goods.

8. GUARANTEE

- [a] Subject to the provisions set out in this Condition 8[c] if (in the case of new Goods sold by the Company to the Purchaser) within the period of twelve months from the date of delivery such Goods or any part thereof are found to be defective as a result of faulty design manufacture or workmanship the Purchaser shall make the Goods available for inspection by the Company and the Company undertakes at its option to:
[i] in exchange for the return of the Goods repay or allow the Purchaser the invoice price thereof (including freight where appropriate) and any reasonable transport costs incurred by the Purchaser in carrying out the relevant Goods from the place of original delivery of such Goods to the Company's premises; or
[ii] Make good the defect at the Company's expense as soon as may be reasonably practical; or
[iii] replace Goods by delivering replacement goods to the original place of delivery as soon as may be reasonably practicable.
[b] Subject to the provisions set out in this condition 8[c] if (in the case of Goods which have been returned to the Company for repair other than pursuant to Condition 8[a]) within the period of six months from the date of return to the customer that part of the Goods which have been repaired are found to be defective as a result of a fault repair then the Purchaser shall make the Goods available for inspection by the Company and the Company undertakes as its option to:
[i] repay to the Purchaser the invoice price of the repairs and any reasonable transport costs incurred by the Purchaser in delivering the relevant Goods from the place of original delivery of such Goods to the Company's premises; or
[ii] make good the defect at the Company's expense as soon as they may be reasonably practicable.
[c] The guarantees set out in Paragraphs 8[a] and 8[b] and all other terms and conditions of the Contract are subject to and the Company shall (subject to the provisions of Conditions 9[c]) be under no liability:
[i] in respect of any defect in the Goods arising from any drawing design or specification supplied or approved by or on behalf of the Purchaser;
[ii] in respect of any defect in the Goods arising from fair wear and tear willful damage negligence abnormal working conditions failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Company's approval.
[iii] if the total price for the Goods or their repair (as the case may be) has not been paid by the due date for payment;
[iv] unless the Company is notified of the defect as soon as reasonably practicable.

9. LIABILITY

- [a] The Purchaser expressly holds itself out as making the contract in the course of a business.
[b] Except to the extent expressly provided in these Conditions all warranties statements terms and conditions or undertakings which may be implied by statute common law custom of the trade or otherwise are hereby excluded.
[c] The Company does not exclude liability for death or personal injury resulting from its negligence or that of its employees.
[d] The Company will not be liable to the Purchaser for any
[i] direct loss damage or injury; and/or
[ii] indirect consequential or special loss damage or injury (including but without limitation financial loss, loss of profits, loss of business or contracts loss of operating time or loss of use) whether foreseeable or not to the Purchaser or to the Purchaser's property howsoever whensoever or wheresoever arising whether by reason of any representation or any implied warranty condition or other term or duty at common law or under statute or under the express terms of the Contract (and whether caused by negligence of the Company or otherwise) or otherwise in respect of or in connection with the supply against or their use or resale by the Purchaser except to the extent expressly provided in these Conditions:
[e] the quantity of the Goods printed upon the Company's advice/despatch note shall be final unless the Purchaser shall have given written notice of any discrepancy in quantity within seven days after receipt of the Goods and has thereafter given the Company a reasonable opportunity of witnessing a verification of the Goods before they have been used processed or sold.
[f] The Company is concerned to ensure that the price of the Goods remains competitive and taking into account the fact that the extent of the damage that might be caused or alleged to be caused to the Purchaser is disproportionate to the amount that can be reasonably charged (and is charged) by the Company to the Purchaser this must necessarily involve the incorporation of the terms and conditions set out in this Condition 9.

10. PROPER LAW

The Contract shall be deemed to be made in England and the construction validity and performance of the Contract shall be interpreted in all respects by the laws of England.

11. INDEMNITY

- The Purchaser shall indemnify and keep the Company indemnified from and against any liability of any kind to any third party howsoever arising (whether in contract tort or otherwise and including but not limited to, liability arising from the negligence of the Company or from the negligence of any person for whom the Company is vicariously liable) in respect of or in connection with:
[a] any defect in the Goods; and/or
[b] any loss injury or damage of any kind (whether direct indirect or otherwise and including but not limited to any loss of profit and/or any incidental consequential or special loss or damage of any description) arising out of in respect of or in connection with the installation or supply of Goods or their use or resale; and/or
[c] any claim for infringement of any patent copyright design right trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Purchaser's designs drawings specifications tooling or goods.

12. WAIVER

The rights of the Company or the Purchaser shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.

13. SEVERANCE

In the event of any of the words provisions terms and/or Conditions herein contained being unenforceable or void for any reason whatsoever each word provision term or Condition (including any paragraph or sub-paragraph herein contained) shall be deemed to be severable from the remaining words provisions terms or Conditions and such remaining words provisions terms or Conditions shall remain in full force and effect.

14. HEADINGS

The headings to these Conditions are for convenience only and shall not affect their construction.