

MARTIN AEROSPACE LIMITED

TERMS AND CONDITIONS OF PURCHASE

1 DEFINITIONS

In these Conditions and all texts relating to the Order:

“**Buyer**” means Martin Aerospace Ltd, a company incorporated under the Companies Acts (registered number SC145469) whose registered office is at Block 2, East Faulds Road, Caldwellside Industrial Estate, Lanark, ML11 7SR.

“**Conditions**” means the conditions set out herein.

“**Force Majeure**” means causes proved to be beyond the Buyer’s or the Supplier’s reasonable control including without limitation an act of God, natural disasters, fire, flood, explosions or earthquakes, any act of the Government of the Buyer or the Supplier, war, insurrection or riots.

“**Instructions**” means any conditions or instructions to the Supplier or other matters which are set out on the face of this document or which are by reference incorporated in the Order.

“**Intellectual Property**” means technical 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, know-how and trade secrets or other confidential or proprietary information. “**Intellectual Property Rights**” means patents, patent applications, registered and unregistered designs, copyright, trade marks and other forms of statutory protection conferring rights in Intellectual Property, as well as rights arising as a result of the application of the laws of confidentiality of contracts, in appropriate circumstances, to trade secrets and unpublished know-how.

“**Order**” means this document (including the Instructions) and the Specification and any amendments hereto.

“**Specification**” means any written specification or technical requirement or other agreed means of defining the technical or other requirements of the Supplies.

“**Supplier**” means the supplier with whom the Order is placed.

“**Supplies**” means:-

- (i) all articles, materials or other goods supplied to the Buyer and all work associated with the production of these goods (“**Goods**”); and
- (ii) all services supplied to the Buyer by sub-contractors or professionals or such other suppliers from whom the Buyer purchases services from time to time (“**Services**”);

which are the subject of the Order.

2 APPLICATION

(i) These Conditions are an integral part of the Order. The Instructions, these Conditions, the Specification and any amendments constitute the Order and shall govern the contract (“**Contract**”) between the Buyer and the Supplier and shall supersede all previous communications or representations between the parties including any standard conditions issued by the Supplier and shall not be varied except with the written agreement of the Buyer.

(ii) In case of any conflict between the provisions of the Instructions and the Conditions, the Instructions shall prevail.

3 ORDER

The Buyer will not accept the delivery of or performance of any Supplies unless supplied in all respects in accordance with the Order, the reference and (where applicable) item number of which shall be quoted on all documents, correspondence (including advice notes, reports, invoices and required certificates) and packages. The Supplier must notify the Buyer of acceptance of the Order within 14 days of the date of the Order. Failure to do so will give the Buyer the right to withdraw the Order without incurring liability. Where the Supplier has not notified the Buyer of Order acceptance as aforesaid and the Buyer does not elect to withdraw the Order then commencement of the performance of the Order by the Supplier shall be deemed to be unconditional acceptance of the Order by the Supplier.

4 **ADVICE AND RELEASE CERTIFICATES**

The Supplier shall:

- (i) on the despatch of each consignment of Goods, send Advice Note(s) and such Certificate(s) of Conformity or Civil Approved Certificate(s) as may be indicated by the terms of the Order. One copy of the Certificate of Conformity or Civil Approved Certificate or such other document as may be required by the Buyer shall accompany each consignment of Goods and a further copy shall be sent to the receiving department; and
- (ii) provide any information relating to the Supplies as may be requested by the Buyer; and
- (iii) if a stockist, provide copies of the original manufacturer's Certificate of Conformity or Civil Approved Certificate.

5 **QUALITY**

- (i) The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and conform in all respects with the Order and any further instructions, specifications and/or patterns supplied or advised by the Buyer to the Supplier and, in the case of Services, shall be provided to the highest standards of skill and care and in accordance with good practice in the Supplier's industry, and in addition the Supplier shall be subject to the following Quality Assurance Conditions:
 - (a) the Supplier shall ensure that the Order is carried out in conformity with any other quality requirements stipulated and approved by the Buyer;
 - (b) the Supplies shall be subject to inspection on receipt and during and upon completion of performance;
 - (c) any exceptional conditions determined by the Quality Director/Managing Director/Production Director of the Buyer and shown on the face of the Order;
 - (d) the Supplier shall (where applicable) ensure that the order is carried out in compliance with the quality requirements of their AS9100 / AS9120/ ISO9000 registration;

Terms implied by statute apply in addition to those set out herein.

- (ii) The Buyer's representatives and representatives of any other organisation on the authority of the Buyer shall be allowed to visit the Supplier's premises and those of its sub-contractors and shall be afforded all necessary facilities at any reasonable time to check the progress or quality of the work on the Supplies.

If the results of any checks or testing carried out in terms of this clause give the Buyer reasonable grounds to believe that the Supplies do not or are unlikely to conform with the Order, the Buyer shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity with the Order.

The right of the Buyer to carry out checks in this manner and demand remedial action to ensure the Supplies conform with the Order shall not affect the responsibility of the Supplier to provide acceptable Supplies nor shall it preclude subsequent rejection of the Supplies by the Buyer.

(iii) **Non-conforming product / process change**

- (a) Suppliers shall notify the Buyer of any non-conforming product
- (b) Suppliers shall obtain Buyer approval for non-conforming product disposition
- (c) Suppliers will notify the Buyer of changes in product and/or process, changes to suppliers, changes of manufacturing/process facility locations and, where require, obtain buyer approval.
- (d) Suppliers shall flow down to the supply chain the applicable requirements including stated end customer requirements.

(iv) **Record Retention**

Subject to any statutory requirement, the Supplier shall keep secure and maintain for at least six (6) years, or such longer period as may be agreed between the Parties or as implied/stated by specific end Customer requirements, full and accurate records of all matters relating to the Goods.

6 **PRICE**

- (i) Where prices have been agreed, they shall be stated on the Order and shall be fixed and firm and exclusive of value added tax but inclusive of all other taxes, imposts, fees and duties. Where the prices are still to be agreed at the date of the Order, quotations shall be submitted by the Supplier and, if agreed by the Buyer, the Buyer shall issue to the Supplier within a reasonable time an amended Order which shall replace the original Order in its entirety and constitute the "Order" in terms of these conditions. The Supplier shall not issue an invoice until they receive the new Order.
- (ii) No additional charge shall be made for packing, insurance or delivery unless otherwise agreed and incorporated in the Order and any such charge shall be separately detailed in the invoice.

7 **DELIVERY AND PERFORMANCE**

- (i) Delivery of Goods shall be in accordance with the Order and shall be made to the Buyer's premises at Block 2, East Faulds Road, Caldwellside Industrial Estate, Lanark, ML11 7SR (or such other premises notified to the Supplier by the Buyer) between 8am and 4pm Monday to Friday. The Services shall be performed in accordance with the Order at such time and place as shall be notified by the Buyer to the Seller.
- (ii) All Goods must be properly and securely packed. If so requested, the Buyer will return packing cases or containers to the Supplier at the Supplier's expense.
- (iii) In the event of any delay in delivery or performance of the Supplies due to causes other than Force Majeure, the Buyer reserves the right to terminate the Order in accordance with condition 12(i).
- (iv) The Supplier shall not be liable for delays in delivery or performance due to Force Majeure provided that the Supplier promptly notifies the Buyer of any delay or anticipated delay as soon as it becomes aware of that delay and resumes delivery or performance as soon as possible thereafter. However, if such delay exceeds 14 days the Buyer shall be entitled to cancel the Order without incurring any liability whatsoever except in respect of Supplies already delivered or provided to the Buyer prior to such cancellation.
- (v) Should an event of Force Majeure occur the Buyer may wholly or partly suspend or postpone any of its obligations under the Order by promptly notifying the Supplier in writing. Such suspension or postponement may continue until the circumstances of Force Majeure have ceased or been overcome.

8 **TITLE AND RISK**

Title to and risk in the Goods shall pass to the Buyer upon receipt of the Supplies.

9 **ACCEPTANCE**

- (i) Where acceptance tests are required by the Order, acceptance of the Supplies shall take place upon satisfactory completion of the acceptance tests. Where no acceptance tests are required by the Order, acceptance of the Supplies shall in the absence of rejection by the Buyer be deemed to have taken place 14 days after receipt of the Supplies.
- (ii) If the Supplies are found not to be in accordance with the Order the Buyer shall be entitled to exercise one or more of the following rights:
 - (a) Reject the Supplies in whole or in part;
 - (b) Require the Supplier promptly to replace or repair or take remedial action in respect of the Supplies at the Supplier's expense and risk;
 - (c) Require the Supplier to pay all the Buyer's reasonable expense and additional costs connected herewith;
 - (d) Require the Supplier forthwith to correct the lack of conformance with the Order.

WARRANTIES

General:

The Supplier warrants that:

- (i) unless otherwise agreed with the Buyer the Goods are of new manufacture and that for a period of 12 months after the date of acceptance by the Buyer, they will be free of defects in material workmanship and (insofar as the Supplier is responsible for the design thereof) in the design of the Goods, having regard to the state of the art at the time of the acceptance, that they are fit for intended purpose, that they will be of satisfactory quality and that they conform and will continue for such period to conform to the Order.
- (ii) in the event that the Goods do not in the reasonable opinion of the Buyer conform to the above warranty, the Supplier shall at its own expense and risk forthwith (or in such other timescale as may be agreed with the Buyer) replace the Goods with Goods which conform to such warranty or repair the Goods to achieve such conformance. The Supplier shall bear all costs incurred by the Buyer which arise out of such breach of warranty.
- (iii) this warranty is equally applicable to any Goods replaced or repaired under this Condition. When replacement parts are fitted by the Supplier the parts removed shall become the property of the Supplier.
- (iv) in the event of any breach of warranty causing non-availability of the Goods within the warranty period then the warranty period shall be extended by any period of such non-availability.
- (v) any and all warranties and service guarantees attaching to the Goods shall not only be for the benefit of and enforceable by the Buyer but also for the benefit of and enforceable by the Buyer's customers and/or users of the Goods.
- (vi) the provisions of this condition shall apply in addition and without prejudice to any other rights and remedies available to the Buyer whether express, implied or statutory.
- (vii) it has the full capacity and authority and all necessary licences, permits and consents to enter into and provide the Services.
- (viii) the Services shall be rendered and supplied by appropriately experienced, qualified and trained personnel with all due skill, care and diligence.
- (ix) that the Services shall be performed in compliance with all applicable laws, enactments, orders regulations, and other similar instruments (including but not limited to all applicable health and safety legislation).
- (x) as at the date of the Order, there is no material outstanding litigation, arbitration or other dispute to which the Supplier is a party which may have an adverse effect upon the Supplier's liabilities, responsibilities and obligations pursuant to the Contract

PAYMENT

- (i) The Supplier shall invoice for the Supplies in accordance with the Order and shall submit its invoice after despatch or performance of the Supplies quoting Order, Order item number, reference number, part and drawing numbers, description, quantities and weights in the form detailed on the Order and Advice Note number.
- (ii) All invoices shall state the price for the Supplies exclusive of value added tax and show the amount (if any) separately.
- (iii) Subject to receipt by the Buyer of Supplies in accordance with the Order the Supplier shall be paid for the Supplies within sixty (60) days following the receipt of a correct invoice (or such other period as may be specified on the face of the Order), provided that such invoice is received after delivery or performance and acceptance of the Supplies. Time for payment shall not be of the essence of the Contract.
- (iv) Without prejudice to any other right or remedy, the Buyer reserves the right to set off any amount owing at any time from the Supplier to the Buyer against any amount payable by the Buyer to the Supplier under the Contract.

TERMINATION

(i) For default:

In the event of a breach of the terms of the Order the Buyer may give the Supplier notice of such breach. If such breach is capable of remedy the Supplier shall rectify the breach within 7 days from the date of such notice. If the Supplier does not rectify the breach within the said 7 days or, if the Buyer considers that the breach is not capable of remedy, then the Buyer may give the Supplier written notice terminating the Order without incurring any liability whatsoever. In addition and without prejudice to existing rights and remedies already accruing to the Buyer, the Buyer reserves the right to recover from the Supplier the additional cost of purchasing the Supplies from elsewhere.

(ii) For Insolvency:

If the Supplier becomes insolvent or has a receiver or administrator appointed to its business or is compulsorily or voluntarily wound up or if the Buyer *bona fide* believes that any of such events or similar, or the equivalent in any jurisdiction, may occur then the Buyer shall have the right without prejudice to any other remedy to suspend the performance of or terminate the Order forthwith without incurring any liability whatsoever except in respect of any Supplies previously and properly delivered or performed.

(iii) For convenience:

The Order may be terminated by the Buyer at any time in whole or in part by delivery to the Supplier of a notice of termination. In the event of such notice being given the Supplier shall comply with any directions with regard to the Supplies which may be given by the Buyer. The Supplier shall submit an account to the Buyer within three months from the effective date of termination in the form prescribed by the Buyer. The Buyer undertakes to agree a fair and reasonable price for all work done in connection with the provision of the Goods or supply of Services which were to constitute the Supplies under the Order and pay for any unique materials purchased up to the date of giving of such notice of termination. The agreed price taken together with any sums paid or due or becoming due to the Supplier under the Order shall not exceed the total price of the Supplies under the Order.

(iv) Any termination of the Order, for whatever reason, shall be without prejudice to any rights or remedies which may have accrued to either party and both parties shall use all reasonable endeavours to mitigate their losses on such termination.

REMEDIES

Without prejudice to any other right or remedy which the Buyer may have, if any Supplies are not supplied in accordance with, or the Supplier fails to comply with, the Order then the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Supplies have been accepted by the Buyer:-

- (i) to rescind the Order;
- (ii) in the case of Goods, to reject the Supplies (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Supplies so returned shall be paid forthwith by the Supplier;
- (iii) at the Buyer's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Supplies or to supply replacement Goods or reperform the Services and carry out any other necessary work to ensure that the Conditions are fulfilled;
- (iv) to refuse to accept any further deliveries or performance of the Supplies but without any liability to the Supplier;
- (v) to carry out at the Supplier's expense any work necessary to make the Supplies comply with the Order; and
- (vi) to claim such damages as may have been sustained in consequence of the Supplier's breach or breaches of the Order.

14 **INTELLECTUAL PROPERTY RIGHTS**

- (i) All Intellectual Property generated from or arising as a result of the work undertaken by the Supplier for the purpose of the Order shall vest in and be the absolute property of the Buyer which reserves the right to protect the same by securing appropriate Intellectual Property Rights.
- (ii) The Supplier hereby warrants to the best of his belief that the Supplies, the provision of them to the Buyer and the intended use thereof do not infringe any third party owned Intellectual Property Rights whatsoever existing or pending at the date of the Order and hereby agrees to fully indemnify the Buyer against any liability, damages or expenses whatsoever which may be incurred by or on behalf of the Buyer as a result of the infringement or alleged infringement by the possession or use or receipt of Supplies which include any Intellectual Property Rights belonging to third parties.

15 **INDEMNITY**

The Supplier shall keep the Buyer indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:-

- (i) defective workmanship, quality or materials;
- (ii) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Supplies;
- (iii) any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expenses sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Supplies as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Order by the Supplier.

16 **LEGAL LIABILITY INSURANCE**

The Supplier shall effect and maintain in effect legal liability insurance of not less than Five Million Pounds (£5,000,000) per event or such other amount as may be stated in the Instructions and procure that any sub-contractor to the Supplier effects similar insurance in respect of loss or damage to property or loss or death or injury to persons resulting from or during the execution of the Order. Should such insurance policy cover a liability in excess of Five Million Pounds (£5,000,000) then the Buyer shall have the benefit of the full extent of the cover available. The Supplier shall upon request supply the Buyer with a copy of such certificate of insurance together with receipts evidencing payment of all premiums to date.

17 **CONFIDENTIALITY**

The Order and the subject thereof shall be treated as confidential between the Supplier and the Buyer and any sub-contractor of the Supplier shall be similarly bound. Where required by the Buyer the Supplier shall give appropriate and agreed publicity to the award of the Order and will participate in other agreed related publicity initiatives. Other than provided above, the Supplier shall not make use of the Buyer's name or any information contained in the Order or related documents for any purpose whatsoever other than the supply of the Supplies.

18 **SUB-CONTRACTS AND ASSIGNMENT**

- (i) No work on the Order may be sub-contracted by the Supplier (except as is customary in the trade) without the prior written consent of the Buyer. All sub-contracts shall be the responsibility of the Supplier.
- (ii) The Order may not be assigned in whole or in part by the Supplier without the prior written consent of the Buyer.
- (iii) The Buyer's interest in the Order may be assigned without the consent of the Supplier.

19 **CONTINUITY OF SUPPLY**

The Supplier undertakes to accept further Orders in respect of the Buyer's future requirements for similar Supplies at a price and delivery lead times no less favourable to the Buyer than those agreed for this Order, having regard to the economic circumstances at the time and in the event that the Supplier is unwilling or unable to accept such Orders he shall deliver to the Buyer without charge all necessary drawings, manufacturing information and tooling to enable the Buyer to make the Supplies or have them made elsewhere and shall use his best endeavours to obtain for the Buyer on terms satisfactory to the Buyer the grant of any necessary licence.

20 **CHANGES**

The Buyer may by notice in writing amend the Order and the Supplier shall comply therewith without delay. Within 14 days after receipt of such notice, the Supplier may:-

- (i) lodge a notice with the Buyer which in the opinion of the Buyer acting reasonably demonstrates that amending the Order is unfairly prejudicial to the Supplier or the Supplier's ability to supply the Supplies under the Order; or
- (ii) where no such notice is lodged by the Supplier or where the Buyer is not satisfied that the amendment is unfairly prejudicial to the Supplier, the Supplier shall advise the Buyer in such detail as the Buyer may reasonably require of the effect of such change;

and the Buyer shall agree to cancel the amendment where Clause (i) applies or, where Clause (ii) applies, shall as soon as practicable agree with the Supplier any necessary and reasonable adjustment to the Order and incorporate such agreement into the Order by formal amendment thereto.

21 **PROPERTY OF THE BUYER**

- (i) Any property of the Buyer including Intellectual Property Rights supplied by or on behalf of the Buyer to the Supplier for the performance of the Order (whether as free issue or on loan) shall remain the absolute property of the Buyer.
- (ii) During the period when any property of the Buyer is supplied to the Supplier such property shall be at the Supplier's risk, stored and booked separately from the Supplier's property, maintained at the Supplier's expense in good and serviceable condition clearly identified as belonging to the Buyer and only used by the Supplier for the performance of the Order.
- (iii) At any time on request by the Buyer and in any event on completion of the Order, any property of the Buyer supplied to the Supplier shall, unless used in the manufacture of the Supplies, be returned by the Supplier to the Buyer.
- (iv) The Buyer shall not accept liability for any parts or materials received by the Supplier from the Buyer in a damaged state under or in connection with the Order unless such damage is notified in writing to the Buyer within 5 days of receipt by the Supplier of such parts or materials.
- (v) All scrap arising from materials issued by the Buyer shall remain the property of the Buyer. The disposal of such scrap by the Supplier shall be in accordance with the instructions of the Buyer and all proceeds of sale of such scrap shall be credited by the Supplier to the Buyer. Any such instructions given by the Buyer as to the disposal of scrap shall not however replace or prejudice any duty whether statutory or otherwise imposed on the Supplier as to such disposal.

22 **COMPLIANCE WITH LAWS AND REGULATIONS**

- (i) The Supplier shall comply with all statutory requirements applicable to the Order.
- (ii) The Supplier, its employees and its sub-contractors shall familiarise themselves with and shall comply with the Buyer's procedures relating to the performance of the Order.
- (iii) If any provision of the Order is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Order and the remainder of such provision shall continue in full force and effect.

23 **NOTICES**

- (i) All notices and communications shall be in writing.
- (ii) Any notice or other communications sent to the Supplier shall be effective if sent to an address notified to the Buyer for the purpose or to the address of the Supplier last known to the Buyer.
- (iii) Notices or other communications sent by the Supplier to the Buyer shall be sent to the address given for the Buyer on the face of the Order for the attention of the person indicated on the face of the Order

24 **WAIVER**

Any failure, delay, relaxation or concession by the Buyer in the exercise of its right to insist upon the performance of any of the obligations or to exercise any rights hereunder, shall not be construed as a waiver or relinquishment of the future exercise of any such right and the obligations of the Supplier shall continue in full force and effect.

25 **INTERPRETATION AND SEVERANCE**

- (i) Clause headings are for convenience only and shall not govern the interpretation of these conditions.
- (ii) In the event that any term, condition, provision, clause or phrase of the Order shall be nullified or made void by any statute, regulation or order by the decision of any court having jurisdiction, the remaining terms, conditions and provisions of the Order shall remain in full force and effect.

26 **APPLICABLE LAW**

The Order including all terms and conditions relative to the Order shall be governed by, construed and shall take effect in accordance with the laws of Scotland and the parties agree to submit to the non-exclusive jurisdiction of the Scottish courts.