



**TERMS AND CONDITIONS OF SALE OF AEROFLEX HOSE AND ENG LIMITED**  
(Hereinafter "Seller")

**1. General:**

The following terms and conditions ("Terms") shall apply to and govern all sales and supplies of goods and services. The acceptance of Seller's tender or the acceptance by Seller of the customer's order shall be subject to the Terms and to such other terms and conditions (if any) stated in or referred to in Seller's tender or in Seller's official acceptance document. Excluded are all other terms and conditions unless expressly agreed by Seller in writing, and all prior representations and warranties. These Terms, together with Seller's offer, written order confirmation or proposal (if any) shall prevail over any conflicting, different or additional terms contained in any customer issued document, including any purchase order, no matter how and when issued. Seller's failure to object to conflicting, different or additional provisions, printed or otherwise, contained in customer's purchase order, or, in any other document issued by customer, shall not be construed as a waiver of the provisions hereof, or, as an acceptance by Seller of such conflicting, different or additional provisions. Verbal telephone or telegraphic orders and any variations to orders must be confirmed in writing by customer, otherwise Seller will not - unless it so thereafter agrees in writing - be bound to comply with the same. Seller will not be bound by and responsible for any clerical or arithmetical error occurring in any estimate, offer, tender, order confirmation, notice of acceptance, invoice or statement or document issued by Seller.

**2. Pricing:**

- a) Prices are quoted exclusive of any applicable sales, use, value added or similar taxes and all customs, license fees and duties, which will be paid by the customer at the rates ruling at the date of invoice. Unless otherwise specified in any order, tender or invoice of Seller, all packing cases, skids, drums and other packing materials will be charged to customer and are not returnable to Seller.
- b) If, under any applicable law or regulation, Seller is required to pay or collect any tax or duty upon any product(s) supplied to customer hereunder, which tax is based upon the sale, transport, delivery, use or consumption of such product(s), the price to be paid by customer for such product(s) shall be increased by the amount of any such tax and customer shall pay such tax as part of the purchase price for such product(s) unless customer provides a complete and accurate exemption certificate in advance as prescribed by applicable law.
- c) If the prices of the material, labour or other costs increase or cost of performance of the contractual obligations increase due to changes in law, order or regulation, Seller reserves the right to invoice at the prices which rule at the date of invoice.

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Winchester House  
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- d) Seller reserves the right to supply and charge for 10% by number more or less of the goods than the quantity ordered. When such supply has been effected, the order shall be accepted by all parties as having been completed. (*This applies to customer specific subcontract work only*)

### 3. Payment:

- (a) Unless otherwise agreed, payment of the contract price shall be made net in cash within thirty (30) days from the date of the invoice.
- (b) Customer shall not set-off unless claims are uncontested or have been adjudicated and are final and cannot be further appealed. No claim by customer under warranty or otherwise shall entitle customer to any deduction, retention or withholding of any part of the contract price and these terms of payment must be carried out
- (c) In the case of late payment, interest at 5% per annum will be charged on the daily balance from the due date until payment is made. Customer shall reimburse Seller for all costs incurred in collecting late payments, including, without limitation, legal fees.

### 4. Delivery:

- (a) Unless otherwise agreed, delivery shall be EXW Seller's manufacturing facility INCOTERMS 2010.
- (b) Any estimate submitted by Seller whether verbal or in writing shall be provisional and shall not bind Seller. The period of time quoted by Seller for the despatch of goods ordered is to be calculated from acceptance by Seller of the customer's written order and receipt of all necessary information to enable Seller to put the work in hand, whatever occurs later, and shall be subject to continued and timely performance on customer's part.
- (c) Seller assumes no liability whatsoever to customer or to any third party for any loss or damage, including any indirect or consequential damage resulting from any delay or deviation in delivery. Time for performance shall be extended by a reasonable period if delay is caused by delay or failure on the part of any other supplier or by industrial dispute or by any cause beyond Seller's reasonable control. Should Seller be prevented from supplying any goods by reason of any of the said causes or due to customer's fault, customer shall take such goods as Seller is able to despatch and shall pay for the same pro rata at the agreed prices.
- (d) Seller reserves the right to deliver the goods in instalments. Each instalment may be invoiced separately, and customer will pay each invoice when due, without regard to delivery or non-delivery of previous and/or subsequent instalments. Delay in delivery of any instalments shall not relieve customer of its obligations to accept remaining instalments. Requests to reschedule deliveries will be subject to acceptance by Seller.



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#### **5. Storage:**

If customer does not take delivery of the goods or arranges storage or as appropriate gives Seller its forwarding instructions to enable Seller to despatch the goods within seven (7) days after receipt of advice that the goods are ready for despatch or if goods are to be collected by customer from Seller's works or premises but they remain uncollected for more than seven (7) days after notification has been given that they are ready for collection or if customer notifies Seller it is or will be unable to receive or accept the goods, then Seller shall be entitled to arrange storage at Seller's own works or elsewhere on the customer's behalf and all charges for handling, storage, insurance and otherwise shall be payable by the customer.

#### **6. Title & Risk:**

- a) Legal and beneficial ownership of the goods shall remain vested in Seller until full payment of the contract price has been made. Until such time the customer shall keep the goods free from any charge, lien or other encumbrance and the customer shall not resell them or otherwise dispose of them and the customer shall keep them separately identifiable.
- b) While any part of the contract price remains outstanding Seller may at any time and from time to time until it is paid in full require the goods to be returned to Seller and, if this requirement is not complied with immediately, Seller may take possession of the goods and enter the customer's premises for such purpose and sever the goods from anything to which they are attached or connected without being responsible for any loss or damage caused. Such return or retaking of possession shall be without prejudice to the customer's obligation to purchase the goods. Should nevertheless the goods become constituents of or become converted into other products whilst subject to Seller's equitable and beneficial ownership Seller shall have an equitable and beneficial ownership in such other products as if they were sold and the other goods previously supplied by Seller.
- c) The risk in the goods shall pass on delivery as per the agreed Incoterm, or, when delivery should have occurred if delayed by the customer.

#### **7. Patents & Confidentiality:**

- a) All patents, copyright and other intellectual property rights in or relating to the goods or their design or the specifications, drawings, manuals or information prepared or supplied by Seller, or which arise under or in the course of Seller's performance of the Contract ("Contract" means the agreement arising as a result of Seller's acceptance of customer's order, or the customer's acceptance of Seller's tender, incorporating these Terms.), are, shall be and shall remain Seller's absolute property and shall not be used or reproduced without Seller's consent in writing.



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- b) Any specifications, drawings, manuals, information or particulars supplied with Seller's tender, offer or under the Contract are supplied by Seller in confidence. They shall not be used by the customer except for the purposes of the Contract and for the proper use of the goods and shall not be disclosed by the customer to any third party (except the customer's employees having a need to know for the aforesaid purposes) for any purpose whatsoever without Seller's written agreement. The foregoing shall not apply to information which is or becomes public knowledge without fault or failure by the customer or its employees.

#### **8. Suspension & Termination:**

If customer fails to make payment in accordance with the Contract or commits any other breach of the Contract or has a receiver appointed or passes a resolution for winding up (other than for the purposes of solvent amalgamation or reconstruction) or a court makes an order to that effect or enters into any composition or arrangement with his creditors, Seller shall, at its sole discretion and option, be entitled to suspend any outstanding deliveries or upon notice to customer cancel the Contract so far as it remains unperformed and without prejudice to Seller's other rights and remedies including without limitation its right to claim for the price of the goods already delivered at the date of cancellation and for loss, damage or injury occasioned thereby.

#### **9. Customer's Property:**

Seller does not accept responsibility or liability for loss or damage consequential or otherwise in relation to any goods or property belonging to customer while such are in Seller's possession, custody, control or on its premises and this shall apply irrespective of cause, whether in tort, contract or otherwise at law and notwithstanding the negligence or breach of duty (whether statutory or otherwise).

#### **10. Material:**

Customer acknowledges and agrees that the goods to be supplied are subject to availability. Seller will try to make the goods available as far as this is reasonable. Should any material(s) or part(s) specified or required for completion of a Contract be unavailable for timely satisfaction of such, then a substitute deemed by Seller to be suitable for the intended purpose as understood by Seller will be supplied, if available, and shall without prior notice be accepted by customer in full satisfaction and performance of Seller's obligation. In the event that Seller is unable to obtain a substitute which Seller deems suitable for unavailable material(s) or part(s), Seller is, at its sole discretion and option, be entitled to

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- (i) upon notification to customer suspend its obligations until such time as the material(s) or part(s) previously unavailable or substitutes therefore as provided for above become available and any necessary adjustment to the price shall be made by Seller or
- (ii) Cancel any Contract or any part of a Contract without cause at any time and without penalty, and Seller's sole obligation shall be to return any down payment paid, if any, by customer.

#### **11. Indemnification:**

Customer shall indemnify Seller and keep Seller indemnified against all costs, claims, damage or expense whether in relation to persons or property caused by or resulting from any breach or non-performance of the contract or negligence on the part of customer, affiliates, its employees or agents. Upon transfer of risk customer shall be responsible for and shall indemnify Seller against any loss or damage to the goods from whatsoever cause occurring.

#### **12. Limitation of Liability:**

Notwithstanding anything to the contrary contained herein or elsewhere in the Contract and save to the extent this limitation is prohibited by law;

- a) Seller's total liability pursuant to any Contract whether by way of indemnity, for breach of contract, Warranty or guarantee obligations or by reason of any tort, statute or otherwise shall in no event exceed the contract price.
- b) Seller shall not be liable to customer or any third party, whether or not claiming by or through customer, for any indirect, economic, special, punitive, incidental or consequential damages of any kind or nature whatsoever, or:
  - I. loss of the use of the goods or any equipment containing such goods,
  - II. loss or damage to any such equipment,
  - III. loss of profits,
  - IV. loss of revenue,
  - V. loss of production,
  - VI. Replacement or repair costs (other than as provided in connection with the warranties contained herein), regardless of whether such damages are based upon contract, tort, strict liability in tort, negligence or indemnity.
- c) This clause shall survive any termination, default, cancellation or any other discontinuance of any Contract.

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### 13. Force Majeure:

Neither party shall be liable in respect of its obligations and shall not be considered to be in default or in breach of its obligations under the Contract (other than failure to pay any amounts due) to the extent that performance of such obligations is prevented or delayed by any circumstances outside its reasonable control including, without limitation, strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, embargoes, sanctions, accidental breakdown of plant or machinery, fire, flood, storm or epidemic. Either party shall be entitled to terminate the Contract if the force majeure situation continues, or it is obvious that it will continue, for more than one hundred and eighty (180) days without liability to the other party.

**14. Import / Export / Sanctions:** Customer agrees that it will comply with all applicable import, export control and sanctions laws and/or regulations, including without limitation those of the U.S., EU, EU Member States, and/or other jurisdictions (together "Trade Compliance Rules") from which the Seller goods, software and/or technology ("Product") may be supplied or shipped. The customer agrees that it will not participate directly or indirectly in the sale, resale, export, transfer or disposal of Products to any entity, for any use, or to any country in breach of applicable Trade Compliance Rules and the customer will not sell, resell, export, transfer, dispose or otherwise deal with the Products to any country, use, destination or person without first obtaining any required export licence or other governmental authorization, and completing such formalities as may be required by Trade Compliance Rules. The customer shall not put the Products in their entirety or in part to any use in connection with any prohibited or illicit end use including but not limited to use in nuclear, chemical or biological weapons or rocket or missile applications. Upon Seller's request, the customer shall provide information in response to any reasonable request (including a written certification) regarding compliance with applicable laws, rules or regulations and/or in connection with any applications made by Seller to the authorities in connection with the export or supply of the Products. Failure by the customer to comply with the terms of this clause shall constitute a material breach of the Contract. Seller reserve the right to refuse to enter into or to perform any order or Contract, to cancel any Contract, or to void any warranty concerning the Products, if Seller determine, at its sole discretion, that the entry into such Contract or the performance of the transaction to which such Contract relates would be unlawful or be at risk of prohibition by any Trade Compliance Rules. Seller shall be excused from performance, and not be liable for damages or costs of any kind, including but not limited to liquidated damages and/or penalties for late delivery, for failure to deliver or delay in delivering the Products, or for delay or refusal to repair or replace under any warranty, resulting from Seller's exercise of its rights pursuant to this clause.



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**15. Subcontract:**

Seller shall be entitled to sub-contract the whole or part of any work at its absolute discretion and if it does so shall be deemed to have carried out its obligations under the Contract.

**16. Assignment:**

Any Contract made between Seller and customer is made between the parties as principals and is not assignable by customer without the consent in writing of Seller.

**17. Entire Agreement:**

The Contract contains the entire understanding of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, contracts, commitments, and writings with respect thereto. There are no oral understandings, terms or conditions and neither party has relied upon any representation, express or implied, not contained in the Contract.

**18. Rights & Governing Law & Jurisdiction:**

- a) No right or remedy conferred upon or reserved to Seller shall exclude any other right or remedy herein or by law or equity or permitted, but each shall be cumulative on every other right or remedy given hereunder now or hereafter existing and may be enforced concurrently therewith or from time to time.
- b) These Terms and each Contract shall be governed by and construed according to English law. The Convention on Contracts for the International Sale of Goods shall not apply.
- c) The parties submit to the exclusive jurisdiction of the English Courts.



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