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## **GENERAL TERMS AND CONDITIONS OF SALE**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In these conditions, the following words shall have the following meanings:-

"Business Day"	means any day from Monday to Friday on which the Company is open for business.
"Buyer"	means the company, partnership, business or individual who/which purchases the Goods from the Company.
"Company"	means Hycrome Aerospace Ltd registered in Scotland under number SC491503.
"Conditions"	means the General Terms and Conditions of Sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Company and the Buyer.
"Contract"	means any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions.
"Delivery Point"	means the place where delivery of the Goods is to take place under condition 4.
"Goods"	means the goods or services or any part thereof to be sold or provided to the Buyer by the Company as described in the Contract.
"Price"	means the price for the Goods as stated in the Company's quotation as accepted by the Buyer's purchase order.

1.2 Clause heading are for ease of reference only and shall not affect the construction or interpretation of any clause.

1.3 Words importing the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

### **2. APPLICATION OF TERMS**

2.1 Unless otherwise agreed in writing by the Company, these conditions are the only conditions upon which the Company is prepared to supply the Goods to the Buyer. These Conditions shall constitute the whole agreement between the Company and the Buyer and shall govern the Contract to the entire exclusion of all other terms or conditions (including the Buyer's terms and conditions or those implied by trade, custom or practice).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions.

2.4 No order placed by the Buyer shall be deemed to be accepted by the Company until a Purchase Order reflecting the agreed terms of offer has been received or (if earlier) the Company delivers the Goods to the Buyer.  
Any quotation is given on the basis that no contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of Thirty (30) days only from its date (unless otherwise agreed), provided the Company has not previously withdrawn it.

2.5 These Conditions apply to all the Company's sales and any variation to these Conditions and any representation about the Goods shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Company.

2.6 The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

### **3. DESCRIPTION**

3.1 The quantity and description of the Goods shall be as set out in the Company's quotation as agreed by the Buyer's purchase order.

3.2 All drawings, particulars of weights and dimensions, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They will not form part of this Contract and this is not a sale by sample.

3.3 Any jigs or tooling 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.

3.4 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 is possible following notification of the discontinuance of the finishing.

#### **4. DELIVERY**

4.1 Delivery is in accordance with the Contract terms by any method convenient to the Company and the Buyer will be charged accordingly.

4.2 The Buyer shall take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3 Delivery times specified by the Company in its quotation are intended to be business estimates only and the Company is not liable to the Buyer for any failure to comply with such delivery time.

4.4 Subject to the other provisions of these Conditions the Company will not be held liable for any direct, indirect or consequential loss, or any costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless the delay exceeds 90 days.

4.5 If Company is delayed in or prevented from performing any of its obligations under the Contract due to the acts or omissions of Buyer (including but not limited to failure to provide specifications or such other information as Company reasonably requires to proceed expeditiously with its obligations under the Contract), the delivery period and the Contract Price shall both be adjusted accordingly.

4.6 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

4.6.1 risk in the Goods shall pass to the Buyer;

4.6.2 the Goods shall be deemed to have been delivered; and

4.6.3 the Company may store the Goods for the Buyer and the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

4.7 The Buyer shall provide at the Delivery Point, at the Buyer's expense, adequate and appropriate equipment and manual labour for unloading the Goods.

4.8 The Company is not bound to deliver the Goods in one lot, shipment or consignment and the Buyer shall accept split deliveries or delivery by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

4.10 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 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 all the 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

#### **5. NON-DELIVERY**

5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within 5 days of the date when the Goods would, in the ordinary course of events, have been received.

5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

#### **6. INSPECTION, TESTING AND CALIBRATION**

6.1 Goods will be inspected by Company and, where practicable, submitted to Company's standard tests before despatch. Any additional tests or inspection (including inspection by Buyer or its representative, or tests in the presence of Buyer or its representative and/or calibration) or the supply of test certificates and/or detailed test results shall be subject to Company's prior written agreement and the Company reserves the right to charge thereof.

6.2 If the Buyer or its representative fails to attend such inspection, tests or calibration after 7 days notice that the Goods are ready therefore, the inspection, tests and/or calibration will proceed and will be deemed to have been made in the presence of Buyer or its representative and the Company's statement that the Goods have passed such inspection, testing and/or calibration shall be conclusive.

## **7. RISK/TITLE**

7.1 The Goods are at the risk of the Buyer from the time of delivery or within 7 days of receiving notice that the Goods are ready for delivery, whichever is the earlier.

7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- 7.2.1 the Goods; and
- 7.2.2 all other sums which are or which become due to the Company from the Buyer on any account.

7.3 Until ownership of the Goods passes to the Buyer, the Buyer shall:

- 7.3.1 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- 7.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 7.3.3 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request, the Buyer shall produce the policy of insurance to the Company.

7.4 The Buyer can only resell the Goods before ownership has passed to it solely on the following conditions:

- 7.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 7.4.2 any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal in making such a sale.

7.5 The Buyer's right of possession of the Goods shall terminate immediately if:

- 7.5.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or as a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder, or a resolution is passed, or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer;
- 7.5.2 the Buyer suffers any diligence or execution to be levied, on his/its property or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 7.5.3 the Buyer encumbers or in any way charges any of the Goods.

7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.

7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are being stored in order to inspect them, or, where the Buyer's rights to possession has terminated, to recover them.

## **8. PRICE AND PAYMENT**

8.1 Unless otherwise agreed in the Contract, the Price shall be payable in full without set-off, counterclaim or withholding of any kind (save where and to the extent that this cannot by law be excluded) within 30 days of the Company's invoice date, without further notice from the Company. All sums are to be paid in the currency as specified on the invoice.

8.2 The Price for the Goods shall be exclusive of any value added tax, export, import, excise duties and any other taxes or duties. All such taxes or duties shall be payable by the Buyer.

8.3 The Company may invoice on or any time after delivery, or if the Buyer wrongfully fails to take delivery or otherwise suspends or delays delivery, the Company is entitled to invoice from the date the Goods were tendered for delivery.

8.4 If the Buyer fails to make timely payment of any sum due, the Company may suspend the delivery of Goods until full payment is made. If such failure to make payment continues for more than one month, the Company may without prejudice to any other contractual rights, terminate this Contract and dispose of the any Goods appropriate to the Contract.

8.5 No payment will be deemed to have been received until the Company has received cleared funds.

8.6 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the matter will be passed to the Company's lawyers to commence legal proceedings to recoup any amounts owed under the Contract.

- 8.7 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provisions.
- 8.8 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.
- 8.9 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 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 of profit, loss of business or loss of use of processing lines suffered by the Company as a direct or indirect result thereof.
- 8.10 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 the costs of any trans-shipment and/or deviation of voyage shall be paid by the Customer.
- 8.11 The cost of any variation or modification to the order requested by the Customer after the date of acceptance of order shall, if such variation or modification is accepted by the Company, be borne by the Customer.

## **9. WARRANTY**

- 9.1 The Company warrants that:-
- 9.1.1 Goods supplied by the Company will be free from defects in materials or workmanship under normal use and care and services will be performed by trained personnel using proper equipment and instrumentation for the particular service provided. The foregoing warranties will apply until the expiration of the warranty period which is 12 months from the date of initial installation or 18 months from the date of notification of delivery by the Company whichever occurs earliest;
  - 9.1.2 if any of the Goods do not conform to this warranty the Company will at its option either repair or replace non-conforming Goods or take back the non-conforming Goods and refund the appropriate part of the purchase Price.
  - 9.1.3 Should the warranty period given by the original manufacturer be less than that stated in 9.1.1, then company reserves the right to reduce the warranty period to that given by the manufacturer unless otherwise agreed.
- 9.2 The warranty contained in clause 9.1 is conditional upon:-
- 9.2.1 the Buyer giving written notice to the Company within 14 days of the time when the Buyer discovers or ought to have discovered the alleged non-conformity in the Goods;
  - 9.2.2 the Buyer giving the Company reasonable access to inspect the Goods and, if requested by the Company, returning the alleged non-conforming Goods to the Company's premises, carriage paid, for inspection;
  - 9.2.3 the Goods having been properly stored, maintained, handled and installed in accordance with good industrial practises and the Company's recommended procedures; and
  - 9.2.4 the Buyer having paid for the Goods in full.
- 9.3 The Company accepts no liability in respect of:
- 9.3.1 any modification or alteration required to the Goods made necessary by any legislation, regulation or requirements of any authority after the purchase order has been placed;
  - 9.3.2 any repair or replacement required to any Goods where any identification, serial or batch number has been altered, defaced or removed, or if any unauthorised work has been carried out by others; and
  - 9.3.3 faults caused by accident, neglect, misuse or normal wear and tear.
- 9.4 The Customer is reminded of the associated hazards and affects 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.
- 9.5 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.
- 9.6 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 9.5 above and for any breach of Contract or breach of statutory duty or tort (including but not limited to negligence) misrepresentation or otherwise is limited to 1 times the charge made for finishing of the relevant Goods under the Contract. In the case of breach of the warranty given in condition 9.5 above, instead of refunding or waiving the whole or the appropriate part of the charge for finishing the Company may as 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.
- 9.7 This warranty is given in lieu of all warranties and conditions whether express or implied by statute, common law or otherwise (including but not limited to satisfactory quality and fitness for purpose) which are hereby excluded to the fullest extent permitted by law.

**10. LIMITATION OF LIABILITY**

- 10.1 Neither party excludes or limits its liability to the other party for death or personal injury caused by any negligent act or omission, or wilful misconduct or breach of duty of such party.
- 10.2 The Company shall, in no circumstances, be liable to the Buyer in respect of any of the following losses or damage (whether such losses or damages were foreseen, foreseeable, known or otherwise):
- 10.2.1 indirect or consequential loss or damage;
  - 10.2.2 loss of business profits, salary, business revenue, goodwill, or anticipated savings; or
  - 10.2.3 loss which could have been avoided by the Buyer through reasonable conduct.
- 10.3 In the event that, notwithstanding any of these Conditions, the Company is found liable to the Buyer, such liability for actual damages for any cause whatsoever shall be limited to the Price paid by the Buyer to the Company in relation to provision of the Goods.

**11. GENERAL**

- 11.1 The Company may terminate the Contract with immediate written notice if the Buyer fails to pay the Price in accordance with condition 8.4.
- 11.2 The Buyer may terminate or suspend its order for all or part of the Goods covered by the Contract only upon the Company's written consent.
- 11.3 In the event of cancellation of the Contract by the Buyer, the Buyer will be liable for all costs incurred by the seller up to the time of cancellation or a variable charge based on the full value of the Contract dependent upon the time elapsed after placement of the Order whichever be the greater. The variable charges are defined as follows:
- |                 |      |
|-----------------|------|
| 2 weeks         | 25%  |
| 3-4 weeks       | 30%  |
| 5-6 weeks       | 50%  |
| 7-8 weeks       | 75%  |
| 9 weeks or more | 100% |

**12. ASSIGNATION**

- 12.1 The Company may at any time assign the Contract or any of its rights or obligations under it.
- 12.2 The Buyer shall not, and shall not purport to assign or otherwise transfer the Contract or any rights or obligations under it without the Company's prior written consent. Any such consent shall not excuse the Buyer from performance of any obligations on its part to be performed.

**13. SEVERABILITY**

If and in so far as any part or provision of these Conditions is or becomes void or unenforceable it shall be deemed not to be or never to have been or formed a part of the Contract and the remaining provisions of the Contract shall continue in full force and effect.

**14. FORCE MAJEURE**

- 14.1 The Contract shall be suspended, without liability, in the event and to the extent that its performance is prevented or delayed due to any circumstance beyond the reasonable control of the party affected, including but not limited to: Act of God, war, armed conflict or terrorist attack, riot, fire, explosion, accident, flood, sabotage, governmental decisions or actions including but not limited to prohibition of exports or the failure to grant or revocation of applicable export licenses, or labour trouble, strike, lockout or injunction.
- 14.2 If either party is delayed or prevented from performance of its obligations by reason of this clause for more than 180 consecutive calendar days, either party may terminate the then unperformed element of the Contract by notice in writing given to the other party, without liability provided that the Buyer shall be obliged to pay the reasonable cost and expense of any work in progress and to pay for all Goods delivered as at the date of termination. Company may deliver by instalments and if so each delivery shall constitute a separate Contract and failure by the Company to deliver any one or more of the instalments in accordance with their terms shall not entitle the Buyer to terminate the whole of the Contract or treat it as repudiated.

**15. VARIATION**

Any variation to the Contract shall only be effective if in writing and signed by authorised representatives of both parties.

**16. WAIVER**

No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound.

**17. THIRD PARTY RIGHTS**

Save to the extent expressly set out in the Contract, the Contract is not intended nor shall it create any rights, entitlement, claims or benefits enforceable by any person that is not a party to it and the rights set out in the Contracts (Rights of Third Party Parties) Act 1999 shall not apply.

**18. BUSINESS ETHICS**

The Company is committed to providing the diligence and care required to prevent any action or condition that might result in a breach of, but not limited to, the UK Bribery Act 2010 and the U.S. Foreign Corrupt Practices Act. The Company is actively involved in establishing and implementing policies and procedures as well as training mechanisms to make its personnel aware of the obligations set out in anti-bribery legislation. Personnel are committed to strictly adhere to policies and procedures put in place by the Company to prevent its personnel from giving or receiving: gifts, payments, loans, or any other inducement for any purpose from any firm, corporation, person or other body in performance of the Contract.

**19. NOTICES**

Notices may be served by telex or fax and are deemed served the next working day after despatch.

**20. GOVERNING LAW**

The construction, validity and performance of this Contract shall be governed by and construed in accordance with Scots law and the parties hereby submit to the exclusive jurisdiction of the Scottish courts.

THIS DOCUMENT IS SUBJECT TO CHANGE WITHOUT FORMAL NOTICE.

**Title:** HYCROME AEROSPACE GENERAL TERMS AND CONDITIONS OF SALE

**Revision:** 1

**Effective Date:** 1<sup>ST</sup> October 2016

**Previous Revision:**

**Dated:**