

ADVANCED MANUFACTURING SERVICES LTD TERMS AND CONDITIONS FOR SUPPLY OF GOODS AND SERVICES

1 Definitions and interpretation

1.1 In these Conditions the following definitions apply:

Conditions

means the Supplier's terms and conditions of sale set out in this document;

Customer

means the person who purchases the Deliverables from the Supplier and whose details are set out in the Order;

Deliverables

means the Goods or Services or both as the case may be;

Force Majeure

means an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, explosions earthquake or other natural disaster, acts of terror, plant shutdowns, war, riot or civil unrest, sabotage, interruption or failure of supplies of power or critical equipment, fuel, water, transport, equipment or telecommunications service, or unavailability of material or parts required for supply of Goods, strike, lockout or boycott or other industrial action including those involving the Supplier's or its suppliers' workforce, but excluding the Customer's inability to pay or circumstances resulting in the Customer's inability to pay;

Goods

means the goods and related accessories, and other physical material set out in the Order and to be supplied by the Supplier to the Customer;

Intellectual Property Rights

means copyright, patents, know-how, trade secrets, trademarks, trade names, design rights, rights in get-up, rights in goodwill, rights in confidential information, rights to sue for passing off, domain names and all similar rights and, in each case: whether registered or not; including any applications to protect or register such rights; including all renewals and extensions of such rights or applications; whether vested, contingent or future; to which the relevant party is or may be entitled; and in whichever part of the world existing;

Location

means the address(es) for delivery of the Goods and performance of the Services as set out in the Order;

Order

means the Customer's order for the Deliverables in substantially the same form as set out in the Customer's order form;

Services

means the services set out in the Order and to be supplied by the Supplier to the Customer;

Specification

means the description or specification of the Deliverables set out or referred to in the Order;

Supplier

means Advanced Manufacturing Services Ltd, with registered company number 04300336;

Supplier Personnel

all employees, officers, staff, other workers, agents and consultants of the Supplier, its Affiliates and any of their sub-contractors who are engaged in the performance of the Services from time to time;

Warranty

has the meaning given in clause 9.1.

2 Application of these Conditions

- 2.1 These Conditions apply to and form part of the Contract between the Supplier and the Customer. They supersede any previously issued terms and conditions of purchase or supply. Any additional special conditions as detailed in the quotation will prevail and will be confirmed by the Supplier's written acceptance of the order.
- 2.2 No terms or conditions endorsed on, delivered with, or contained in the Customer's purchase conditions, order, specification or other document shall form part of the Contract except to the extent that the Supplier otherwise agrees in writing.
- 2.3 No variation of these Conditions or to an Order or to the Contract, or cancellation of an Order shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of the Customer. Cancellation of Orders shall only be agreed by the Customer agreeing to compensate the Supplier for loss caused by such cancellation up to a maximum of 110% of the value of an Order.
- 2.4 Any quotes provided are valid for 30 days only unless otherwise stated.
- 2.5 Each Order by the Customer to the Supplier shall be an offer to purchase the Deliverables subject to these Conditions.
- 2.6 The Supplier may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Deliverables shall arise, until the earlier of: the Supplier's written acceptance of the Order; or the Supplier delivering or performing the Deliverables or notifying the Customer that they are ready to be delivered or performed (as the case may be).
- 2.7 Marketing and other promotional material relating to the Deliverables are illustrative only and do not form part of the Contract.

3 Price

- 3.1 The price for the Deliverables shall be as set out in the Order or, in default of such provision, shall be calculated in accordance with the Supplier's scale of charges in force from time to time or as indicated by the Supplier and received and acknowledged by the Customer before the date the Order is made (**Price**).
- 3.2 The Prices are exclusive of packaging, delivery, insurance, and are not included in the standard price which shall be charged in addition at the Supplier's standard rates; and VAT.

- 3.3 The Customer shall pay any applicable VAT to the Supplier on receipt of a valid VAT invoice.
- 3.4 The Supplier may increase the Prices at any time by giving the Customer not less than 30 business days' notice in writing.
- 3.5 Notwithstanding clause 3.4, the Supplier may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Deliverables which is due to any factor beyond the control of the Supplier.
- 4 Payment**
- 4.1 The Supplier shall invoice the Customer for the Deliverables at any time after delivery or performance (as the case may be) of the Deliverables.
- 4.2 Subject to 5 the Customer shall pay all invoices in the currency specified in full without deduction or set-off, in cleared funds within 30 days of the date of each invoice, and to the bank account nominated by the Supplier.
- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date, the Supplier may, without limiting its other rights: charge interest on such sums at 24 % a year above the base rate of Barclays Bank Plc from time to time in force; and interest shall accrue on a daily basis and apply from the due date for payment until actual payment in full, whether before or after judgment.
- 4.4 If the customer fails to pay for any one or more shipments when due, the Supplier shall have the right in addition to other remedies to either a) suspend or cancel future deliveries or b) require payment on or before shipment/delivery. Should the Customer's financial viability become unsatisfactory to the Supplier, payment via Pro-Forma invoice may be required by the Supplier before proceeding with future deliveries.
- 5 Credit limit**
- The Supplier may set and vary credit limits from time to time and withhold all further supplies if the Customer exceeds such credit limit.
- 6 Delivery and performance**
- 6.1 The Goods shall be delivered by the Supplier to the Location on the date(s) specified in the Order. The Goods shall be deemed delivered by the Supplier on unloading of the Goods at the Location.
The Services shall be deemed delivered by the Supplier on completion of the performance of the Services at the Location.
- 6.2 The Supplier may deliver or perform the Deliverables in instalments. Any delay in performance or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6.3 Time is not of the essence in relation to the performance or delivery of the Deliverables. The Supplier shall use its reasonable endeavours to meet estimated dates for delivery and performance, but any such dates are approximate only and the Supplier will not be held liable for failure to do so.
- 6.4 The Supplier shall not be liable for any delay in or failure of performance caused by the Customer's failure to: (i) make the Location available, (ii) prepare the Location; and/or Force Majeure.
- 7 Risk**
- Risk in the Goods shall pass to the Customer on delivery.
- 8 Title**
- 8.1 Legal and equitable title to the Goods shall only pass to the Customer once the Supplier has received payment in full and cleared funds for the Goods.
- 8.2 Until title to the Goods has passed to the Customer, the Customer shall: 8.2.1 hold the Goods as bailee for the Supplier; 8.2.2 store the Goods separately from all other material in the Customer's possession; 8.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered; 8.2.4 ensure that the Goods are clearly identifiable as belonging to the Supplier; 8.2.5 not remove or alter any mark on or packaging of the Goods; 8.2.6 inform the Supplier immediately if it becomes subject to any of the events or circumstances set out in clauses 14.1.1 to 14.1.2 or 14.2 or 15.2; and on reasonable notice permit the Supplier to inspect the Goods during the Customer's normal business hours and provide the Supplier with such information concerning the Goods as the Supplier may request from time to time.
- 8.3 The Supplier or its agents or authorised representatives shall be entitled to enter upon the Customer's premises where Goods are held or are reasonably believed to be held to repossess the same in the event of failure to pay for the Goods.
- 8.4 The Customer must inform the Supplier of any action taken in relation to unpaid for Goods by third parties.
- 9 Warranty**
- 9.1 Subject to the remainder of this clause 9 & clause 11 the Supplier warrants that, for a period of 6 months from manufacture or **unless otherwise stated in the quotation and confirmed by the Supplier's written acceptance of the order**, the Deliverables shall: conform in all material respects to any sample, their description and to the Specification; and be free from material defects in inherent design, material and workmanship.
- 9.2 The Supplier shall, at its option, correct, repair, remedy, re-perform or refund the Deliverables that do not comply with clause 9, provided that the Customer: serves a written notice on Supplier not later than five business days from delivery or performance in the case of defects discoverable by a physical inspection, or within 6 months from manufacture or performance **or unless otherwise stated in the quotation and confirmed by the Supplier's written acceptance of the order** in the case of latent defects; and gives the Supplier a reasonable opportunity to examine the claim of the defective Deliverables.
- 9.3 The Company will not accept a conforming product for return without the Supplier's written consent. Such consent will be granted at the Supplier's sole discretion and will be subject to a minimum 25% service charge. The service charge will be dependent upon the goods and the packaging when returned. All goods must be returned to the Supplier in accordance with the instructions provided by the Supplier, and at the Customer's own cost. The Company

- reserves the right to reject any request for return that was made more than 5 days after discovery of the fault in the Goods to which the claim relates. The Customer's failure to give written notice within the applicable time period shall constitute an absolute and unconditional waiver of any such claim or action.
- 9.4 If the shipment requires the use of **returnable containers**, title to such returnable containers shall remain with the Supplier and they shall be returned to the Supplier in good condition (normal wear and tear excepted) within 60 days or unless otherwise agreed in writing of product delivery. All freight charges to collect the containers must be paid by the Customer. Upon the request of the Supplier the Customer agrees to pay the Supplier the reasonable value of the returnable containers if the Customer fails to return them to the Supplier or fails to return them in a suitable condition. The Supplier may require a returnable container deposit at its sole discretion.
- 9.5 The Customer's use and application of the Goods is beyond the Supplier's control and the Supplier does not offer warranties where there is a failure of the Goods owing to: negligence of the Customer or a third party, alteration, contamination or misuse of the Goods, a specification or modification required by the Customer, the Customer's failure to follow health and safety instructions provided by the Supplier in accordance with industry standards, the Customer's failure to comply with laws, fair wear and tear. Wilful damage, abnormal working conditions, misuse, alteration or repair of Goods without the Supplier's approval.
- 9.6 All warranties and conditions (including the conditions implied by ss 12–16 of the Supply of Goods and Services Act 1982 and ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted.
- 10 Indemnity and Customer obligations**
- 10.1 The Customer shall indemnify, and keep indemnified, the Supplier from and against any losses, damages, liability, costs (including legal fees) and expenses incurred by the Supplier as a result of or in connection with the Customer's breach of any of the Customer's obligations under the Contract.
- 10.2 The Customer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom and Ireland to cover its obligations under the Contract. On request, the Customer shall supply so far as is reasonable evidence of the maintenance of the insurance and all of its terms from time to time applicable.
- 10.3 In addition to other obligations stated herein, the Customer assumes all risk and liability for loss or damage resulting from the handling, use, or application of the Goods and containers delivered hereunder. The Customer agrees to familiarise itself and keep informed (without reliance on the Supplier) about hazards to persons and/or property involved in handling and using such Goods and containers. The Customer shall advise its employees, customers, agents, distributors, consultants, independent contractors and others who handle or use, or may foreseeably handle or use, such Goods, of any hazards. The Customer hereby agrees to indemnify, defend and hold the Supplier, its subsidiaries and affiliates and their respective directors, officers, shareholders, employees, agents, successors and assigns, harmless from and against any and all liabilities, losses, costs or damages, including, resulting from claims (unless finally determined to be the result of the gross negligence or wilful misconduct of Supplier) resulting from use or handling of the Goods by Customer or its affiliates, whether or not the Goods are combined with any other materials, substances or equipment or is used in any manufacturing process. Any reference to Customer and its affiliates shall include Customer's and its affiliates' officers, directors, employees, agents and representatives).
- 11 Limitation of liability and indemnities**
- 11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.
- 11.2 Subject to clause 11.5, the Supplier's total liability whether breach of contract, warranty, tort or otherwise shall not exceed the sum of the purchase price of the portion of the Goods in respect of which such claim is made plus any transportation charges thereon paid by the Customer or the following remedies at the Customer's election: shipment of replacement Goods, modification of the Goods.
- 11.3 Subject to clause 11.5, the Supplier shall not be liable for special damages, consequential, indirect or special losses.
- 11.4 Subject to clauses 11.5, the Supplier shall not be liable for any of the following (whether direct or indirect): loss of profit; loss or corruption of data; loss of use; loss of Goodwill; loss of contract; loss of opportunity; loss of savings, discount or rebate (whether actual or anticipated); harm to reputation or loss of goodwill.
- 11.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following: death or personal injury caused by negligence; fraud or fraudulent misrepresentation; any other losses which cannot be excluded or limited by applicable law; any losses caused by wilful misconduct.
- 11.6 The Supplier's recommendations, training or instructions manual (in written or verbal form) as to use of any Goods or, including its use alone or in combination with other products, or as to use any apparatus or process or the use of any Goods in connection therewith, are based upon information believed to be reliable, but the Supplier assumes no liability with respect thereto. All descriptions and illustrations and particulars of weights and dimensions issued by the Supplier are by way of general descriptions and approximations only and shall not form part of the Contract or give rise to any liability on the part of the Supplier. The Customer or the Customer's customer shall be responsible for testing all Goods and methods to determine whether or not such Goods and methods meet the Customer's needs and whether the Goods are suitable for the Customer's requirements.
- 11.7 Such recommendations, training or instructions manuals provided by the Supplier are not intended to suggest operations, which would infringe any patents or Intellectual Property Rights belonging to third parties. The Supplier grants no sublicense and grants no rights to the Customer in relation to any Intellectual Property Rights, and the Supplier assumes no liability or responsibilities for infringement of any such patents or Intellectual Property Rights. The Supplier may without liability to a Customer of any kind, decline to continue deliveries of any Goods that manufacture, sale or use of which, in the Supplier's opinion would infringe any such patent now or hereafter issued.

- The Customer shall be deemed to have waived all such claims as to any Goods except those claims of which it gives notice to the Supplier within thirty (30) days after Customer's sale thereof. On any claim, whether as to Goods delivered or for non-delivery thereof or otherwise, the Parties acknowledge that its liability whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the purchase price of the portion of the Goods in respect of which such claim is made plus any transportation charges thereon paid by Customer.
- 11.8 With respect to claims against the Supplier by third parties involving Goods, the Customer will defend, indemnify and hold harmless the Supplier, its affiliates, employees and agents, from and against all claims, losses, damages, liabilities and expenses, resulting in each case from the Customer's storage, handling, sale, or use of Goods sold where such claims, losses, damage, liabilities, and expenses were caused by the acts or omissions of the Customer, its employees or agents. This obligation of the Customer will survive the termination of this Agreement.
- 11.9 In addition to the above, the Parties also agree and acknowledge each other that the Supplier will have no obligation to defend, indemnify and hold harmless the Customer in case of claims, losses, damages, liabilities or expenses for bodily injury, property damage or commercial loss arising out of (a) any modification in the composition of Goods that occurs after delivery to the Customer, including contamination or adulteration, or (b) Goods that have been commingled with any Goods other than the Goods supplied (c) sales of Goods that have been repackaged or relabelled with a package or label that differs from those supplied by the Supplier (d) sales of Goods including a material safety data sheet (MSDS) that differs from the MSDS supplied by the Supplier (e) claims based upon any express or implied warranty or representation by the Supplier, or its employees or agents, that is not specifically or expressly approved by the Supplier (f) incidental or consequential damages.
- 11.10 The Customer shall notify the Supplier if it becomes aware of any issue which indicates that a Goods supplied by the Supplier to the Customer which may be non-conforming. The Indemnifying Party has the right and opportunity to defend or settle any such claim, and the Indemnified Party will cooperate fully (except to the extent of conflicts of interest, or of claims by the Indemnifying Party against the Indemnified Party) with the Indemnifying Party in the defence of any such claim and will not make or negotiate any settlement with the claimant without Indemnifying Party's prior written consent, which will not be withheld or delayed.
- 12 Processing of personal data**
- The Customer consents to storage and processing of their personal data by the Supplier in connection with the Contract and to the transmission of personal data across the Supplier and its business partners for the purposes of the Supplier's legitimate interests including marketing and credit control.
- 13 Force majeure**
- Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure.
- The Party whose performance is prevented or impeded by a Force Majeure Event will:
- (a) give prompt notice to the other Party stating the details and the full particulars in connection with, and the expected duration of, the event; and
- (b) take commercially reasonable steps to resume performance promptly.
- If the Force Majeure Event continues for more than (ninety) 90 days, the Party whose performance is not prevented or impeded will have the option to terminate (with cause) this Agreement upon notice to the other Party. To the extent a Party's performance is prevented or impeded by a Force Majeure Event, such Party will have the right to omit any portion of the quantity of Goods deliverable under this Agreement. If, due to any such Force Majeure Event, the Supplier is unable to supply the total quantity of Goods deliverable hereunder the Supplier will allocate its available supply among its internal and external customers in a fair and equitable manner.
- 14 Termination**
- 14.1 The Supplier may terminate the Contract or any other contract which it has with the Customer at any time by giving notice in writing to the Customer if: the Customer commits a material breach of the Contract which is not remedied within 14 days of receiving written notice of such breach; or the Customer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid within 7 days after the Supplier has given notification that the payment is overdue.
- 14.2 The Supplier may terminate the Contract at any time by giving notice in writing to the Customer if the Customer:
- 14.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so; 14.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Supplier reasonably believes that to be the case; 14.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986; 14.2.4 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income; 14.2.5 has a resolution passed for its winding up; 14.2.6 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it; 14.2.7 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within 7 days of that procedure being commenced; 14.2.8 has a freezing order made against it; 14.2.9 is subject to any recovery or attempted recovery of items supplied to it by a supplier retaining title in those items; 14.2.10 is subject to any events or circumstances analogous to those in clauses 14.2.1 to 14.2.9 in any jurisdiction; If the Customer becomes aware that any event has occurred, or circumstances exist, which may entitle the Supplier to terminate the Contract under this clause 14, it shall immediately notify the Supplier in writing.
- 14.3 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Supplier at any time up to the date of termination.
- 15 Dispute resolution**
- 15.1 Any dispute arising between the parties out of or in connection with the Contract shall be dealt with in accordance with the provisions of this clause 15.

- 15.2 The dispute resolution process may be initiated at any time by either party serving a notice in writing on the other party that a dispute has arisen. The notice shall include reasonable information as to the nature of the dispute.
- 15.3 The parties shall use all reasonable endeavours to reach a negotiated resolution.
- 15.4 Until the parties have used reasonable endeavours to reach a negotiated resolution, and have failed to resolve the dispute, neither party shall commence formal legal proceedings or arbitration except that either party may at any time seek urgent interim relief from the courts.
- 16 Notices**
- 16.1 Any notice or other communication given by a party under these Conditions shall: be in writing and in English; be signed by, or on behalf of, the party giving it (except for notices sent by email); and be sent to the relevant party at the address set out in the Contract
- 16.2 Notices may be given, and are deemed received: by hand: on receipt of a signature at the time of delivery; by Royal Mail Recorded Signed For post: at 9.00 am on the second business day after posting; by Royal Mail International Signed post: at 9.00 am on the fourth business day after posting; and by email: on receipt of an email confirming receipt.
- 16.3 Any change to the contact details of a party as set out in the Contract shall be notified to the other party in accordance with clause 16.1.
- 17 Entire agreement**
- 17.1 The parties agree that the Contract and any documents entered into pursuant to it constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.
- 17.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.
- 17.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.
- 18 Variation**
- No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, the Supplier.
- 19 Assignment**
- 19.1 The Customer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Supplier's prior written consent.
- 19.2 Notwithstanding clause 19.1, the Customer may perform any of its obligations and exercise any of its rights granted under the Contract through any Affiliate provided that it gives the Supplier prior written notice of such subcontracting or assignment including the identity of the relevant Affiliate. The Customer acknowledges and agrees that any act or omission of its Affiliate in relation to the Customer's rights or obligations under the Contract shall be deemed to be an act or omission of the Customer itself.
- 20 Set off**
- 20.1 The Supplier shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Customer under the Contract.
- 20.2 The Customer shall pay all sums that it owes to the Supplier under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.
- 21 Severance**
- If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.
- 22 Waiver**
- No failure, delay or omission by the Supplier in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.
- 23 Conflicts within contract**
- If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail.
- 24 Costs and expenses**
- The Customer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).
- 25 Third party rights**
- A person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.
- 26 Governing law & jurisdiction**
- The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

The Customer has read and accepts the Order and Contract subject to the Conditions above

Signed by or on behalf of the

Customer.....Date.....20[]

Name.....Position.....