

## Standard Conditions

These are the Conditions of Supply of Goods by the Company (as defined at Condition 1.1).

### 1. Interpretation

1.1. In these Conditions the following terms shall have the following meanings unless the context otherwise requires:

<b>“Company”</b>	means Bon Accord Engineering Ltd, a company registered under the Companies Acts (registered number 09804052) and having its registered office at 20-22 Wenlock Road, London, England, N1 7GU;
<b>“Conditions”</b>	means the terms and conditions set out in this document;
<b>“Contract”</b>	means any contract between the Company and the Customer for the supply of Goods to the Customer, incorporating any Order Confirmation and these Conditions;
<b>“Customer”</b>	means the person, firm, company or unincorporated association who purchases the Goods from the Company;
<b>“Delivery Date”</b>	means the date when the Goods are to be delivered to the Delivery Point, as accepted by the Company);
<b>“Delivery Point”</b>	means the place where delivery of the Goods is to take place in accordance with the details provided by the Customer and confirmed on the Order Confirmation;
<b>“Goods”</b>	means any goods agreed to be supplied to the Customer by the Company (including any part or parts of them);
<b>“Request for Goods”</b>	means any request howsoever given by the Customer (including by telephone, email or in person) for the supply of Goods from the Company as set out in an Order Confirmation;
<b>“Order Confirmation”</b>	means an order confirmation sent by the Company to the Customer detailing the Goods ordered by the Customer from the Company; and
<b>“Price”</b>	means the price set out in Condition 7.1.

1.2. A reference to a particular law is a reference to it as it is in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3. Words in the singular include the plural and in the plural include the singular.

1.4. A reference to one gender includes a reference to the other gender.

1.5. Headings do not affect the interpretation of these Conditions.

## **2. Application of Terms**

- 2.1. These Conditions shall apply to all Contracts between the Company and the Customer to the exclusion of all other terms and conditions, including any terms or conditions which the Customer may purport to apply under any Request for Goods, Order Confirmation or similar.
- 2.2. Any Request for Goods shall be deemed to be an offer by the Customer to purchase Goods pursuant to these Conditions.
- 2.3. The Customer shall ensure that the details given in any Request for Goods and any applicable specification are complete and accurate;
- 2.4. A Contract shall be formed only on acceptance by the Company of a Request for Goods. A Request for Goods shall be deemed to be accepted by the Company when the Company issues an Order Confirmation to the Customer. The parties acknowledge that a Contract shall be formed at this time. .
- 2.5. The Company will give the Customer a copy of the Contract with all information contained in it within a reasonable time after the Contract is formed but in any event not later than the delivery of any Goods under any Order Confirmation.
- 2.6. These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed for and on behalf of the Company by a director. The Customer 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 writing. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.7. Any quotation by the Company is given on the basis that no contract shall come into existence until a Request for Goods from the Customer is accepted by the Company.
- 2.8. Any quotation by the Company for the provision of Goods will be deemed to be an invitation to treat (and shall not be an offer) by the Company to supply Goods on and subject to these Conditions and will be valid for 28 days only from the date of issue.

## **3. Description of Goods**

- 3.1. The quantity and description of the Goods shall be as set out in the Company's Order Confirmation.
- 3.2. All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's advertising material are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract. This is not a sale by sample
- 3.3. The Customer shall notify the Company of any errors contained in the Order Confirmation (including but not limited to postal address details or quantities of Goods) as soon as possible and no later than close of business on the business day following the Customer's receipt of the Order Confirmation. Where the Company is notified of any such error, it shall update its records accordingly.

## **4. Delivery and Performance**

- 4.1. Unless otherwise agreed by the Company, delivery of the Goods shall take place by the Company delivering the Goods to the Delivery Point. The Customer may also agree to have the Goods delivered by post. If a Customer agrees that the Goods shall be delivered by post then it is the Customer's responsibility to ensure that someone is present at the delivery address for collection of the Goods.

- 4.2. Any date(s) specified by the Company for delivery of the Goods are intended to be an estimate and time shall not be made of the essence by notice. If no dates are so specified, delivery and/or performance shall be within a reasonable time.
- 4.3. The Customer acknowledges that delivery of the Goods may be affected by events beyond the reasonable control of the Company (including but not limited to weather conditions making it unsafe to deliver the Goods or Goods not being delivered within timescales indicated by third party suppliers of such Goods). In such circumstances the Company shall notify the Customer as soon as reasonably practicable and shall not be liable for any losses or claims arising out of such events.
- 4.4. Subject to the other provisions of these Conditions, the Company shall not be liable for any direct or indirect loss (which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods, nor shall any delay entitle the Customer to terminate or rescind the Contract.
- 4.5. If for any reason the Customer fails to accept delivery of any Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents or authorisations, the Company may:
  - 4.5.1. store the Goods until delivery, whereupon the Customer shall be liable for all reasonable costs and expenses (including, without limitation, storage and insurance); or
  - 4.5.2. sell the Goods at the best price readily obtainable and charge the Customer for the shortfall between that price and the Price under the Contract.

## 5. **Non-Delivery**

- 5.1. The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 5.2. The Company shall not be liable for any non-delivery of Goods unless the Customer gives written notice to the Company of the non-delivery within 14 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 Price against any invoice raised for such Goods.

## 6. **Risk/Title**

- 6.1. The risk of damage to or destruction of the Goods shall pass to the Customer from the time of delivery as determined by Condition 4.
- 6.2. Notwithstanding delivery and the passing of risk in the Goods, ownership of the Goods shall not pass to the Customer until the Company has received in full, all sums due to it in respect of:
  - 6.2.1. the Goods under the Contract; and
  - 6.2.2. all other sums which are or which become due to the Company from the Customer on any account.
- 6.3. Until ownership of the Goods has passed to the Customer, the Customer shall:
  - 6.3.1. hold the Goods as the Company's fiduciary agent;
  - 6.3.2. store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;

- 6.3.3. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 6.3.4. 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 Customer shall produce the policy of insurance to the Company.
- 6.4. The Customer's right to possession of the Goods shall terminate immediately:
  - 6.4.1. upon the occurrence of any of the events listed at Condition 12; or
  - 6.4.2. if the Customer fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Customer; or
  - 6.4.3. if the Customer encumbers or in any way charges any of the Goods.
- 6.5. 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.
- 6.6. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.
- 6.7. Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 6.8. On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this Condition 6 shall remain in effect.

## 7. **Price**

- 7.1. Unless otherwise agreed by the Company in writing, the Price for the Goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price set out in the Company's invoice published on the date of delivery or deemed delivery.
- 7.2. Notwithstanding the terms of Condition 7.1, the Company reserves the right, by giving written notice to the Customer at any time before delivery, to increase the Price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase on the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 7.3. The Price is stated exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Customer shall pay in addition when it is due to pay for the Goods.

## 8. **Payment**

The following is subject to Conditions 8.9 and 12.2:

- A. **New Trade Customers**
  - 8.1. Payment of the price for supply of Goods is due in pounds sterling within 30 days (as default unless agreed **in writing** otherwise) of the date of the invoice issued by the Company to the Customer or the date of delivery of goods, notwithstanding that ownership of the Goods has not passed to the Customer under Condition 6.

8.2. If the Customer fails to pay the Company any sum due pursuant to the Contract, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

C. Existing Trade Customers

8.3. Payment of the price for supply of Goods, and for the supply of Goods is payable in pounds sterling within 30 days of the date of the invoice issued by the Company to the Customer, notwithstanding that ownership of the Goods has not passed to the Customer under Condition 6.

8.4. If the Customer fails to pay the Company any sum due pursuant to the Contract, the Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

D. All Customers

8.5. Time for payment shall be of the essence.

8.6. The Company has full discretion whether to require or accept deposits or instalments of the Price. The Price shall be paid in full on the date specified in accordance with Conditions 8.1 or 8.3, as appropriate.

8.7. No payment shall be deemed to have been received until the Company has received full payment in cleared funds into the Company's nominated bank account specified in the Order Confirmation.

8.8. Any interest which accrues on late payments shall accrue on a daily basis and apply from the due date for payment until actual payment is received in full.

8.9. The Customer shall be liable to the Company for all expenses reasonably incurred by the Company in recovering payment from the Customer, including the fees of any Company advisers.

8.10. All payments payable to the Company under the Contract shall become due immediately on its termination, notwithstanding any other provision.

8.11. All payments by the Customer will be made without set-off or counterclaim, free and clear of and without deduction for any tax, levy, duty, charge, or withholdings of any kind now or in the future, imposed in any jurisdiction unless a party is compelled by law to deduct or withhold any such amounts, in which case it will pay to the other such additional amount as will ensure that the other is paid the full amount it would have received but for such deduction or withholding

**9. Credit Limited**

The Company may (in its sole discretion) set and vary credit limits from time to time and withhold all further supplies if a Customer exceeds such credit limit.

**10. Warranty**

10.1. The Company warrants that at the time of delivery the Goods supplied will correspond to the description given by the Company.

10.2. The Company will, at its option, repair, replace or refund the price of defective Goods, provided that and subject to condition 10:

10.2.1. the Customer informs the Company in writing within 5 business days of receipt of the defective Goods that some or all of the Goods do not comply with condition 10.1;

10.2.2. the Customer gives the Company a reasonable opportunity to examine the defective Goods;

10.2.3. the Customer returns the defective Goods to the Company at the Customer's expense.

- 10.3. The Company will not be liable for any failure of the Goods to comply with condition 10.1:
- 10.3.1. where such failure arises by reason of fair wear and tear, wilful damage, negligence, abnormal working conditions, or could be expected to arise in the normal course of use of the Goods;
  - 10.3.2. to the extent caused by the Customer's failure to comply with the Company's instructions in relation to the Goods, including any instructions on installation, operation, storage and maintenance;
  - 10.3.3. to the extent caused by the Company following any specification or requirement of the Customer in relation to the Goods;
  - 10.3.4. where the Customer modifies any Goods without the Company's prior agreement or, having received such agreement, not in accordance with the Company's instructions; or
  - 10.3.5. where the Customer uses any of the Goods after notifying the Company that it does not comply with condition 10.1.
- 10.4. Except as set out in this condition 10:
- 10.4.1. the Company gives no warranty in relation to the Goods; and
  - 10.4.2. will be under no liability for their failure to comply with the warranty in condition 10.1.

## 11. Limitation of Liability

- 11.1. Subject to Conditions 4, 5 and 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- 11.1.1. any breach of these Conditions;
  - 11.1.2. any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
  - 11.1.3. any representation, statement or delictual act or omission including negligence arising under or in connection with the Contract.
- 11.2. Nothing in these Conditions excludes or limits the liability of the Company:
- 11.2.1. for death or personal injury caused by the Company's negligence; or
  - 11.2.2. for defective products under the Consumer Protection Act 1987; or
  - 11.2.3. for fraud or fraudulent misrepresentation; or
  - 11.2.4. for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability.
- 11.3. Subject to Conditions **Error! Reference source not found.** and 11.2:
- 11.3.1. the Company's total liability in contract, delict (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the total Price received by the Company from the Customer; and
  - 11.3.2. the Company shall not be liable to the Customer for loss of profit, loss of business or depletion of goodwill, in each case whether direct or indirect, which arise out of or in connection with the Contract.

11.3.3. Neither shall the Company be liable for any damage which results to the Customer's property.

## **12. Insolvency of Customer**

12.1. This Condition 12 applies if:

12.1.1. the Customer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes sequestrated or bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Customer (within the meaning of the Insolvency Act 1986); or

12.1.2. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer (including the Goods); or

12.1.3. any other proceedings are commenced relating to the insolvency or possible insolvency of the Customer;

12.1.4. the Customer ceases, or threatens to cease, to trade or carry on business; or

12.1.5. the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

12.2. If this Condition applies then, without limiting any other right or remedy available to the Company, the Company may cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **13. Assignment**

13.1. The Company may assign the Contract or any part of it to any person, firm or company.

13.2. The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

## **14. Force Majeure**

The Company reserves the right to defer the date of delivery or to cancel the Contract or to reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), power failure or breakdown in machinery or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Customer shall be entitled to give notice in writing to the Company to terminate the Contract.

## **15. General**

15.1. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

15.2. If any provision of the Contract 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 Contract and the remainder of such provision shall continue in full force and effect.

- 15.3. Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 15.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.5. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by Scots law and the parties submit to the exclusive jurisdiction of the Scottish courts.

## **16. Communications**

- 16.1. All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
  - 16.1.1. (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Customer by the Company; or
  - 16.1.2. (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Customer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Customer.
- 16.2. Communications shall be deemed to have been received:
  - 16.2.1. if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
  - 16.2.2. if delivered by hand, on the day of delivery; or
  - 16.2.3. if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
  - 16.2.4. Communications addressed to the Company shall be marked for the attention of the managing director.

## **17. Data Protection**

The Company shall comply with all obligations under data protection legislation and will only use the Customer's identity and other information to comply with duties under the law, to provide the Goods and handle the Customer's payment for them. Where the Customer has given prior consent, the Company will use the Customer's data to keep them informed about the Company's products and services.