

# integrated AIR SYSTEMS LIMITED - CONDITIONS OF SALE

## 1. Preliminary

- 1.1. These are the only terms or conditions applicable to any sale or supply of goods and installation and testing by Integrated Air Systems Limited (the "us") to the customer named in our quotation (the "you") and, unless specifically agreed in writing by us and you, no additional or other terms or conditions shall apply.
- 1.2. No variation of these conditions shall be binding upon us unless agreed in writing and signed by one of our directors.
- 1.3. A contract shall become binding between us and you when we accept your order for such plant and equipment and installation and testing, and all contracts between us and you shall be governed by these conditions to the exclusion of any other conditions subject to which you place or purport to place any order.

## 2. Specification, Instruction or Design

- 2.1. If plant or equipment is made to a specification, instruction or design supplied by you or any third party on behalf of you then:
  - 2.1.1. the suitability and accuracy of that specification, instruction or design will be your responsibility;
  - 2.1.2. you will indemnify us against any infringement or alleged infringement of any third party's intellectual property rights and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement in any country; and
  - 2.1.3. you will indemnify us against any loss, damage or expense in respect of any liability arising in any country by reason of the goods being made to such specification, instruction or design.
3. **Price and Payment**
  - 3.1. All prices quoted are exclusive of VAT and you shall pay any and all taxes duties and other government charges payable in respect of the plant and equipment, installation and testing. Subject to clauses 3.3 below and/or unless otherwise agreed in writing, we shall be entitled to invoice you for the plant and equipment and the installation and testing thereof on or at any time after you have taken over and accepted the plant and equipment as specified in clause 5, unless you wrongfully fail to take over and accept the plant and equipment or fail to accept delivery of the plant and equipment, in which event we shall be entitled to invoice you at any time after the plant is deemed to have been taken over and accepted in accordance with clause 5, or where relevant, within 30 days of notification by us that the plant and equipment is ready for delivery.
  - 3.3. We reserve the right to issue invoices for progress payments where we deem such payments appropriate and you agree to make such progress payments. Any invoices issued in respect of such progress payments will be paid by you in accordance with these conditions.
  - 3.4. Unless otherwise agreed in writing you shall pay all invoices without set-off within 30 days of the invoice date in pounds sterling or in such currency as we and you shall agree, provided at all times that where a currency other than pounds sterling is agreed, the exchange rate on the date of payment shall be deemed to be the rate prevailing at the date of the quotation, by reference to the rates published by HSBC Bank plc and that you shall be responsible for all banking and similar charges in respect of the conversion of the relevant currency to pounds sterling.

- 3.5. Time for payment shall be of the essence of the contract. Without prejudice to any of our other rights and remedies, interest will be payable on all overdue accounts at HSBC Bank plc base rate plus 4% or at the rate specified by the Late Payment of Commercial Debts (Interest) Act 1998 (whichever is the higher)

- 3.6. Minor omissions or defects in the plant and equipment which in our reasonable opinion do not materially affect their commercial use shall entitle you to retain from the payment of only such sum as represents the value of such incomplete or defective details, and any sum so retained shall be paid upon such omissions or defects being remedied, which will be done by us at the earliest opportunity. Any sum retained under this clause 3.6 shall be a maximum of 5% of the contract price.

## 4. Extra Cost

- 4.1. Should we incur extra costs (including but not limited to costs incurred as a result of repeat or additional visits to the location of the plant and equipment) owing to suspension of the work by your instructions or lack of instructions, interruptions, delays, incorrect specification, amendments requested by you to the specification or order, amendment to the location of plant and equipment, overtime, unusual hours, mistakes or incomplete work for which we are not responsible, we shall be entitled to add to the contract price a reasonable sum in respect of such extra costs, as well as the cost incurred by keeping any of our employees or sub-contractors on the site after completion of installation
- 4.2. We shall be entitled on each anniversary of the contract between us and you becoming binding (in accordance with clause 1.3) to make a reasonable increase in the contract price to reflect any increase in the cost of labour and materials.

## 5. Delivery and Time of Taking Over and Acceptance

- 5.1. Subject to clause 5.2 below delivery of the plant and equipment shall occur when they are offloaded by us at your premises, or such other premises as you shall stipulate in your order unless you fail to give instructions for or accept delivery, in which case delivery will be deemed to occur 7 days from notification by us to you that the plant and equipment is ready for delivery.
- 5.2. In the case of plant and equipment to be exported outside of England, Scotland or Wales delivery shall occur when the plant and equipment is collected by you or on your behalf from our premises, or where you fail to collect or arrange the collection of the plant and equipment delivery will be deemed to occur 7 days from notification by us to you that the plant and equipment is ready for collection.
- 5.3. The plant and equipment shall be deemed to have been taken over and accepted by you when the installation has been completed and the plant has passed any relevant tests on site, or one calendar month after it shall have been put into commercial use (whichever may be the earlier): Provided that in any case the plant and equipment shall be deemed to have been taken over and accepted at the expiration of two calendar months after we shall have given you written notice that installation is complete, unless in the meantime tests shall have been carried out showing that it does not comply with the terms of the contract and we have been provided with the full results of such tests. We reserve the right to recover from you our reasonable expenses incurred in attending at your premises at your request to view allegedly non-conforming equipment where such equipment is found to be in accordance with the contract.
- 5.4. The time of taking over and acceptance of plant and equipment shall not be delayed on account of additions, minor omissions or defects which in our reasonable opinion do not materially affect their commercial use.
- 5.5. Notwithstanding clauses 5.1 and 5.2 above, if we are unable by reason of your instructions or lack of instructions or from causes beyond our control, to deliver all or any of the plant when ready, or to proceed with the supervision of installation of such plant as we have already delivered, you shall take delivery or arrange for storage. If you do not take delivery or arrange for storage, we shall be entitled to arrange storage either at our own works or elsewhere on your behalf and all charges for storage, for insurance or for demurrage shall be payable by you. In any case, you will make the payments as provided for in the quotation.
- 5.6. Time for delivery, installation and testing shall not be of the essence of the contract.

## 6. Performance

- 6.1. We will accept no liability for failure to attain any performance figures quoted by us unless we have specifically guaranteed them in writing, subject to any tolerances specified or agreed by us in our quotation.
- 6.2. If the performance figures obtained on any test provided for in the contract are outside the acceptance limits specified in our quotation, we are to be given reasonable time and opportunity to inspect the plant and rectify its performance.
- 6.3. You will not be entitled to reject the plant if its performance is less than but reasonably close to the guaranteed performance or is operable for more than 90% of the time.
- 6.4. You assume responsibility that plant stipulated by you is sufficient and suitable for your purpose.

## 7. Cancellation

- 7.1. Where you:
  - 7.1.1. are overdue with any payment owed to us, or
  - 7.1.2. shall have failed to take delivery of the Goods; or
  - 7.1.3. make default in or commit any breach of your other obligations to us hereunder; or

- 7.1.4. become bankrupt, insolvent or have a petition presented in respect of an administration order or winding-up order in respect of you or have a receiver appointed of your assets or execution or distress levied upon your assets or under the national law of your own country suffer the equivalent of any of them, or take any step with a view to entering into a voluntary arrangement with your creditors (within the meaning of the Insolvency Act 1986); or
- 7.1.5. cease or threaten to cease to trade, or if we shall reasonably doubt your solvency; then (without prejudice to any other right or remedy available to us) we reserve the right to stop manufacture, delivery or performance under any contract and recover from you the full balance of the contract price (including any overdue amounts) notwithstanding that under any agreed schedule of progress payments the due date for any installment shall not yet have been reached. Any exercise of our rights under this clause 7 shall be without liability to you.

## 8. Limitation on our Liability

- 8.1. Our liability in respect of any plant or equipment supplied or services carried out shall be limited to replacing or (in our discretion) repairing or paying for the repair or replacement of plant and equipment and/or carrying out again any services which by reason of defective design, workmanship or materials are found to be defective or fail or are unable to perform in accordance with the contract. Any liability under this clause 7.1 is subject to the following provisos:
  - 8.1.1. we shall not be under any liability in respect of any defect or failure in the plant and equipment arising from any drawing, design or specification supplied by you or on your behalf;
  - 8.1.2. we shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal working conditions, failure to follow our instructions (whether oral or written), misuse of the plant and equipment, or failure to maintain the plant and equipment;
  - 8.1.3. you must have paid the contract price (including any progress payments) by the due date for payment;
  - 8.1.4. you must return to us if so required and where reasonably practicable any defective parts;
  - 8.1.5. We shall be under no liability under the above warranty unless you notify us within 14 days of any defect becoming apparent.
  - 8.1.6. We shall be under no liability to you in any case following 6 months from acceptance or deemed acceptance of the plant and equipment under clause 5.3 above.
- 8.2. Our total liability for damage caused by our breach of contract, tort (including but not limited to negligence) or breach of statutory duty shall not exceed 5% of the contract price.
- 8.3. We shall not be liable to you for any loss of profit or of contracts or, save as aforesaid, for any loss or damage of any kind whatsoever and whether caused by our breach of contract, tort (including but not limited to negligence) breach of statutory duty or otherwise howsoever.
- 8.4. We shall in no circumstances be liable for any consequential loss suffered by you or by any third party, howsoever caused.
- 8.5. All plant and equipment is supplied with the benefit of the terms implied by Section 12 of the Sale of Goods Act 1979. Subject thereto, all other guarantees and warranties express or implied, statutory or otherwise, are expressly excluded, save insofar as contained in these conditions or as otherwise expressly agreed by us in writing, to the extent permitted by law.
- 8.6. We shall have no liability for negligence except as expressly set out in these terms and conditions.
- 8.7. This clause 8 sets out the full extent of our liability under or arising out of any contract concluded with you.

## 9. Risk and Passing of Property

- 9.1. Risk in the plant and equipment shall pass to you on delivery.
- 9.2. Without prejudice to our rights under clause 3, the plant and equipment shall remain our sole and absolute property as legal and equitable owner (and we reserve the right to dispose thereof) until such time as the price plus VAT thereon and of plant and equipment supplied under any other contract, shall have been received by us. The said amounts shall not be treated as received until our bank account has been credited therewith in cleared funds.
- 9.3. Until such time as you become owner of the plant and equipment you will keep them in good condition and store them separately from your own or any other person's goods and in a manner which makes them readily identifiable as ours.
- 9.4. You hereby acknowledge that all goods are until passing of property therein to you held in your possession solely as bailee for us.
- 9.5. In the event of a sale or any other disposition or use of plant and equipment by you prior to such passing of property you shall hold on trust for us:
  - 9.5.1. If plant and equipment have not been mixed with or incorporated into other goods or processed the whole of the proceeds of sale and your right thereto or
  - 9.5.2. If the plant and equipment have been mixed or incorporated into other goods or processed a just proportion of the proceeds of sale and your right thereto.The said proceeds of sale shall not be mingled with other monies or paid into any overdrawn bank account and shall at all times be our monies and identifiable as such. The right to such proceeds of sale belong exclusively to us notwithstanding any purported assignment thereof by you.
- 9.6. Until such time as property in the plant and equipment passes to you under clause 9.2 above we shall be entitled to the immediate return of the plant and equipment referred to in all contracts between you and us (without prejudice to any of our other rights) and you hereby authorize us to recover possession of goods to the extent of your total indebtedness and to enter on your premises by servants or agents for that purpose.

## 10. Intellectual Property Rights

- 10.1. All patents, trade marks, copyright, design rights and all other intellectual property rights, whether registered or unregistered, existing in or applied to the specifications, designs and plant and equipment (except to the extent that such specifications or designs are made furnished or specified by you or by a third party on your behalf) shall automatically vest in us.

## 11. Export

- 11.1. You shall be responsible for complying with any legislation or regulations governing the importation of the plant and equipment into the country of destination and for the payment of any duties on them.
- 11.2. We shall be under no obligation to give notice under Section 32 (3) of the Sale of Goods Act 1979. If the contract between us and you is an International Supply Contract (as defined in the Unfair Contract Terms Act 1977) it shall be deemed to incorporate the latest edition of Incoterms current at the date of the contract save that in the event of any inconsistency between Incoterms and any express term of the contract, the latter shall prevail.
- 11.3. In the case of plant and equipment to be exported outside of the United Kingdom, property in the plant and equipment shall pass to you on delivery.

## 12. General

- 12.1. If any of the provisions of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected.
  - 12.2. Any notice or communication required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to the provision to the party giving the notice and shall be posted or sent by facsimile.
  - 12.3. Failure by us to enforce strict compliance with these conditions by you will not constitute a waiver of us of the provisions of these conditions.
  - 12.4. The headings in these conditions are for convenience only and shall not effect their interpretation.
  - 12.5. We shall be entitled to sub-contract all or any of our obligations hereunder.
- ## 13. Legal Consideration
- 13.1. Unless otherwise agreed in writing any contract between us and you shall in all respects be construed and operate as an English contract and in conformity with English law, and we and you submit to the jurisdiction of the English Courts.