

## **C -TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND SERVICES <sup>(AAR-6)</sup>** **(To apply to Orders for purchase of Goods or Services where the service provided DOES NOT INCLUDE INSTALLATION or other work on site)**

### **1 EXISTENCE AND SCOPE OF CONTRACT**

- 1.1 These terms and conditions together with AAR's Purchase Order set out all the rights and obligations of the parties each to the other and no other terms or conditions shall be implied save to the extent that such terms and conditions re implied by statute.
- 1.2 Unless otherwise expressly agreed, delivery of Goods or commencement of performance of the contract shall signify acceptance of these terms and condition. For the avoidance of doubt AAR does not intend to enter into contract on any terms and conditions other than those set out herein.
- 1.3 AAR reserves the right to add to, amend or vary the conditions as herein set out by appending such additions, variations or modifications to the order or in any written correspondence between the parties. No variation or modification of these conditions by the Seller shall be effective unless expressly agreed in writing by AAR.

### **2 DEFINITIONS**

- (i) "AAR" means Andrews Air Conditioning & Refrigeration Limited its successors and assigns.
- (ii) "Seller" means the name to which AAR's order is addressed.
- (iii) "Contract" means AAR's order and the Seller's acceptance thereof these Terms and Conditions and any documents referred to therein.
- (iv) "Order" means AAR's Purchase Order and any amendment thereto.
- (v) "Goods" means goods material equipment supplied by the Seller in accordance with the contract.

### **3 DELIVERY AND TIME**

- 3.1 Time is of the essence of the Contract. Delivery of Goods shall be made in the quantities in the manner and the time stipulated in the order or if not stipulated then within a reasonable time. Where it is agreed that there shall be phased delivery of Goods such phased delivery shall be made at the rates and times stipulated in the order or other written instructions issued from time to time pursuant to the order time being of the essence. AAR shall be entitled to amend the date or rate of delivery upon reasonable prior notice in writing time being of the essence in respect of such amended date, if any. In the event of the Seller failing to comply with the date or rate of delivery including any amendment thereof AAR shall have the right (without prejudice to any other right or remedy of AAR) to cancel the order and to buy elsewhere Goods the subject thereof and to debit the Seller with any additional costs or expenses arising in relation thereto. Any extension of time by agreement or otherwise or the acceptance of the Goods or the provisions of services in whole or in part after the stipulated date or any amended date for delivery of performance shall not operate as a waiver of rights accruing to AAR from failure to meet the stipulate date or amended date for delivery. Where part delivery only has been made within the time specified or within a reasonable time as aforesaid, then AAR shall be entitled to return to the Seller at the Seller's risk and expense any of the Goods already delivered but which cannot be effectively and commercially used and to recover from the Seller any monies paid to AAR in respect of such Goods.
- 3.2 In the event of AAR's processes for the purposes of which the order is placed being prevented, hindered, interrupted, delayed, impeded or otherwise restricted any cause whatsoever beyond AAR's control, AAR shall be at liberty to defer the date for delivery or to modify or cancel the order.

- 3.3 If for any other reason whatsoever AAR wishes to modify or cancel the order it shall be entitled to do so subject to payment for any Goods partially manufactured or services partially performed. In relation to the raw materials irrevocably allocated to the order AAR shall upon cancellation negotiate with the Seller as to alternative uses, disposal in the market or taking over commitment prices.
- 3.4 Save as herein provided AAR shall be under no liability by reason of any deferment, modification or cancellation of the order and in any event AAR shall not be liable for any claim by the Seller unless made in writing within 14 days from such deferment, modification or cancellation.
- 3.5 If the Seller delivers to AAR Goods in excess of the quantities that it contracted to sell, AAR may accept the Goods included in the contract and reject the rest or it may reject the whole. Any quantities rejected shall be and remain at the Seller's risk and returnable at the Seller's expense. If AAR, by notice in writing, elects to accept the whole of the Goods or materials so delivered, it shall pay for them at the contract rate.
- 3.6 If any consignment of a specified number of identical parts any single part does not conform to the contract AAR shall be entitled to reject the entire consignment, and where the consignments forms part of a contract for delivery by installments AAR shall be entitled (without prejudice to any other of its rights hereunder) to terminate the whole contract and reject all further installments.

#### **4 RISK AND PROPERTY IN GOODS**

4.1 The risk in the Goods or materials shall pass to AAR:

- (a) Where the Goods are supplied under the contract in connection with works or services to be performed on land or premises of AAR, upon completion of the entire works or services and acceptance of the Goods or materials by AAR in accordance with the contract. Until such time the Goods shall be and remain at the sole risk and responsibility of the Seller and shall not be removed from such land or premises without AAR's express written consent.
- (b) Where Goods are supplied under the contract other than in connection with works or services as aforesaid, upon actual delivery (by whatever means) thereof at the place specified in the order and acceptance thereof by AAR after it has had a reasonable opportunity to inspect same.

4.2 The property in the Goods shall pass to AAR in accordance with the provisions of the Sale of Goods Act 1979, and the Supply of Goods and Services Act 1982 and 1994 and any reservation of title or purported reservation of title by the Seller shall be of no effect.

#### **5 DEFECTIVE GOODS**

5.1 Notwithstanding part performance by the Seller or where AAR has accepted the Goods or part thereof, Goods which are defective shall, at the request of AAR and without prejudice to its other rights, be replaced free of all costs to AAR, fair wear and tear excepted. Defective Goods shall be retained by AAR its distributors or agents for a period of 28 days after notification by AAR to the Seller that such Goods or materials are defective. Goods retained by AAR its distributors or agents which are defective will be forwarded to the Seller upon the Seller's written request and upon payment advance by the Seller of the costs of carriage insurance and freight. If after 28 days no such request has been made by the Seller and in the case of exported Goods no payment in respect of the costs of carriage and insurance has been received, the Seller shall immediately become liable to indemnify AAR fully in respect of all costs claims and charges in respect of such Goods.

#### **6 PRICE**

- 6.1 The Seller shall not be entitled to any increase in the contract price without AAR's express consent in writing, nor will AAR accept any increase in the contract price arising from changes in the rate of exchange of foreign currencies. Any invoice price not in accordance with this condition shall be invalid and ineffective and no payment shall be due in respect thereof.
- 6.2 Prices specified in the order are deemed to include shipping, carriage, insurance, labour and any other item whatsoever. No additional charges will be accepted for boxes, packages, crates, pallets, stillages or containers of any description whatsoever but if requested they will be returned to the Seller at the Seller's risk and expense unless specifically stated otherwise in the order.
- 6.3 AAR reserves the right to deduct from any monies due or becoming due to the Seller any monies due to AAR or any other company in the same group as AAR under this or any other contract.

## **7 ADVICE NOTES, INVOICES AND PAYMENTS**

- 7.1 The Seller undertakes to render advice notes showing AAR's order number in full upon delivery of Goods and materials at the place for delivery specified in the order.
- 7.2 The Seller undertakes to render properly prepared invoices quoting AAR's order number in full within 14 days of delivery, separate invoices being sent in respect of each separate order number. Invoices, statements of account and all other communications in connection therewith are to be sent to AAR's Accounts Department at the address stated on the order. AAR shall pay all invoices not less than 60 days after receipt.

## **8 SAFETY AND QUALITY**

- 8.1 All Goods supplied shall be of best quality and shall meet the governing specification as to description, quality and standards and shall be supplied subject to AAR's express approval in writing.
- 8.2 The Seller accepts the specification for sampling procedures contained in the relevant British Standard, furthermore, AAR will be entitled to be admitted to the Seller's premises at all reasonable times to inspect and test the Goods obtained for the purpose of the contract during manufacture, processing or storage and where the Goods do not comply with the order, AAR shall inform the Seller in writing and the Seller shall take such steps as may be necessary to ensure such compliance. AAR's customer shall be afforded the right to visit the Seller's premises, by prior arrangement, to verify that manufacture of Goods to be used in the production of equipment to his order conforms to specification. AAR also requires the option for first off inspection and batch inspection before painting where appropriate. No liability will be accepted by AAR for any work carried out or any services provided prior to the approval of such samples as aforesaid. The exercise by AAR of any of its rights under this clause shall be without prejudice to its rights under any other term of this contract.
- 8.3 AAR reserves the right to reject any Goods which do not conform to the description, quality or standards as specified in any order or which are defective or faulty.
- 8.4 The Seller warrants that the design, construction and quality of the Goods are fit for any purpose made known by AAR to the Seller and comply in all respects with all relevant requirements of any Statute, Statutory Rule or Order, or other instrument having the force of law, and further warrants that all such Goods are full and clear of all liens and encumbrances whatsoever and that the Seller has good and marketable title to the same. In particular, as required by the relevant Health and Safety legislation all Goods to be supplied must be designed, tested and constructed so as to be safe and without risks to health when used at work and all necessary information and instructions for the safe and proper use of the Goods must be supplied to AAR prior to delivery of the Goods. The Seller shall indemnify AAR against all actions claim costs charges damages and expenses arising from any breach by the Seller of the obligations imposed by this clause.

## **9 INDEMNITY AND INSURANCE**

- 9.1 The Seller shall indemnify AAR against the following and shall wherever so required produce evidence that it is adequately insured against:
- a) Loss or damaged or injury whatsoever and wheresoever arising caused to AAR or for which AAR may be liable to third parties and any expenses and consequential losses in connection therewith due to defective design, workmanship or failure to carry out the contract in accordance with these conditions.
  - b) Claims in respect of death or injury howsoever caused to any of the employees or those of the agents or sub-contractors of the Seller while in or about AAR's sites or works or other places of business, save where such death or personal injury arises from the negligence of AAR or its employees.
  - c) Consequential loss or damage sustained by AAR for which AAR may be liable as a result of the failure of the Seller its servants or agents to perform the work or supply of services in accordance with the terms of the order.
- 9.2 If AAR resells the Goods whether as part of an assembly or component or otherwise howsoever upon the terms that AAR is or shall become liable to repair or replace any assembly or component or part thereof proving to be defective, AAR shall be entitled, at its sole discretion, to recover compensation or repair or replacement from the Seller in respect thereof.

## **10 BREACH AND TERMINATION**

- 10.1 Any breach by the Seller of any of its obligations under the contract as to time or delivery or otherwise howsoever shall entitle AAR to treat the contract as repudiated without prejudice to its right to treat any such breach as giving rise to a claim for damages.
- 10.2 Any forbearance on the part of AAR not to insist on the strict performance of any of the terms and conditions of the contract (whether AAR has accepted the Goods or not and whether the property therein has passed to AAR or not) shall not be deemed a waiver of any rights or remedies of AAR against the Seller and shall not be deemed a waiver of any subsequent breach by the Seller of these terms and conditions.
- 10.3 If the Seller shall commit any breach of the contract or be or become insolvent or unable to pay its debts or commit any act of bankruptcy or (being a limited company) go into liquidation other than a voluntary liquidation for the purpose of amalgamation or reconstruction only or have a receiver appointed of its undertaking or its assets or a substantial part therefore AAR may without notice suspend or terminate the contract or the unfulfilled part thereof without prejudice to any other right or remedy which AAR may lawfully enforce or exercise; any Goods, drawings, specifications and other technical data, designs, tools, patterns, gauges, samples and other equipment of whatever nature provided or supplied to the Seller its servants or agents by AAR, or paid for by AAR, shall remain the property of AAR who shall be entitled to take whatever action is necessary to recover the same.
- 10.4 The conditions set out in this clause are in addition to and without prejudice to AAR's rights at law as a Buyer.

## **11 CONFIDENTIALITY AND INDUSTRIAL PROPERTY RIGHTS**

- 11.1 All information, materials, drawings, specifications and other technical data, designs, jigs, tools, patterns, gauges, samples and other equipment of whatever nature provided or supplied to the Seller its servants or agents paid for in whole or in part by AAR or prepared by the Seller are confidential to AAR and must not be communicated without consent authorised in writing by a Director from AAR to any other person not used manufactured or sold in any part thereof by the Seller for any purpose other than in connection with AAR's business; they shall remain the property of AAR who reserves the exclusive right to reproduction for any purpose and must be returned promptly to AAR in good order and condition on request or on completion, or other termination of the contract (howsoever arising), of the contract. If whilst in the execution of the

contract the Seller makes any invention, discovery or improvement associated with such work, they will become AAR's property immediately and the Seller may be required at the cost of AAR to execute applications, assignments or other documents to establish AAR's rights title and interest therein whether or not resulting in patents pending. Similarly any registered design, copyright, trade mark or trade name arising from the contract shall become the property of AAR. The Seller will indemnify AAR against any damage to or loss of Goods which are the subject of the contract sent to the Seller for processing or other work whilst such Goods are in the Seller's custody or control and the Seller shall arrange adequate insurance against any liabilities which may arise under the contract and to produce to AAR on demand all policies and proof of renewal in respect thereof.

- 11.2 Neither the order nor AAR's name nor the Goods shall be used for any advertisement or publicity material without AAR's prior consent authorised in writing by a Director.

## **12 PROPERTY RIGHTS**

- 12.1 The Seller warrants that the design construction and quality of any Goods to be manufactured or supplied by it comply with any statute, rule, regulation or order of any duly constituted authority (including legislation or other enactments of the European Communities) which may be in force and further that the sale or use of the Goods by AAR will not infringe any United Kingdom, European or Foreign patent, trade mark, trade name, registered design or copyright. The Seller undertakes to indemnify AAR against all loss, damage, liability, costs and expenses which AAR may suffer or incur by reason of any breach of the said warranties.

## **13 ASSIGNMENTS**

- 13.1 The Seller shall not without the express written consent of AAR assign, transfer, sub-contract or otherwise dispose of the contract or any part thereof other than in respect of such part of the Goods of which the makers or suppliers are named in the order. Where AAR gives such express written consent this shall not relieve the Seller of any responsibilities arising from the contract and the Seller shall be liable to AAR for any breach by any assignee transferee or sub-contractor of these conditions together with any additional conditions attached thereto.
- 13.2 The Seller consents to AAR transferring any guarantee or similar rights given by the Seller to AAR in relation to the Goods supplied thereunder to any other person or company to whom AAR sells hires or disposes of the same to the intent that such guarantee or similar right may be enforced against the Seller not only by AAR but also by any person or company claiming through AAR.

## **14 THIRD PARTY LOSS DAMAGE OR INJURY**

- 14.1 In the event of any claim being made against AAR by any third parties in respect of loss, damage or injury of any kind alleged to be attributable to defects in or unfitness of the Goods, the Seller undertakes to procure such facilities, assistance and advice as may be requested by AAR for the purpose of defending or dealing with the claim. The Seller undertakes to indemnify AAR against all payments made under any judgment of a Court or any settlement out of Court in respect of any loss, damage or injury and expenses in connection therewith caused or alleged to have been caused as aforesaid.

## **15 LAW**

- 15.1 The contract shall be governed by English Law and the Seller consents to the exclusive jurisdiction of the English Courts in all matters regarding this contract except to the extent that the company involves the jurisdiction of the Courts of any other country.

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