

1. INTERPRETATION

(a) In these conditions:-

- 'the Seller' means Swift Aerospace Services Limited, trading as Swift Aerospace;
- Product' means the product(s) and/or material(s) specified;
- 'the Buyer' means the person named (or where a such person act as agent for another that person and the principal jointly and severally);

(b) These Conditions shall apply to all dealings between the Seller and the Buyer relating to the Product, except where expressly excluded by the Seller in writing. Any general conditions of order or other terms of business offered on behalf of the Buyer shall if inconsistent with these Conditions be deemed to have been rejected by the Seller unless expressly accepted in writing.

(c) Any notices to be served hereunder shall be sent by ordinary prepaid letter post or fax to either party at its last known address. Notice by mail shall only be deemed served seven days after posting, while notice by fax is deemed served when the fax is received.

(d) 'Holding Company' and 'subsidiary' have the meanings ascribed thereto in Section 1159 of the Companies Act 2006.

2. PRICE

(a) If the Seller's costs (including but not limited to materials, labour and energy costs) incurred in respect of the Product increase owing to circumstances beyond its reasonable control above those obtaining when the Buyer's order was accepted, the Seller may at its option at any time before delivery give written notice to the Buyer of an increase in the contract price under this Condition not greater than the amount of such increase in costs and an increase in profit proportionate thereto, and the increased price so notified shall thereby be substituted for the contract price. Where delivery is by instalments the Seller shall be entitled to increase the contract price as aforesaid in respect of any undelivered Product. Without prejudice to the foregoing, the Seller may increase the contract price without restriction in respect of any Product due for delivery not more than 45 days after the date when notice of an increase is given. If the Buyer is dissatisfied with any such increase he may within 7 days of receipt of such notice, cancel any order for Product to which such increase of price applies.

(b) Value Added Tax will be charged in accordance with United Kingdom legislation in force at the tax point date.

(c) If the contract is entered into at a price in any currency other than English Sterling, and any decrease in the value of such currency as compared with Sterling takes place between the date when the Buyer's order is accepted and the date or dates upon which payments are due, whereby the Sterling equivalent of the amount receivable by the Seller is less by more than 3% than that which would but for such decrease have been so receivable, the Buyer shall pay to the Seller in addition to the contract price an amount in such currency which is equal (at the date of payment) to the whole of the difference between the said Sterling equivalent at the date when the Buyer's order was accepted and the said Sterling equivalent when payment is due or (if the difference is greater) when payment is actually made to the Seller. In the event of any dispute as to exchange rates, the decision of the Seller's Auditors shall be final and binding.

3. TRADEMARKS

The Buyer undertakes:-

- Not to use in relation to the Product or goods made therefrom any trade mark (whether or not registered) of the Seller or its holding company or a subsidiary of either if the Product has been processed, treated or used in any manner of which the Seller or such other company (as appropriate) has not approved in writing or if the Product is sold by the Seller unbranded; and
- To ensure that the stipulation contained in Condition 3(a) is specifically advised to the Buyer's trade buyers for the Product and to obtain corresponding undertakings from each such Buyer.

4. LICENCES

(a) The Seller will be responsible for obtaining any necessary United Kingdom export licences or exchange control consents for this contract.

(b) The Buyer will be responsible for obtaining all necessary Licences which it may require to enable it to import and use the Product and for all necessary exchange control consents to enable the Buyer to make payment for the Product and the Buyer shall not be discharged from its obligations hereunder by any total or partial prohibition of imports or by the refusal or non-availability of any import licence or by the imposition of any conditions or restrictions upon the grant of any such licence.

5. TIME OF DELIVERY

(a) Any delivery date specified is a genuine forecast in the light of current conditions but shall not be legally binding on the Seller.

(b) Time of delivery shall not be of the essence of this contract.

(c) When it is necessary for the Buyer to supply any labels or identification, or supply particulars in respect of the Product or do any other act to enable the Seller to effect deliveries, such labels, identification and particulars must be furnished or act performed within a reasonable time to enable the Seller to deliver by the delivery date(s) specified.

(d) The weights and/or quantities of any consignment of Product under this contract as ascertained by the Seller upon despatch from the Seller's works shall be prima facie the evidence of the weight/quantity received by the Buyer on delivery.

(e) The Buyer will take all deliveries on the delivery date(s) specified or on the date when the Product is delivered at the place specified for delivery (or, if it is the Buyer's obligation to collect the Product, on the date when the Buyer is notified that the Product is ready for collection), whichever shall be later. If no delivery date is specified then, subject to Condition 8, deliveries shall be taken and the purchases under this contract completed within six months of the first day of the month in which the Buyer's order was received.

(f) The Seller shall have the right to cancel this contract as regards any part of the Product not accepted by the Buyer by the appropriate time specified under Condition 5(c) or as regards any balance which the Seller cannot deliver by reason of the Buyer's default hereunder, and in either case without prejudice to any claim for damages which the Seller may have.

(g) The Seller's liability, if any, in respect of failure to deliver the Product in time or at all shall not in any event exceed the amount of any fall in the value of the Product between the date when it should have been delivered and the date on which it was in fact delivered or when the contract was terminated, as the case may be. *In no circumstance (and whether or not involving negligence) shall the Seller be liable for any loss of profit or third party claims or consequential or other loss of whatever nature arising from such failure.*

6. TOLERANCES

Unless otherwise agreed in writing:-

(a) All quantities of Products supplied shall be subject to a tolerance in either way of 10 per cent thereof and the Buyer will pay for the actual quantities of Product delivered.

7. DELIVERY AND PACKAGING

(a) Unless otherwise specifically stated, the Seller's prices are quoted exclusive of delivery and where additional costs are incurred to meet special requirements of the Buyer subsequently notified so the Seller such additional costs will be charged to the Buyer. Additional charges for small orders or deliveries may be made. All other transport and delivery costs shall be for the Buyer's accounts.

(b) Unless otherwise specifically agreed in writing, the Seller may effect delivery of the Product by whatever means the Seller thinks most appropriate.

(c) Where packaging is described as a 'returnable', it will be carried to and paid for by the Buyer but credit will be given if it is returned so the Seller's despatching works within a reasonable time carriage paid and in good condition.

(d) If the Buyer shall require special packaging, any additional cost will be charged to him separately from the contract price.

(e) Unless otherwise specifically agreed in writing, the Seller gives no undertaking that when the Product is supplied in containers of whatever description, such containers are fit to withstand transport to any place or by any method other than as may be specified in this contract.

(f) Where the Product is sent at the Seller's risk the Buyer shall so soon as reasonably practicable on receipt thereof thoroughly inspect the Product and shall at once notify the Seller in writing of any loss or damage in transit, and if by reason of any failure by the Buyer to inspect and/or notify the Seller the Seller is unable to make a valid claim against the carrier, the Seller shall not be liable to the Buyer in respect of any loss of or damage to the Product.

(g) Where the Seller is not obliged under the contract to deliver the Product to the Buyer, any delivery in fact effected by the Seller on the Buyer's behalf shall be at the Buyer's risk and expense.

8. FORCE MAJEURE

(a) If events beyond the Seller's reasonable control prevent the Seller from delivering all or part of the Product by the appropriate delivery date, such date shall without liability be postponed for a period equal to the delay caused by such events.

(b) If such events prevent the Seller from delivering all or part of the Product for longer than six months, either party may at any time after the expiry of such a period of six months by notice in writing and without liability (save for refunding any payments made by the Buyer by way of deposit or otherwise on account in respect thereof and subject to the Seller's rights under condition 8(c)) cancel the contract as regards such undelivered Product.

(c) Where the Buyer cancels the contract in accordance with Paragraph (8b) above the Seller may by counter-notice in writing given within 28 days of such cancellation require the Buyer to take and pay for at the proper proportion of the contract price any Product manufactured or adapted to the Buyer's design or specification under the contract or purchased for the purpose of the contract and for which there is no other market readily available to the Seller.

(d) If, by reason of events beyond the Seller's reasonable control, the Seller is prevented from delivering to the Buyer all or part of the Product by the appropriate delivery date while at the same time performing in full its contractual obligations to others, then the Seller may without liability reduce or suspend deliveries to the Buyer to such extent and for such time as is in the reasonable opinion of the Seller is reasonable and fair in all circumstances (including the Seller's other contractual obligations).

(e) The Seller will give as much advance notice as is reasonably practicable of any proposed action by it under Condition 8(a) or (d), but any failure to do so shall not prejudice its rights under those paragraphs or constitute a breach of this contract.

9. WARRANTIES

The Seller warrants that save as otherwise herein specifically provided, the Product will accord with the contract specifications, will be of sound materials and workmanship, and where the Seller has specifically so agreed, will be reasonably fit for the purpose of which the Buyer has given appropriate written details to the Seller before the date when the Seller's offer was made. Save where the Buyer deals as consumer, this warranty is in substitution for all conditions and warranties (other than those implied under Section 12 of the Sale of Goods Act, 1979) relating to the Product whether express or implied by statute or custom of the trade or otherwise and whether as to quality, condition, performance, merchantability or fitness for any purpose or otherwise.

10. LIMITATIONS OF LIABILITY

(a) THE SELLER SHALL NOT BE LIABLE (EXCEPT FOR DEATH OR PERSONAL INJURY ARISING OUT OF DEFECTS IN THE PRODUCT TO THE EXTENT ATTRIBUTABLE TO THE SELLER'S NEGLIGENCE) IN RESPECT OF ANY DEFECTS IN THE PRODUCT OR ANY LOSSES OR DAMAGE RESULTING THEREFROM UNLESS:-

(i) Written notice of such defects shall have been given to the Seller;

(A) in the case of sales to customers in the United Kingdom, within 7 days after the delivery has been effected at the point of delivery specified or (in the case of sales to customers outside the United Kingdom) within 7 days after the Product has arrived at the Buyer's place of business; or

(B) (in either case), where the defects are not such as should reasonably have been discovered on an immediate and thorough inspection by the Buyer, within 7 days after such date as they should first reasonably have been discovered whichever period is longer; and

(ii) the defective Product is where possible placed aside and made available for inspection by the Seller's representative.

(b) Save so far as such defects may be due to negligence which has caused death or personal injury, the Seller's liability in respect of the Product proved by the Buyer to be defective is limited to:

(i) giving the Buyer a repayment or (where the Buyer is otherwise indebted to the Seller) a credit of the difference between the value that it would have had had it not been so defective (provided that in any event the Seller's maximum liability in respect of any defective Product shall not exceed its invoice value) or, at the Seller's option;

(ii) replacing the Product within a reasonable time at the contractual point of delivery; and the Seller accordingly not be liable for any loss of profit or third party claims or consequential or other loss of whatsoever nature (and whether or not involving negligence) arising from any such defects.

(c) WITHOUT PREJUDICE TO ANY OTHER LIMITATION OF THE SELLER'S LIABILITY (WHETHER EFFECTIVE OR NOT);

(i) IN NO CIRCUMSTANCES WHATSOEVER SHALL THE SELLER BE LIABLE (IN CONTRACT, TORT OR OTHERWISE, AND IRRESPECTIVE OF ANY NEGLIGENCE OR OTHER ACT, DEFAULT OR OMISSION OF THE SELLER OR ITS EMPLOYEES OR AGENTS) FOR ANY LOSS OF PROFITS, ANTICIPATED SAVINGS OR USE, FOR ANY INDIRECT OR CONSEQUENTIAL

LOSSES (INCLUDING WITHOUT LIMITATION LOSS OF GOODWILL OR BUSINESS) OR FOR ANY THIRD PARTY CLAIMS IN CONNECTION WITH THE PRODUCT OF THE CONTRACT.

(ii) THE SELLER'S TOTAL AGGREGATE LIABILITY IN CONNECTION WITH THE PRODUCT OR THE CONTRACT (IN CONTRACT, TORT OR OTHERWISE AND WHETHER OR NOT RELATED TO ANY NEGLIGENCE OR OTHER ACT, DEFAULT OR OMISSION OF THE SELLER OR ITS EMPLOYEES OR AGENTS), IS LIMITED TO THE CONTRACT PRICE, EX-WORKS AND EX VAT.

NOTHING IN THIS CLAUSE SHALL AFFECT ANY LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE.

(d) WITHOUT PREJUDICE TO ANY EXPRESS TERMS IN THESE CONDITIONS, THE BUYER'S SOLE REMEDY SHALL BE IN DAMAGES.

(e) The Seller shall not in the event be liable for any adverse effects resulting from the application to the Product of any process, operation or treatment unless the intended application shall prior to the making of this contract have been agreed in writing by a duly authorised representative of the Seller. Processing or assembly of parts, materials etc by the Buyer shall constitute a waiver of any liability on the Seller's part.

(f) Product may be returned to the Seller only if so agreed by the Seller and the Seller's certificate as to the quantity of returned Product received by it shall be final and binding.

(g) Where a complaint or a claim has been made in respect of Product proved or alleged to be defective, the Seller may suspend further deliveries of any Product under this contract which may have the same or similar alleged defects until the validity of such complaint or claim has been finally determined. In such event the applicable delivery date(s) shall be postponed accordingly.

11. PAYMENT

(a) Payment shall be due on the date stated on the invoice (or, if none, upon delivery) and shall be deemed to fall due if sooner upon the happening of any of the events specified in Conditions 15(a)(iv) or 15(b)(i), (ii) or (iii).

(b) The Seller shall be entitled to charge interest at a rate of 2 per cent per month on:

(i) all overdue payments;

(ii) The price of any Product of which the Buyer shall have failed to take delivery until the date it is actually delivered to the Buyer or otherwise disposed of.

(c) Time of payment shall be of the essence of the contract.

(d) The Buyer shall not be entitled for any reason whatsoever to withhold or set-off payment for Product delivered.

(e) Where the Seller or any other member of the Seller's Group is indebted to the Buyer in respect of goods or services supplied by the Buyer (and whether or not such debt is then due and payable), the Buyer agrees with the Seller that the Seller may accept from such member sums equivalent to all or such parts as such member may elect of any debts owed to the Buyer by such member, whereupon the Buyer shall, to the extent of such payment, be discharged from its obligations to pay for the Product (but without prejudice to any other remedies of the Seller in respect of any non-payment or other breach of this contract by the Buyer) and such member shall to the same extent be discharged from its obligations to pay for the goods or services supplied by the Buyer. In this Condition 11(e) 'Seller's Group' means the Seller, its holding companies and all subsidiaries thereof, and any company in which the aforesaid together hold 50 per cent or more in aggregate of its equity share capital (as defined in Section 1159 of the Companies Act, 2006). This Condition 11(e) shall survive termination of the contract for whatever reason.

(f) Payment shall be made by the Buyer to the address specified or to such address as the Seller or its representatives may nominate from time to time.

12. PASSING OF RISK AND PROPERTY

(a) The risk in the Product shall pass to the Buyer when the Seller delivers the Product in accordance with the terms hereof to the Buyer or any other person to whom the Seller has been authorised by the Buyer to deliver the Product whether expressly or by implication; thereafter the Seller shall not be liable for the safety of the Product and the Buyer shall therefore insure the Product.

(b) However, the Seller shall retain ownership of the Product until all sums due to the Seller from the Buyer, whether in respect of the Product or any other goods or services, have been paid in full.

(c) If the Product or any part thereof is processed or mixed with or applied to any other goods, the resulting product ('the Downstream Product') shall be the property of the Seller until the conditions in Condition 12(b) has been met, provided that where the value of other goods to which the Product is applied or with which it is mixed or processed (as measured by the price paid or payable by the Buyer thereof, or if none, the direct cost to the Buyer of their manufacture) exceeds the invoice value of the Product, the Downstream Product shall (as between the Seller and the Buyer) be the property of the Buyer.

(d) Notwithstanding Condition 12(b) and 12(c), ownership in the Product or Downstream Product shall pass to the Buyer upon any bona fide sale thereof at arm's length by the Buyer to an unrelated third party who does not have notice of the Seller's title, but in any such event the Buyer shall hold the proceeds of sale on trust for the Seller to the extent that any sums are owing to the Seller under the contract (whether or not yet due and payable) and shall place such proceeds of sale in a separate bank account and shall give notice to the bank of the Seller's rights therein.

(e) Until ownership of the Product or Downstream Product passes to the Buyer:

(i) the Seller reserves the right to dispose of either; and

(ii) the Buyer shall insure them against all usual risks to full replacement value and shall keep them separate and clearly identified as the Seller's Product; and

(iii) if payment has become due and remains unpaid in whole or in part the Seller may recover and/or sell all or part of the Product or Downstream Product and may enter the Buyer's premises for that purpose. The proceeds of the sale shall be applied first in discharging any costs of the Seller in enforcing its rights under the contract and/or of resale of the Product, on a full indemnity basis, and secondly in discharging all debts (by assignment or otherwise) or liabilities due to the Seller from the Buyer, under this or any other contract. The balance (if any) shall be held by the Seller on trust for the Buyer; and

(iv) subject to Condition 12(e)(i), (ii) and (iii), the Buyer may use the Product or Downstream Product in the ordinary course of its business.

(f) If any question arises as to whether any Product (or Product incorporated in any Downstream Product) has been paid for in full as aforesaid, the Seller may make such allocation of sums received from the Buyer in payment for goods supplied by the Seller under this or any other contract as seems reasonable to the Seller in all the circumstances, and any such allocation made in good faith by the Seller shall be binding on both parties for all purposes.

(g) This Condition 12 shall survive termination of the contract for whatever reason.

13. DESIGNS AND SKETCHES

(a) All designs and sketches are submitted by the Seller in confidence and, unless otherwise agreed in writing, they and the copyright in them and the right to reproduce any such design or sketch remains its property.

(b) The Buyer shall indemnify the Seller against all the claims, costs, losses, damages and expenses for which the Seller may suffer or be liable arising out of the affixing to or placing on the Product of any trade mark or registered name on the Buyer's instructions or, without prejudice to the generality of the foregoing, arising out of the use of intellectual property (including without limitation patent rights, copyright or registered designs) supplied by the Buyer or required by the Buyer to be used by the Seller in relation to the contract.

14. DELIVERY BY INSTALMENTS

Save for the purposes of Conditions 12(b) to (f) (passing of title) each delivery of a quantity of Product under this contract shall be deemed to constitute a separate contract to which the terms and conditions hereof shall apply; provided that this Condition shall be subject to and shall in no way affect the Seller's rights under Condition 2, 8 or 11 above or 15 below to vary, to suspend or terminate the whole contract in the circumstances there mentioned.

15. EVENTS OF DEFAULT

(a) Without prejudice to the Seller's rights to accept any repudiation of this Contract by the Buyer,

(i) if the Buyer is overdue with any payment; or

(ii) if the Buyer shall wrongfully have failed to take delivery of the Product; or

(iii) if the Buyer exceeds its credit limit with the Seller or any of its associate companies whether or not such credit limit has been advised to the Buyer; or

(iv) if the Buyer makes default in or commits any breach of its other obligations to the Seller hereunder.

Then in any such case the Seller shall immediately become entitled (without prejudice to its other claims and rights under this contract) to suspend further performance by it of this contract for such time not exceeding six months as it shall in its absolute discretion think fit.

(b) The Seller shall, further, be entitled so to suspend its performance of this contract or (whether or not notice of such suspension shall have been given) to treat the contract as wrongfully repudiated by the Buyer and forthwith terminate the contract:

(i) if the Buyer is involved in any legal proceedings in which its solvency is questioned or is deemed to be unable to pay its debts; or

(ii) if the Buyer is a Company and any resolution is passed or petition is presented (otherwise than for reconstruction or amalgamation) to wind it up or a receiver is appointed; or

(iii) if the Buyer ceases or threatens to cease to trade or serious doubts arise as to its solvency.

(c) The Seller will notify the Buyer of the exercise of its options to suspend its performance of or terminate this contract and/or the Buyer's authority to sell the Product under Condition 12 above within a reasonable time of its becoming aware of the event giving rise to the Seller's right under this Condition.

16. OTHER TESTS OR SERVICES

If the Seller shall perform any tests or tender any other services to the Buyer at the Buyer's request beyond the obligations imposed by the contract, the Seller shall not in the event incur any liability (whether or not for negligence, save when and in so far as the Seller's negligence has caused death or personal injury) in respect thereof unless the Seller shall have agreed otherwise in writing.

17. FOREIGN TRADE CONTROLS COMPLIANCE

The Buyer understands and agrees that goods sold and any technical data or services provided hereunder may be subject to export and other foreign trade controls restricting resales and/or transfers to other countries and parties, including, but not limited to, licensing requirements under applicable laws and regulations of the United States or countries in Europe. Any other provision of this Agreement to the contrary notwithstanding, the Buyer agrees that no goods, technical data or services provided hereunder will be sold, reexported or transmitted except in full compliance with all relevant governmental laws and regulations. Customer agrees to do and assume all responsibility for obtaining any required licenses related to the export or reexport of the goods, technical data or services, including any licenses for their export from and their import into any country. Customer further agrees that it will not export or reexport any of the goods, technical data or services of U.S. origin or containing U.S. content provided hereunder to any country, government, person, entity, organization or end-user subject to U.S. foreign trade restrictions and, in particular, that it will not export or reexport the goods, technical data or services to: (i) any country to which such goods, data or services may not be transmitted without prior specific authorization of the Directorate of Defense Trade Controls, U.S. Department of State, pursuant to the International Traffic in Arms Regulations (22 C.F.R. Parts 120 through 130); or (ii) any country to which such goods or data may not be transmitted without prior specific authorization of the Bureau of Industry and Security, U.S. Department of Commerce, pursuant to the Export Administration Regulations (15 C.F.R. Parts 730 through 774); or (iii) any country, government, person, entity, organization or end-user against which the United States government has imposed any other foreign trade restrictions, including, without limitation, economic sanctions or an economic embargo or the denial of export privileges. Any violation of this Section, as determined solely by Supplier, shall be deemed a material breach of this Agreement and Supplier may terminate any and all of its obligations under this Agreement.

18. HEADINGS

Headings are for convenience of reference only and shall not be construed as affecting the subject matter hereof.

19. PROPER LAW

The principal place of performance of this contract shall be the United Kingdom. This contract shall be governed by and construed in accordance with the law of England. The Buyer hereby agrees for the Seller's exclusive benefit, that the English courts shall have sole jurisdiction to hear all claims of process connected with the Product or the contract. The Seller may nevertheless bring claims in any other courts of competent jurisdiction.