



Conditions of Sale of Goods

1. Interpretation

1.1. In these Conditions:

- “Buyer” means the person(s), firm or company who purchases the goods from the Company;
- “Company” means *Airflow Products Limited* (Co. No. 01741708) whose registered office is at Northern Works, Underhill Lane, Sheffield S6 1NL;
- “Contract” means the Order Acknowledgement and these Conditions;
- “Goods” means any goods agreed in the Contract to be supplied to the Buyer by the Company (including any parts or parts of them) together with any services which the Company agrees to provide to the Buyer in connection with such goods;
- “Order Acknowledgement” means the Company’s order acknowledgement in Writing of the Buyer’s order for the sale and purchase of the Goods.

1.2. In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3. In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and visa versa as the context admits or requires.

1.4. In these Conditions headings will not affect the construction of these Conditions.

1.5. Any reference in the Contract to “Writing” or related expressions includes a reference to cable, facsimile transmission, e-mail or comparable means of communication.

2. Application of Terms

2.1. Subject to any variation under condition 2.3, the Contract contains the entire agreement and understanding of the Company and the Buyer in connection with the sale and purchase of the Goods to the exclusion of all other terms and conditions (including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2. No terms or conditions endorsed upon, developed with or contained in the Buyer’s purchase order, confirmation of order, specification or other document will form part of the Contract simply as a result of such a document being referred to in the Contract.

2.3. These Conditions apply to all the Company’s sales and any variations to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in Writing and signed by a Director of the Company.

2.4. Each order for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to purchase Goods subject to these Conditions.

2.5. No order placed by the Buyer shall be deemed to be accepted by the Company until an Order Acknowledgement is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6. The Buyer must ensure the terms of its order and any applicable specification are complete and accurate.

2.7. Any quotation is given on the basis that no contract will come into existence until the Company dispatches an Order Acknowledgement to the Buyer.

Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3. Description

3.1. The description of the Goods shall be as set out in the Order Acknowledgement.

3.2. Save as set out in the Order Acknowledgement all plans, drawings, descriptive matter, specifications and advertising issued by the Company, any verbal descriptions, promises or specifications given by the company of any of its agents and any descriptions or illustrations contained in the Company’s catalogues or brochures or are issued or published for the purpose of giving a general outline of the that Company’s proposals and/or an approximate idea of the Goods described in them and do not form part of this Contract. Any typographical, clerical or other error or omission in such documents and/or the Contract shall be subject to correction without any liability on the part of the Company.

3.3. All plans, illustrations, specifications, patterns, drawings, photographs and samples provided by the Company shall remain the exclusive property of the Company and shall not be copied or disclosed by the Buyer to any third party without the Company’s Written consent.

3.4. When Goods are supplied to the Buyer’s designs the Company shall not be responsible for infringement of any patent rights, design rights or other intellectual property rights of any third party and the Buyer shall keep the Company fully indemnified for any expense, costs, damages, liability or loss incurred by the buyer or any third party claiming such rights in respect of the Goods so supplied by the Company.

4. Delivery

4.1. Unless otherwise agreed in Writing by the Company delivery of the Goods shall take place at the Buyer’s place of business, the delivery address having been previously agreed upon.

4.2. The Buyer will take delivery of the Goods within 7 days of the Company giving it notice that the Goods are ready for delivery.

4.3. Any dates specified by the Company for the delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

4.4. Subject to the other provisions of these Conditions the Company will not be liable for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company’s negligence), nor will any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.5. If for any reason the Buyer will not accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

4.5.1. risk in the Goods will pass to the Buyer (including for the loss or damage caused by the Company’s negligence);

4.5.2. the Goods will be deemed to have been delivered; and

4.5.3. the Company may store the Goods until delivery whereupon the Buyer will be liable for all related costs and expenses (including without limitation storage and insurance).

4.6. The Buyer will provide at its expense at the place of delivery adequate and appropriate equipment and manual labour for unloading the Goods.

4.7. If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity set out in the Order Acknowledgement the Buyer shall not be entitled to or object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro-rata Contract rate.

4.8. The Buyer shall inspect the Goods upon delivery.

5. Non Delivery

5.1. The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company’s place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

5.2. The Company shall not be liable for any non-delivery of Goods (even if caused by the Company’s negligence) unless written notice is given to the Company within 5 days of the date when the Goods would be 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 making good any shortage or replacing the Goods within a responsible time or issuing a credit note at the pro-rata Contract rate against any invoice raised for such Goods.

6. Risk & Title to Goods

- 6.1. The Goods are at the risk of the Buyer from the time of delivery.
- 6.2. Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1. the Goods; and
- 6.2.2. all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3. Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 6.3.1. hold the Goods on a fiduciary basis as the Company's bailee;
- 6.3.2. store the Goods (at no cost to the Company) separately from all other goods of the Buyer, or any third party in such a way that they all 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;
- 6.3.4. maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and
- 6.3.5. hold the proceeds of the insurance referred to in condition 6.3.4. on trust for the Company and not mix them with any other money nor pay the proceeds into an overdrawn bank account.
- 6.4. The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 6.4.1. any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
- 6.4.2. any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5. The Buyer's right to possession of the Goods shall terminate immediately if:
- 6.5.1. the Buyer (being an individual) has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any legislation for the time being in force for the relief of insolvent debtors or (being a body corporate) convenes a meeting of creditors (whether formal or informal) or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver and/or manager, administrator or administrative receiver appointed over its undertaking or any part thereof or a resolution is passed or a petition to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer or otherwise takes the benefit of any legislation for the time being in force for the relief of insolvent debtors; or
- 6.5.2. the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it or fails to observe/perform and of his/its obligations under the Contract or any other contract between the Company and the Buyer or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 6.5.3. the Buyer encumbers or in any way charges any of the Goods.
- 6.6. The Company shall be entitled to recover any payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7. The Buyer 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 or inspect them or, where the Buyer's right to possession has terminated, to recover them.

7. Price and Payment

- 7.1. Unless otherwise agreed by the Company in writing the price for the Goods shall be the price set out in the Order Acknowledgement.
- 7.2. The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to loading, unloading, carriage and insurance all of which amounts the Buyer will pay in addition when it is due to pay for the Goods.
- 7.3. The Company reserves that right to vary any estimate, quotation or the price set out in the Order Acknowledgement if any of the following events occur:
- 7.3.1. the Buyer requests an alteration to the design and/or specification of the Goods.
- 7.3.2. the Buyer instructs the Company to suspend any work relation to the Goods or a suspension of work occurs due to the failure by the Buyer to supply instructions to the Company;
- 7.3.3. the prime cost of raw materials increases by more than 5%;
- 7.3.4. local conditions or other requirements necessitate additional safety requirements over and above what are the industry standards for the Goods;
- 7.3.5. the installation of the Goods necessitates the need to use third parties other than those set out in the Order Acknowledgement.
- 7.3.6. the Buyer refuses for whatever reason to take delivery of the Goods.
- 7.4. Payment for the price of the Goods is due at the time set out in the Order Acknowledgement. Time for payment shall be of the essence.
- 7.5. No payment shall be deemed to have been received until the Company has received cleared funds.
- 7.6. All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.
- 7.7. The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 7.8. If the Buyer fails to pay the Company any sum due pursuant to the Contract the Buyer will be liable to pay interest to the Company on such sum from the date for the payment at the annual rate of 4% above the base lending rate from time to time of the Company's bank, accruing on a daily basis until payment is made, whether before or after any judgement. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.

8. Installation

- 8.1. In cases where the Company undertakes installation of the Goods (save as provided for in the Order Acknowledgement) the Buyer shall provide at its own expense all necessary facilities including but not limited to suitable access to the Buyer's premises, proper foundations ready for the Goods, adequate lighting and ventilation, suitable protection and all fuel, water, steam, electricity, gas and other necessary stores and facilities needed for installing, testing and operating the Goods.
- 8.2. Any installation or erection of the Goods shall take place during normal hours of work and such other work as is necessary for the due performance by the Company of the installation of the Goods shall be carried out by the Purchasers in due time. Any increase in costs incurred by the Company caused by delay, interruption, overtime, mistake or any other hindrance by reason of such other work shall be the responsibility of and be paid by the Buyer.
- 8.3. The Buyer warrants that the premises at or on or in which the Goods are to be installed and operated are in such a strong and fit condition that the installation and operation can be safely carried out in the normal way and any additional costs caused by the lack of such strength and/or fitness shall be the responsibility of and be paid by the Buyer.
- 8.4. The Company shall not be responsible for any breach of any local bylaw or any other contractual obligation on the part of the Buyer as a result of the installation of the Goods unless the terms of such bylaw, contractual or other obligation have been notified to the Company in Writing before the Contract is entered into by the Company.

9. Quality

- 9.1. Where the Company is not the manufacturer of the Goods, the Company will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 9.2. The Company warrants that (subject to the other provisions of these Conditions) upon delivery and for the period of 12 months from the date of delivery.
- 9.2.1. the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1994;
- 9.2.2. the Goods will be reasonably fit for;
- 9.2.3. the Goods will be reasonably fit for any particular purpose for which the Goods are being bought provided that the Buyer had made known that purpose to the Company in Writing and the Company has confirmed in Writing that it is reasonable for the Buyer to rely on the skill and judgement of the Company; and
- 9.2.4. any services will be performed using reasonable care and skill.
- 9.3. The Company shall not be liable for a breach of any of the warranties in condition 9.2. unless:
- 9.3.1. the Buyer gives Written notice of the defect to the Company, and (if the defect is a result of damage in transit) to the carrier, within 5 days of delivery
- 9.3.2. after receiving such notice, the Company is given a reasonable opportunity of examining such Goods and the Buyer (if asked to do so by the Company) returns such goods to the Company's place of business at the Buyer's cost for the examination to take place there.
- The buyers attention is in particulars drawn to the provisions of conditions 9.4 and 9.5
- 9.4. The Company shall not be liable for a breach of any of the warranties in condition 9.2. as a result of any of the following circumstances.
- 9.4.1. the improper use, operation or neglect of the Goods by the Buyer;
- 9.4.2. the Buyer makes any further use of such Goods after giving the notice set out in condition 9.3.;
- 9.4.3. the defect arises because the Buyer failed to follow the Company's oral or Written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 9.4.5. any repair, adjustment, alteration or modification of the Goods by any Person other than the Company without the Company's prior Written consent;
- 9.4.6. the failure by the Buyer to implement recommendations in respect of or solutions to faults previously advised by the Company; or
- 9.4.7. the use of the Goods for a purpose(s) for which they were not designed.
- 9.5. Subject to condition 9.3. and 9.4., if any of the Goods do not conform with any of the warranties in condition 9.2. the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro-rata Contract rate provided that if the Company so requests the Buyer shall, at the Buyer's expense, return the Goods or the part of such Goods which is defective to the Company. Any Goods returned to the Company which have been replaced shall belong to the Company.
- 9.6. If the Company complies with condition 9.5. it shall have no further liability for a breach of any of the warranties in condition 9.2. in respect of such Goods.

10. Limitation of Liability

The buyers attention is in particular drawn to the provisions of condition 10

- 10.1. Subject to condition 9., the following provisions set out the entire financial liability of the Company (including any liability for the acts of omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 10.1.1. any breach of a term or condition of the Contract; and
- 10.1.2. any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permanent by law, excluded from the Contract.
- 10.3. Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 10.4. Subject to conditions 10.2. and 10.3.:
- 10.4.1. the Company's total liability in respect of damage to the tangible property of the Buyer resulting from the negligence of the Company or its employees, agents or sub-contractors shall be limited to £1000.00.
- 10.4.2. Save as provided for in condition 10.4.1. the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplative performance of this Contract shall be limited to the contract price; and
- 10.4.3. the Company shall not be liable to the Buyer for any special, indirect or consequential loss or damage (whether for loss of profit, loss of business or business opportunity, loss of anticipated savings, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

11. Assignment

- 11.1. The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 11.2. The Company may assign the Contract or any part of it to any person, firm or Company.

12. Force Majeure

The Company reserve the right to defer the date of the delivery or to cancel the Contract or to reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond reasonable control of the Company, including without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining suppliers of adequate or suitable materials Provided that, if the event in question continues for a continuous period in excess of 30 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

13. General

- 13.1. 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.
- 13.2. 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 unreasonableness 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.
- 13.3. Failure or delay by the Company in enforcing or partially enforcing any provisions of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 13.4. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 13.5. The parties to this Contract do not intend that any terms of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not party to it.
- 13.6. The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the non-exclusive jurisdiction of the English courts.

14. Communications

- 14.1. All communications between the parties about this Contract must be in Writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:
- 14.1.1. (in case of communication to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- 14.1.2. (in case of communication to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.
- 14.2. Communications shall be deemed to have been received:
- 14.2.1. if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
- 14.2.2. if delivered by hand on the day of delivery;
- 14.2.3. if sent by facsimile transmission on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.