

M T PERRY ENGINEERING LIMITED: TERMS AND CONDITIONS

1. Basis of contract

- 1.1 The Customer's order (whether written or not) for the supply of Products and/or Services, and the **Specification** (which includes the Scope of Work for the Services, Description of the Products, price and delivery or collection details) (together the **Order**) constitute an offer by the Customer to purchase Products and/or Services in accordance with these terms and conditions as amended from time to time (**Conditions**).
- 1.2 The Order shall only be deemed to be accepted when M T Perry Engineering Limited, registered in England and Wales with company number 03003702, (**MTP**) issues written acceptance of the Order at which point and on which date the Contract comes into existence.
- 1.3 The Specification and these Conditions (together the **Contract**) constitute the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made by or on behalf of MTP except as set out in the Contract.
- 1.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom or course of dealing.
- 1.5 Any quotation given by MTP shall not constitute an offer, and is only valid for a period of 30 days.

2. Delivery of Products

- 2.1 The details of delivery or collection are set out in the Specification.
- 2.2 Any dates quoted for delivery of the Products are approximate only, and the time of delivery is not of the essence. MTP shall not be liable for any delay in delivery of the Products that is caused by the Customer's failure to provide MTP with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.
- 2.3 If the Customer fails to collect the Products within four weeks of MTP notifying the Customer that the Products are ready, or if the Customer does not accept delivery at the agreed delivery time, then MTP shall store the Products until collection takes place, and charge the Customer for all related costs and expenses (including insurance).
- 2.4 If the Customer has not taken or accepted delivery of the Products within 10 weeks of MTP notifying the Customer that the Products are ready, MTP may resell or otherwise dispose of part or all of the Products and retain any Price paid (as the manufacturing work has by then been completed).

3. Warranty in relation to the Products

- 3.1 MTP warrants that on delivery, and for a period of 12 months from the date of delivery (**warranty period**), the Products shall:
 - 3.1.1 conform in all material respect with their Description;

- 3.1.2 be free from material defects in design, material and workmanship;
- 3.1.3 be of satisfactory quality (within the meaning of the Sale of Products Act 1979); and
- 3.1.4 be fit for any purpose held out by MTP.
- 3.2 Subject to clause 3.4, if:
 - 3.2.1 the Customer gives notice in writing during the warranty period and within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 3.1;
 - 3.2.2 MTP is given a reasonable opportunity of examining such Products; and
 - 3.2.3 the Customer (if asked to do so by MTP) returns such Products to MTP's place of business at the Customer's cost,
- 3.3 MTP shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full. If a defect is discovered, MTP shall also reimburse the Customer for the reasonable costs incurred under clause 3.2.3.
- 3.4 MTP shall not be liable for the Products' failure to comply with the warranty in clause 3.1 if:
 - 3.4.1 the Customer makes any further use of such Products after giving a notice under clause 3.2;
 - 3.4.2 the defect arises because the Customer failed to follow MTP's oral or written instructions as to the storage, installation, use or maintenance of the Products or good trade practice;
 - 3.4.3 the defect arises as a result of MTP following any drawing, design or specification supplied by the Customer;
 - 3.4.4 the Customer alters or repairs such Products without the written consent of MTP;
 - 3.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, misuse or abnormal working conditions; or
 - 3.4.6 the Products differ from the Description as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 3.5 Except as provided in this clause, MTP shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 3.1.

4. Title and risk of Products

- 4.1 The risk in the Products shall pass to the Customer on completion of delivery or collection.
- 4.2 Title to the Products shall not pass to the Customer until the later of MTP receiving payment in full (in cash or cleared funds) and completion of delivery or collection, unless otherwise stated in the Specification.

5. Supply of Services

- 5.1 MTP shall provide the Services to the Customer in accordance with the Scope of Work in all material respects.
- 5.2 MTP shall use reasonable endeavours to meet any performance dates for the Services set out in the Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 5.3 MTP shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and MTP shall notify the Customer in any such event.
- 5.4 MTP warrants to the Customer that the Services will be provided using reasonable care and skill.

6. Customer's obligations

- 6.1 The Customer shall:
 - 6.1.1 ensure that the Description and Scope of Work are as it intends and, where reasonable, test the Product on delivery before putting it in use;
 - 6.1.2 co-operate with MTP in all matters relating to the Services; and
 - 6.1.3 provide MTP and those acting on its behalf with access to the Customer's premises and facilities, information and materials as reasonably required by MTP to provide the Services.
- 6.2 If MTP's performance of any of its obligations is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation, MTP shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the situation, without any liability to the Customer for such suspension.

7. Charges and payment

- 7.1 The price (or a method of calculating it) shall be set out in the Specification.
- 7.2 MTP shall invoice the Customer in advance, unless stated otherwise in the Specification.
- 7.3 The Customer shall pay each invoice submitted by MTP within 30 days of the date of the invoice (unless stated otherwise in the Specification) and in full and in cleared funds. Time for payment shall be of the essence of the Contract.
- 7.4 The Customer shall, on receipt of a valid VAT invoice from MTP, pay to MTP any value added tax that is chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.
- 7.5 If the Customer fails to make any payment due to MTP under the Contract by the due date for payment, it shall pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. MTP may, without limiting its other rights or remedies, set off any amount owing to it by the

Customer against any amount payable by MTP to the Customer.

8. Changes

- 8.1 In the event that:
 - 8.1.1 the Customer decides to amend the Scope of Work during the term of the Contract; or
 - 8.1.2 the cost of any raw material used in the manufacture of the Product increases by more than 10% during the term of the Contract,MTP shall be entitled to provide a revised Specification including a new price to the Customer. The Customer shall then be entitled to agree to the new price or terminate the Contract with immediate effect, subject to clause 11.3.
- 8.2 MTP reserves the right to amend the Scope of Work if required by any applicable statutory or regulatory requirements.

9. Intellectual property rights

- 9.1 All intellectual property rights in or arising out of or in connection with any design created by MTP shall be owned exclusively by MTP, unless stated otherwise in the Specification.
- 9.2 To the extent that the Products are to be manufactured in accordance with a design or specification supplied by the Customer, the Customer shall indemnify MTP against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by MTP in connection with any claim made against MTP for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with MTP's use of the design or specification.

10. LIMITATION OF LIABILITY

- 10.1 Nothing in these Conditions shall limit or exclude MTP's liability for:
 - 10.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - 10.1.2 fraud or fraudulent misrepresentation;
 - 10.1.3 breach of the terms implied by section 2 of the Supply of Products and Services Act 1982 or section 12 of the Sale of Products Act 1979; or
 - 10.1.4 defective Products under the Consumer Protection Act 1987.
- 10.2 Subject to clause 10.1, MTP shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise:
 - 10.2.1 for any amount exceeding £5,000,000; or
 - 10.2.2 for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract up to a maximum of the contract value.

11. Termination

- 11.1 Without limiting its other rights or remedies, the Customer may terminate the Contract on immediate notice to MTP at any time, and MTP may terminate the Contract by giving the Customer no less than one month's written notice, subject to clause 11.3.

- 11.2 Without limiting its other rights or remedies, MTP may suspend or terminate the Contract with immediate effect by giving written notice to the Customer if:
- 11.2.1 the Product is based on a design, specification or requirement provided by the Customer or a third party and MTP has reason to believe that the design is defective and that the Product cannot be manufactured in accordance with it, provided that MTP has first notified the Customer of this opinion and the Customer has not rectified the defect within 30 days of such notification; or
- 11.2.2 the Customer fails to pay an invoice when due, is unable to pay its debts as they fall due (within the meaning of section 123 of the Insolvency Act 1986) or MTP has reason to believe that this is likely to be or imminently become the case.
- 11.3 On termination of the Contract for any reason:
- 11.3.1 the Customer shall immediately pay to MTP all of MTP's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, MTP shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 11.3.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 11.4 clauses 9, 10, 11, 13 and 14 shall survive termination of the Contract, along with any others that by implication have effect after termination.
- 12. Force majeure**
- MTP shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of an event outside of its reasonable control. If such an event prevents MTP from providing any of the Services and/or Products for more than eight weeks, MTP shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 13. Notices**
- 13.1.1 Any notice given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered or sent by a method referred to in clause 13.1.2.
- 13.1.2 A notice shall be deemed to have been received: if delivered personally, when left at the relevant address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the working day after posting; if delivered by commercial courier, on the date and at the time the courier's delivery receipt is signed; or, if sent by e-mail, one working day after transmission.
- 13.1.3 These provisions shall not apply to the service of any proceedings or documents in any legal action.
- 14. General**
- 14.1.1 MTP may at any time assign, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 14.1.2 The Customer shall not, without the prior written consent of MTP, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.2 A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor prevent or restrict its further exercise of that or any other right or remedy.
- 14.3 A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 14.4 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by MTP.
- 14.5 A reference in these Conditions to a statute is a reference to such statute as amended or re-enacted from time to time. A reference to writing or written includes e-mails.
- 14.6 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.
- 14.7 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).