

# AIR BEARINGS LIMITED

## Terms & Conditions of Sale

### 1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition 1 apply to these terms and conditions:

“Buyer” the person, firm or company who purchases the Goods from the Company;

“Company” Air Bearings Limited;

“Contract” any contract between the Company and the buyer for the sale and purchase of the Goods, incorporating these terms and conditions;

“Delivery Point” the Company’s place of business from time to time;

“Goods” any goods agreed in this Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these terms and conditions.

### 2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3, this Contract shall be on these terms and conditions to the exclusion of all other terms and conditions (including any

terms or 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 on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of this Contract simply as a result of such document being referred to in this Contract.

2.3 These terms and conditions apply to all the Company's sales and any variation to these terms and conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a Senior Manager of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the company which is not set out in this Contract. Nothing in this condition 2.3 shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these terms and conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.

2.6 The Buyer shall ensure that 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 shall come into existence until the Company despatches an acknowledgement of order 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 quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.

3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. Unless expressly agreed in writing by the Company they shall not form part of this Contract and this is not a sale by sample.

#### 4. DELIVERY

4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Delivery Point.

4.2 The Buyer shall take delivery of the Goods immediately on the Company giving it notice that the Goods are ready for delivery.

4.3 Subject to the other provisions of these terms and conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), 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 shall any delay entitle the Buyer to terminate or rescind this Contract unless such delay exceeds 180 days.

4.4 If for any reason the Buyer fails to 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:

4.4.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);

4.4.2 the Goods shall be deemed to have been delivered; and

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

4.5 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.

4.6 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of this Contract.

4.7 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

## 5. NON-DELIVERY

5.1 The quantity of any consignment of Goods as recorded by the Company upon notice that the Goods are ready for delivery 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 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

## 6. RISK/TITLE

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 shall:

- 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 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; and
  - 6.3.4 maintain the Goods in satisfactory condition and keep them 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.
- 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 has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision 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 of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as

defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented 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; and/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 or perform any 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; and/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 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 order to inspect them or, where the Buyer's right to possession has terminated, to recover them.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the company to the Buyer in the order in which they were invoiced to the Buyer.

6.9 On termination of this Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

## 7. PRICE

7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's quotation or acknowledgement of order.

7.2 The price of the Goods shall be exclusive of any value added tax and all costs or

charges in relation to packaging, loading, unloading, carriage and insurance incurred, at the Buyer's written request, by the Company on behalf of the Buyer all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

## 8. PAYMENT

8.1 Subject to condition 8.4, payment of the price for the Goods is due in pounds sterling 30 days from the date of invoice.

8.2 Time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received unless and until the Company has received cleared funds.

8.4 All payments payable to the Company under this Contract shall become due immediately on its termination despite any other provision.

8.5 The Buyer shall make all payments due under this Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring any amount equal to such deduction to be paid by the Company to the Buyer.

8.6 If the Buyer fails to pay the Company any sum due pursuant to this Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for 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.

## 9. QUALITY

9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

9.2 Unless otherwise agreed in writing by the Company, the warranty of goods will be (subject to the other provisions of these conditions) upon delivery and for a period of

6 months, from the date of delivery the Goods shall:

9.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

9.2.2 The Company warrants to Buyer that all items sold or supplied to Buyer pursuant to this Agreement shall conform to the applicable specifications made by the Company.

9.3 The Company shall not be liable for a breach of any of the warranties in condition 9.2 if:

9.3.1 the Buyer gives written notice of the defect to the Company, and

9.3.2 the Company is given a reasonable opportunity after receiving the notice 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. If the Company is at fault it will reimburse to the Buyer the reasonable costs of such return.

9.3.3 the Buyer makes any further use of such Goods after giving such notice; or

9.3.4 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

9.3.5 the Buyer alters or repairs such Goods without prior written consent of the Company.

9.4 Subject to condition 9.3 , 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 Buyers expense, return the Goods or the part of such Goods which is defective to the Company.



If the Company is at fault it will reimburse the Buyer the reasonable costs of such return.

9.5 If the Company complies with condition 9.4 it shall have no further liability for a breach of any of the warranties in condition 9.2 in respect of such Goods.

9.6 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 6 month period or any other unexpired warrant period previously agreed in writing.

9.7 THE EXPRESS WARRANTIES SET FORTH IN THIS ARTICLE ARE EXCLUSIVE, AND NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, WRITEN, ORAL, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY SHALL APPLY.

#### 10. LIMITATION OF LIABILITY

10.1 Subject to conditions 4, 5 and 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

10.1.1 any breach of these terms and conditions;

10.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

10.1.3 any representation, statement or tortuous act or omission including negligence arising under or in connection with this Contract.

10.2 Nothing in these terms and conditions excludes or limits the liability of the Company:

10.2.1 for death or personal injury caused by the Company's negligence; or

10.2.2 under section 2(3), Consumer Protection Act 1987; or

10.2.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or

10.2.4 for fraud or fraudulent misrepresentation.

10.3 Subject to conditions 10.2 and 10.3:

10.3.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Contract price as determined in accordance with condition 7; and

10.3.2 the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with this Contract.

## 11. ASSIGNMENT

11.1 The Company may assign this Contract or any part of it to any person, firm or company.

11.2 The Buyer shall not be entitled to assign this Contract or any part of it without the prior written consent of the Company.

## 12. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel this Contract or 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 the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, 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 supplies of adequate or suitable materials, provided that, if the event in questions continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to the Company to terminate this Contract.

### 13. INTELLECTUAL PROPERTY

Unless expressly agreed in writing by the Company, the Company shall at all times own all intellectual property rights relating to the Goods including but not limited to patents, utility models, trade or service marks, trade names, copyrights (including rights in computer software and databases) and moral rights, design rights, inventions, discoveries, confidential information, rights in know-how and all or any other industrial or intellectual property rights whether or not registered or capable of registration including applications for the grant of any of the foregoing and the right to apply for any of the foregoing, and all rights or forms of protection having an equivalent or similar effect to any of the foregoing which may subsist in any part of the world.

### 14. GENERAL

14.1 Each right or remedy of the Company under this Contract is without prejudice to any other right or remedy of the Company whether under this Contract or not.

14.2 If any provision of this Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of this Contract and the remainder of such provision shall continue in full force and effect.

14.3 Failure or delay by the company in enforcing or partially enforcing any provision of this Contract shall not be construed as a waiver of any of its rights under this Contract.

14.4 Any waiver by the Company of any breach of, or any default under, any provision of this Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Contract.

14.5 The parties to this Contract do not intend that any term of this Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

14.6 The formation, existence, construction, performance, validity and all aspects of this Contract shall be governed by English law.

14.7 Any dispute for difference arising out of or in connection with this Contract, including any question regarding its existence, validity or termination or the legal relationships established by this Contract, shall be finally resolved by arbitration under the Rules of the London Court of International Arbitration in force at the date of this Contract.

## 15. COMMUNICATIONS

15.1 All communications between the parties about this Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or e-mail:

15.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or

15.1.2 (in the case of the communications 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.

15.2 Communications shall be deemed to have been received:

15.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or

15.2.2 if delivered by hand, on the day of delivery; or

15.2.3 if sent by fax or e-mail on a working day prior to 4.00pm, at the time of transmission and otherwise on the next working day.

15.3 In proving such service it shall be sufficient to prove that the envelope containing

such notice was addressed to the address of the relevant party (as notified by that party under this Contract) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party (as notified by that party under this Contract) or that the notice was transmitted by e-mail to the e-mail address of the relevant party (as notified by that party under this Contract) and in the case of fax or e-mail a valid delivery receipt generated by the sender is produced.

15.4 Communications addressed to the Company shall be marked for the attention of the Managing Director.