

ACE CONTROLS INTERNATIONAL Supply Conditions

1 Definitions and interpretation

1.1 In these Supply Conditions (“**Conditions**”) the following terms shall have the following meanings:

“**Affiliate**” means any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;

“**Client**” means the person, firm or company purchasing goods pursuant to the Contract;

“**Contract**” has the meaning set out in clause 2.1;

“**Contractor**” means Ace Controls International (BR001473), the UK establishment of Ace Controls International Inc. (FC013944), which is a company incorporated in Delaware USA. The Contractor’s VAT number is [152 2202 20] and its office address is Unit 404 Easter Park, Haydock, Haydock Lane, WA11 9TH;

“**Deliverables**” means:

- (i) any Design Services and/or other services ordered by the Client; and
- (ii) any Goods,

and, unless otherwise stated, “**Deliverables**” includes Project Deliverables;

“**Design Services**” means any services ordered by the Client which require the Contractor to produce drawings, design details, specifications and bills of quantities (including specification of articles or substances) relating to a structure, calculations prepared for the purpose of a design and/or to carry out any non-recurring construction, completion, commissioning and/or engineering works in relation to that design;

“**Document**” means any written, printed, or electronic matter that provides data, information or evidence;

“**Good Industry Practice**” means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from, in the case of the Contractor, a skilled and experienced supplier engaged in the supply of goods and services similar to the Deliverables under the same or similar circumstances as those applicable to the Contract, and in the case of the Client, a skilled and experienced operator in the industry in which the Client participates, and including in both cases, in accordance with any codes of practice published by relevant trade associations;

“**Goods**” means the goods ordered by the Client either as the sole element of an order or as part of the Design Services or any services ordered by the Client;

“**Project Deliverables**” means any Deliverables which, in the reasonable opinion of the Contractor, are not standard, readily available products but are, in whole or in part, custom made or bespoke Deliverables requiring a degree of input from the Contractor in regard to consultancy, design, training or otherwise; and

“**Project Proposal**” has the meaning given in clause 2.2.

1.2 In these Conditions:

1.2.1 any headings used shall not affect the interpretation of the associated clause;

1.2.2 words stated in the singular shall include the plural and vice versa;

1.2.3 a reference to a statute or statutory provision is (unless otherwise stated) a reference to the applicable UK statute as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it; and

1.2.4 where the words “include(s)” or “including” are used in these Conditions, they are deemed to have the words “without limitation” following them, and are illustrative and shall not limit the sense of the words preceding them.

ACE CONTROLS INTERNATIONAL Supply Conditions

2 Incorporation of Conditions

- 2.1 Subject to clause 2.2, these Conditions shall form the basis of the contract between the Contractor and the Client to purchase the Deliverables (the "**Contract**"). Notwithstanding anything to the contrary in any conditions attempted to be imposed by the Client, or in any purchase order, acceptance note, confirmations, letter, specification or any other document issued or sent by the Client, these Conditions shall apply except insofar as special conditions are expressly agreed in writing by the Branch Manager or National Sales Manager of the Contractor. No other servant or agent of the Contractor may vary these Conditions nor may they be varied orally. The placing of an order by the Client shall be deemed to be an offer to purchase the Deliverables in accordance with these Conditions and any such further special conditions as may be prescribed in writing by the Contractor including a Project Proposal as described in clause 2.2. In the event of any conflict or apparent conflict between the special conditions and these Conditions, the special conditions shall prevail.
- 2.2 Where the Contractor has provided a specification or proposal for the Deliverables being ordered ("**Project Proposal**"), the Project Proposal shall form part of the Contract and the provisions of the Project Proposal shall take precedence over these Conditions where applicable.
- 2.3 The images, if any, of the Deliverables on the Contractor's website are for illustrative purposes only. Although the Contractor has made every effort to display the colours accurately, the Contractor cannot guarantee that a device's display of the colours accurately reflects the colour of the Deliverables.

3 Orders and formation of Contract

- 3.1 No order placed by the Client shall be binding on the Contractor unless and until it has been accepted in writing by the Contractor on its acknowledgement of the order, at which point the Contract will be formed.
- 3.2 The Contractor shall confirm to the Client on its acceptance of the order if the intended purchase is categorised as Project Deliverables and the Client may seek such confirmation prior to submitting any order.
- 3.3 The Contractor may change the Deliverables to implement minor technical adjustments and improvements.

4 Supply of Deliverables

- 4.1 The Contractor shall supply the Deliverables to the Client in accordance with:
- 4.1.1 the terms of the Contract;
 - 4.1.2 all applicable law; and
 - 4.1.3 reasonable skill and expertise and Good Industry Practice.

5 Price Increases

- 5.1 The price shall be as set out in the order except that the Contractor reserves the right to increase the price:
- 5.1.1 without notice between the date of acceptance of order and the date of despatch of any Goods in order to take account of the cost of labour including changes in law affecting the free movement of workers, national insurance or minimum wage payments, the cost of raw materials, fluctuations in the value of the currency or the rate of VAT, or changes in direct taxes or any other matter beyond the Contractor's reasonable control which diminishes the Contractor's profit margin; and
 - 5.1.2 with reasonable notice in relation to Project Deliverables where any redesign is necessary due to circumstances beyond the reasonable control of the Contractor or due to any information relied on by the Contractor which is supplied by the Client which is found to be incomplete, inaccurate or incorrect.

6 Packing and Delivery

- 6.1 Prices quoted are, subject to clause 6.2, ex the Contractor's premises at Easter Park, Haydock Lane, Haydock, St. Helens UK and carriage and packing are chargeable as additional costs. Subsections (2) and (3) of Section 32 of the Sale of Deliverables Act 1979 (delivery to carrier) shall not apply.
- 6.2 The Contractor may elect to fulfil the Client's order by direct delivery to the Client from one of the Contractor's Affiliates. In such cases, the

ACE CONTROLS INTERNATIONAL Supply Conditions

Contractor shall notify the Client of the delivery method upon receipt of its order and the Client shall be responsible for all applicable taxes and customs duties, carriage and packing.

6.3 While the Contractor will use its reasonable endeavours to meet any delivery date requested by the Client time for delivery shall not be of the essence of the Contract and the Contractor will not be liable under any circumstances for failure to meet a specified delivery date or to deliver within a reasonable time.

6.4 Delivery of any Goods shall be deemed to take place:

6.4.1 when the Goods are collected by the Client or its agent (including its carrier) from the works or warehouse of the Contractor;
or

6.4.2 if the Goods are transported by the Contractor, its Affiliate or its agent (including its carrier) when the Deliverables are physically delivered to the Client's place of business or such other place as the Client may reasonably nominate.

7 Risk

Risk in the Goods shall pass to the Client on delivery.

8 Payment Terms

8.1 Payment for the Deliverables shall be due from the Client:

8.1.1 thirty days from the date of the invoice or such earlier date as may be determined in accordance with clause 9.4; or

8.1.2 where a Project Proposal forms part of the Contract or in the case of Project Deliverables, in accordance with any payment terms set out in the Project Proposal or as notified to the Client in writing in the absence of any Project Proposal respectively.

8.2 Upon payment becoming due the Contractor shall be entitled to sue for the price of the Deliverables, Value Added Tax and any chargeable extras notwithstanding the fact that pursuant to clause 9 property in the Deliverables has not passed to the Client.

8.3 Payment shall not be withheld or deferred on account of any claim, counter claim or set off.

8.4 Interest at the rate of 4% per annum above Bank of England base rate from time to time in force and accruing from day to day may be charged on all sums overdue for payment by the Client to the Contractor.

8.5 In the event of non-payment of any monies by the due date the Contractor shall have the right, in addition to its other remedies, to terminate any other contracts with the Client and in the event of any such termination the Client shall be liable to the Contractor for any expenses, loss or damage suffered by the Contractor as a result.

8.6 Payment shall become due upon the happening of any of the events listed in clause 9.4, even if such event occurs within 30 days from the date of the invoice, and the Client's right to part with possession or title of the Deliverables pursuant to clause 9.2 shall cease immediately.

8.7 Time shall be of the essence of the Contract so far as it relates to the date on which payment is due.

9 Property in the Deliverables

9.1 Property in the Deliverables shall remain with the Contractor (which reserves the right to dispose of the Deliverables) until payment in full for all of the Deliverables has been received by it. Accordingly, without prejudice to the Client's obligations to purchase the Deliverables, the Contractor shall be entitled on default in payment to repossess the Deliverables and for such purposes to enter any premises owned or occupied by or on behalf of the Client and the Client shall do all in its power to enable the Contractor to do so.

9.2 The Client shall not part with possession or title of any Deliverables for which it has not paid unless such parting with possession is upon a sale in the normal course of the Client's business to a customer of the Client at full market value, whether or not the Deliverables have been converted into other products or mixed with other items to make a new product. In the event of any such sale then:

9.2.1 it does so as principal and not as the Contractor's agent; and

9.2.2 title to the Deliverables shall pass from the Contractor to the Client immediately before the time at which resale by the Client

ACE CONTROLS INTERNATIONAL Supply Conditions

occurs.

- 9.3 Until they have been paid for in full or sold pursuant to the preceding sub-conditions, the Client shall take proper care of the Deliverables, keep them insured against all risks for their full price and take all reasonable steps to prevent any damage thereto or deterioration thereof and shall allow the Contractor to inspect them whenever the Contractor so requires and the Client shall keep any Goods free from any charge, lien or other incumbrance and store any Goods in such a way as to show clearly that they belong to the Contractor and shall provide to the Contractor such information as to the Deliverables or their whereabouts as the Contractor may from time to time require.
- 9.4 The Client shall notify the Contractor immediately if it becomes subject to any of the following events:
- 9.4.1 any notice to the Client that a receiver or manager is to be or has been appointed over the assets or affairs of the Client, or the appointment of any such receiver or manager, whichever is the earlier;
 - 9.4.2 any notice to the Client that a petition to wind up the Client will be or has been presented or the making of, or receipt of any notice proposing a resolution to wind up the Client (save for the purpose of reconstruction or amalgamation);
 - 9.4.3 any decision by the Client that it intends to make an arrangement with its creditors;
 - 9.4.4 any act of bankruptcy as defined by the Insolvency Act 1986 (as amended); or
 - 9.4.5 any other event, act or proceeding in which the Client's solvency is involved.

10 **Acceptance**

Except as set out otherwise in any Project Proposal or agreed otherwise in writing by the parties, the Deliverables shall be deemed to be accepted by the Client unless they are rejected within seven days of delivery. This acceptance of the Deliverables shall be treated as conclusive evidence that they are in all respects fit for the intended and contemplated use by the Client and in every other way satisfactory to it.

11 **Warranties, Remedies and Exclusion of Liability**

- 11.1 No warranty, condition or other term, express or implied, statutory or otherwise, shall apply unless and except to the extent expressly contained in these Conditions or any Project Proposal or any special conditions prescribed by the Contractor pursuant to clause 2.
- 11.2 The Contractor shall have no liability for any consequential loss or damage including (but without limitation) business interruption or loss of profits and the Client acknowledges that it should maintain a suitable insurance policy in respect of those risks.
- 11.3 Any liability to which the Contractor might otherwise become subject shall be limited to the price paid by the Client for such of the Deliverables as give rise to the claim.
- 11.4 The Client shall be solely responsible for deciding whether the Deliverables are suitable for the particular purpose for which they are required.
- 11.5 The Contractor undertakes to remedy, in accordance with clause 11.6, any defective part of the Goods resulting from faulty design, materials or workmanship where such materials have been supplied by the Contractor or the design or workmanship is the responsibility of the Contractor ("**Defective Deliverables**").
- 11.6 The Contractor shall at its option replace or repair any Defective Deliverables, if:
- 11.6.1 details of the defect are given to the Contractor in writing within twelve months from the date of delivery;
 - 11.6.2 the Contractor is given reasonable opportunity to examine the Defective Deliverables; and
 - 11.6.3 the Client (if asked to do so by the Contractor) returns the Defective Deliverables to the Contractor's place of business.
- 11.7 The warranty and remedies in clauses 11.5 to 11.6 shall not apply:
- 11.7.1 to damage or defects resulting from:

ACE CONTROLS INTERNATIONAL Supply Conditions

- (i) improper or inadequate care or maintenance, or improper use, of the Goods, including if the defect arises because the Client failed to follow the Contractor's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) Good Industry Practice regarding the same;
- (ii) attempts other than by the Contractor to install, alter, repair or service the Good without the written consent of the Contractor;
- (iii) fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions or from use of the Goods with incompatible equipment or supplies; or
- (iv) the Contractor following any Document, design or specification relevant to the Goods supplied in any format or on any medium by the Client; or

11.7.2

if:

- (i) the Client fails to give notice of the defect in relation to which the Client is making a claim under the warranty as soon as reasonably practicable after the discovery of such defect;
- (ii) the Client has, without the consent of the Contractor, amended, altered, added to, removed parts from or repaired the Goods or any part of the Goods or has instructed a third party to do so; or
- (iii) the Client has continued to use the Goods after discovery of the relevant defect.

11.8 Nothing in the Contract shall limit or exclude the Contractor's liability for death or personal injury caused by its negligence, fraud or breach of the terms implied by section 12 of the Sale of Goods Act 1979 or any other liability which cannot be limited or excluded by applicable law.

12 **Project Deliverables**

12.1 The provisions of this clause 12 shall only apply if Project Deliverables are ordered by the Client.

12.2 **Contractor obligations:** The Contractor shall use reasonable endeavours to:

- 12.2.1 deliver the Project Deliverables to the Client in accordance in all material respects with the Project Proposal or any other specification, if any, that has been agreed in writing with the Contractor;
- 12.2.2 meet the performance dates specified in the Project Proposal or as otherwise agreed in writing with the Contractor, but any such dates shall be estimates only and time shall not be of the essence of the Contract; and
- 12.2.3 observe all health and safety and security requirements that apply at the Client's premises and that have been communicated to it by the Client, if the Contractor is obliged, for the purposes of fulfilling its obligations under the Contract, to visit the Client's premises provided that the Contractor shall not be liable under the Contract if, as a result of such observation, it is in breach of any of its obligations under the Contract.

12.3 **Client obligations:** The Client:

- 12.3.1 shall comply in all respects where applicable with the Construction (Design and Management) Regulations 2015, Part 2, Section 4 (client duties in relation to managing projects) save as otherwise agreed in writing with the Contractor;
- 12.3.2 shall cooperate at all times with the Contractor in relation to the Project Deliverables and appoint a suitable member of its staff, taking into account the Project Deliverables ordered, to be the primary contact with the Contractor ("Client's Representative") and shall provide details (including telephone numbers and email addresses) of the Client's Representative to the Contractor;
- 12.3.3 shall where applicable, provide in a timely manner such access to the Client's premises, Documents and data, and such office accommodation and other facilities and assistance, as is requested by the Contractor and be responsible (at the Client's cost) for preparing the relevant premises for delivery of the Project Deliverables;
- 12.3.4 shall provide in a timely manner such Documents, data and information as the Contractor may request, and ensure the

ACE CONTROLS INTERNATIONAL Supply Conditions

accuracy of such Documents, data and information in all material respects; and

12.3.5 shall not, without the prior written consent of the Contractor and payment to the Contractor of reasonable compensation, at any time from the placing of any order to the expiry of [12] months after delivery of the Project Deliverables, solicit or entice away from the Contractor or employ or attempt to employ any individual who is, or has been, engaged as an employee of the Contractor, except that the Client shall not be in breach of this clause 12.3.5 if it hires an employee of the Contractor as a result of a recruitment campaign not specifically targeted to any employees of the Client.

12.4 **Delay or non-performance due to Client:** If the Contractor's performance of its obligations under the Contract is prevented or delayed by any act or omission of the Client or the Client's agents, sub-contractors or employees, the Client shall in all circumstances be liable to pay to the Contractor on demand all reasonable costs, charges, or losses sustained or incurred by it (including without limitation, any direct, indirect or consequential loss, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to the Contractor confirming in writing such costs, charges and losses to the Client.

12.5 **Change control:** If either party requests a change to the scope of the Project Proposal or any specification or, in the case of the Client, the order, the Contractor shall, within a reasonable time, provide a written estimate to the Client of:

12.5.1 any changes to any agreed timings that will be required to implement the change;

12.5.2 any variations to the agreed price arising from the change; or

12.5.3 any other impact of the change on the terms of the Contract,

and if the Contractor requests a change to the Project Proposal or any specification agreed in writing which it reasonably believes is necessary, the Client shall not unreasonably withhold or delay consent to such change. If the Client wishes the Contractor to proceed with any change, whether proposed by the Client or the Contractor, the Contractor has no obligation to do so unless and until the parties have agreed in writing the necessary variations to the price, the Project Proposal or any other specification and any other relevant terms of the Contract in accordance with clause 18 to take account of the change.

12.6 **Intellectual Property:** The Client grants the Contractor a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials and Documents provided by the Client to the Contractor for the sole purpose of providing the Project Deliverables to the Client.

12.7 **Contractor's know-how:** The Client shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Client by the Contractor or its agents, and any other confidential information which the Client may obtain concerning the business or products of the Contractor. The Client shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know it for the purpose of discharging the Client's obligations to the Contractor, and shall ensure that such employees, agents or sub-contractors are subject to obligations of confidentiality corresponding to those which bind the Client.

12.8 **Confidential Information:**

12.8.1 For the purposes of this clause 12.8, "Confidential Information" means any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, finances, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, and Clients of either party.

12.8.2 Each party shall take all necessary precautions to ensure that all Confidential Information it receives under or in connection with the Contract and the Project Deliverables is given only to such of its staff and professional advisors or consultants engaged to advise it in connection with the Contract as is strictly necessary and only to the extent necessary for the performance of its obligations under the Contract and is treated as confidential and not disclosed (without the prior written consent of the disclosing party) or used by the receiving party or any member of its staff or its professional advisors or consultants otherwise than for the purposes of the Contract. The provisions of this clause 12.8.2 shall not apply to any Confidential information which is or becomes public knowledge (otherwise than by a breach of this clause 12.8.2, was in the

ACE CONTROLS INTERNATIONAL Supply Conditions

possession of the receiving party, without restriction as to its disclosure before receiving it from the disclosing party, is received from a third party who lawfully required it without restriction as to its disclosure, is independently developed without access to the Confidential Information or must be disclosed pursuant to a statutory, legal or parliamentary obligation placed on the party receiving the Confidential Information. If the Client fails to comply with clause 12.7 or this clause 12.8.2 prior to delivery of the Project Deliverables, the Contractor reserves the right to terminate the Contract by notice in writing with immediate effect.

13 **Hazardous Substances**

13.1 **Compliance with legislation concerning hazardous substances:** The Client acknowledges that materials, components, assemblies or equipment used in the manufacture of any Project Deliverables may be imported from outside of the European Union ("Imported Material") and that without undertaking analysis and testing at significant expense, the Contractor cannot itself warrant that the Imported Materials do not breach the Persistent Organic Pollutants Regulations 2007 (SI 2007/3106) ("POPs Regulations") which implements in the UK Regulation (EC) no.850/004, Regulation (EC) no.1907/2006 which deals with the registration, evaluation, authorisation and restriction of chemicals ("REACH Regulation"), and the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment Regulations 2012 (SI 2012/3032) ("RoHS Regulations") which implements in the UK the Restriction on Use of Hazardous Substances Directive 2011/65/EU. The Contractor therefore warrants that it has received assurance in writing from its suppliers located outside of the European Union that any Imported Materials provided by the relevant supplier do not breach, the POPs Regulations, the REACH Regulation or the RoHS Regulations (together the "Regulations") or, where applicable, that such Imported Materials are subjected to an exemption under the Regulations, and that the Contractor has otherwise complied in all respects with the Regulations.

14 **Force Majeure**

The Contractor shall have no liability to the Client to the extent that the Contractor's performance of the Contract is affected wholly or partially by any restriction or requirement imposed by a government or other competent authority, strikes, lock out, a failure in the Contractor's anticipated supplies of raw materials, any state's exit from the European Union or by any other cause whatsoever which is beyond the Contractor's reasonable control.

15 **Intellectual Property Rights**

15.1 The Client shall be entitled to use the Deliverables in accordance with these Conditions and as is envisaged by the parties. However, nothing in these Conditions transfers, or grants any licence in respect of, any intellectual property rights relating to the Deliverables to the Client.

15.2 The Client undertakes to indemnify the Contractor against all expenses, loss or damage suffered by the Contractor as a result of claims for false trade descriptions, claims for infringements of patents, trade marks, registered designs or copyright arising out of any work undertaken by the Contractor in accordance with the Client's instructions.

16 **Notices**

Any notice given under the Contract shall be given in writing and shall be sent by first class post to the trading address of the intended recipient, or shall be sent by email to the e-mail address notified by the intended recipient in writing for these purposes. Notices given by post shall be deemed to have been received at 9.30am on the second working day after posting and notices if given by email shall if given on a working day be deemed to be received at the time they are transmitted but if delivered after 5.00pm on a working day shall be deemed to be received at 9.30am on the next following working day. For the purposes of this clause "working day" shall mean a day other than a Saturday on which the clearing banks in the City of London are open for business.

17 **Waiver**

17.1 No failure by the Contractor to exercise or delay exercising any of its rights under the Contract shall operate as a waiver of such rights, or shall prevent the Contractor from subsequently enforcing any right or treating any breach by the Client as a breach.

18 **Variation**

18.1 Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be

ACE CONTROLS INTERNATIONAL Supply Conditions

effective unless it is agreed in writing and signed by the Contractor.

19 Applicable Law

19.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be subject to English law and to the non-exclusive jurisdiction of the English courts.

20 General

20.1 All conditions and sub-conditions herein and all parts thereof shall be severable. In the event that any one or more of such conditions or sub-conditions or any part thereof shall be invalid, illegal or unenforceable in any respect under any relevant law, the validity, legality and enforceability of the remaining conditions and sub-conditions and parts thereof shall not in any way be affected or impaired.

20.2 Breach by the Client of any of its obligations shall entitle the Contractor to treat the Contract as repudiated.

20.3 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.