

Terms and Conditions of Sale

These General Conditions together with the Special Conditions (together the "Conditions") govern all contracts for the sale or supply of goods and/or services by the Company.

In these Conditions:-

"Buyer"	means any person at whose request Goods are supplied by the Company;
"Buyer's Tooling"	means all dies, tools and jigs provided by the Buyer to the Company pursuant to the Contract;
"Company"	means Mettis Aerospace Limited
"Contract"	means a contract between the Company and the Buyer for the sale and purchase of goods and/or services;
"Goods"	means any goods or replacements therefor together with any services/workmanship supplied by the Company to the Buyer under the Contract;
"BSI"	means the British Standards Institution.

The headings are for convenience only and shall not affect construction of these Conditions; references to the provisions of any statute or legislation shall be construed as references to such statute or legislation as amended, consolidated or re-enacted (without substantial amendment) from time to time. Variations to these Conditions or the Contract shall be effective only by express agreement in writing signed by a director or authorised person on behalf of the Company.

1. FORMATION AND PARTIES

- 1.1 The Buyer's order (in whatever manner communicated including without limitation Electronic Data Interchange) to the Company is an offer to enter into a contract to purchase the Goods upon these Conditions. Acceptance occurs and the Contract is formed only upon the Company despatching to the Buyer a despatch note, sales invoice or such other documentation as the Company may use from time to time for the acknowledgement of orders. Any terms or conditions proffered at any time by the Buyer are hereby excluded.
- 1.2 In the event of inconsistency between these General Conditions and the Special Conditions the latter shall prevail.
- 1.3 A quotation by the Company does not constitute an offer. Quotations are valid for the period set out in the quotation (or if no period is specified 30 days from date of issue) and may be withdrawn at any time within such period without notice. Oral quotations are for guidance only and are not binding upon the Company unless confirmed in writing.
- 1.4 The Buyer shall not assign the benefit of the Contract without the Company's prior written consent.
- 1.5 The Contract is not cancellable by the Buyer without express written consent of a director or other authorised person on behalf of the Company.
- 1.6 If the Company agrees cancellation by the Buyer, the Buyer shall indemnify the Company in full against all expenses incurred up to the time of cancellation together with 15% of the Contract price by way of liquidated damages for breach of contract as specified by the Company, such sum being acknowledged by the Buyer as representing a genuine pre-estimate of the Company's loss of profit.
- 1.7 The Buyer acknowledges and agrees that the Company's employees are not authorised to make any representations concerning the Goods. Any description or specification contained in any catalogue, brochure, website, leaflet or advertisement is for general guidance only and does not form part of these conditions.
- 1.8 The Buyer warrants that where its order is placed by electronic telecommunications (including without limitation Electronic Data Interchange) the data and information contained in such order shall be complete and accurate and the Buyer shall indemnify and keep indemnified the Company from any costs, losses, expenses or damages arising out of errors or omissions in such data and information.

2. PRICE

2.1 Prices quoted are based on rates of wage and prices of raw materials and commodities current at the date of quotation/order. Unless otherwise agreed in writing, the Company reserves the right to vary the price of Goods by an amount attributable to any change in or insufficiency of Buyer's instructions or to any variation in the cost of materials, labour, transport, duties, taxes, exchange rates or any costs of whatever nature between the date of Contract and the date of delivery or completion of payment (whichever is earlier).

2.2 Prices are exclusive of Value Added Tax.

3. SPECIFICATION AND TOLERANCES

3.1 Where raw materials, component parts and/or other materials are specified or supplied by the Buyer ("Free Issue Materials"), the Company gives no warranty and shall not be liable for their quality or fitness for purpose.

3.2 The Buyer acknowledges and agrees that the Company shall not be liable for any defect or non-conformity in the Goods arising out of, in relation to or after alteration or modification undertaken on the Goods by the Buyer after the date of delivery.

3.3 The Company shall not be responsible for the quality or fitness for purpose of any Goods made to the Buyer's specification and/or design whether or not such purpose is made known to the Company by the Buyer.

4. DELIVERY

4.1 Delivery dates are estimates only. Time of delivery is not of the essence of the Contract. Unless otherwise stated, delivery periods commence from date of acknowledgement of order or receipt by us of such other instruction to proceed as we may deem acceptable. The Company shall use its reasonable endeavours to deliver the Goods by the stated delivery date, but may suspend or delay delivery and shall not be liable for any loss whatsoever in the event of late delivery or non-delivery of Goods or any instalment owing to any occurrence whatsoever beyond its control. The Buyer shall not be entitled to refuse to accept late delivery or treat late delivery as a breach of contract.

4.2 The Company may at its option deliver by instalments; each instalment shall constitute a separate contract on these Conditions. Failure to deliver or defect in any one such instalment shall not entitle the Buyer to repudiate the Contract or any part thereof nor to cancel subsequent instalments.

4.3 Delivery shall subject to Condition 4.4 take place and risk shall pass upon the earliest of the following:-

4.3.1 The Company loading the Goods onto the Buyer's or its agent's transport at the Company's premises; or

4.3.2 The Goods leaving the Company's premises; or

4.3.3 on the eighth day following notification that the Goods are ready for despatch.

4.4 In the case of export orders:-

4.4.1 Incoterms (2000 Edition) shall apply unless otherwise agreed by Company and Buyer, and as defined and notified by the Company in quotation and order acceptance. Risk shall pass from Company to Buyer at such time as defined by relevant Incoterm;

4.4.2 the Buyer warrants that if an import licence, permit or other authorisation is required for the importation of the Goods and Technology into the country of destination such licence, permit or authorisation has been obtained or will be obtained prior to shipment; further the Buyer acknowledges that export of Goods and Technology is contingent upon the Export Control Regulations as amended and current at the time of shipment, of the United Kingdom and/or the United States of America. In the event that required governmental licence, consent or permit cannot be obtained, the Company shall not be liable to the Buyer in respect of any bond or guarantee or for any loss, damage or other financial penalty, notwithstanding article 14 of these conditions.

4.4.3 Stated delivery periods shall commence only upon receipt of a letter of credit complying in all respects with the Company's requirements.

4.5 Deviations in quantity of Goods delivered of +/- 10% or less by value from that set out in the Contract shall not entitle the Buyer to reject the Goods delivered or to claim damages and the Buyer shall be obliged to accept and pay for the Goods delivered at the Contract rate.

4.6 Where the Buyer is obliged to and has failed to collect Goods on the expiry of the seventh day following notification of readiness for despatch the Company shall be entitled to treat the Contract as repudiated by the Buyer. Until the Contract is so terminated the Company may, at its option, either store the Goods itself or have them stored by third parties on such terms as it in its absolute discretion thinks fit. The cost of storage and any additional transportation will be added to and form part of the price. If the Company elects to treat the Contract as repudiated in accordance with this Condition it shall (without prejudice to its rights and remedies in respect of such repudiation) be entitled to sell the goods and retain the proceeds of sale.

4.7 The Buyer shall be responsible for loading and unloading the Goods at the address specified by the Buyer (and at the Company's premises if returned by the Buyer) and any agent of the Buyer or person supplied by the Company for such purpose shall be deemed to be a employee of the Buyer at such times.

5. **LOSS OR DAMAGE IN TRANSIT**

5.1 The Company shall not be liable for loss or damage to Goods in transit unless:-

5.1.1 The Company has agreed to effect delivery to a place other than the Company's premises; and

5.1.2 The loss or damage occurs prior to receipt by consignee; and

5.1.3 Either:-

(a) damage or shortage is reported to the Company and the carrier within 3 days of receipt of Goods by the consignee and the Goods have been signed for as not examined; or

(b) In the case of total loss, non-arrival is notified to the Company and the carrier within 7 days after despatch of advice note.

6. **INSPECTION**

6.1 The Buyer shall inspect the Goods immediately upon receipt and shall (unless such inspection cannot be carried out and the delivery note is marked "not examined") subject to Condition 6.2 below be deemed to have accepted the Goods as delivered.

6.2 The Company shall not be liable for defects or shortages discoverable on reasonable inspection unless the Buyer notifies the Company before the expiry of 7 days after receipt, of any alleged defect or lack of conformity with the Contract.

6.3 The Company shall make good shortages in excess of the permitted margin notified to it under Condition 6.2 above as soon as reasonably practicable but shall not be liable for any other loss whatsoever arising from such shortage.

6.4 The Company's liability for Goods lost or damaged in transit shall in all circumstances be limited to (at the Company's option) rectification or replacement or crediting the Buyer with the invoice value of the Goods in question.

7. **WARRANTY**

7.1 Subject to Condition 3 and Condition 8 the provisions of Condition 7.2 shall apply if within six months after delivery a material defect in the Goods shall be discovered and:-

7.1.1 the Buyer notifies the Company within fourteen days after discovery, giving particulars and either at its own expense and risk returns the Goods to the Company, or (at the Company's sole option) permits the Company to inspect the same; and

7.1.2 Such defect has arisen from faulty workmanship carried out by the Company existing but not discoverable upon inspection at time of receipt.

- 7.2 In the circumstances set out in Condition 7.1 the Company shall (and its liability shall be limited in all circumstances to) at the Company's option remedy the defect, deliver replacements, or credit or refund the invoice value to the Buyer and the Buyer shall accept such of the above remedies as the Company shall proffer as being fulfilment of the Company's obligations under the Contract.
- 7.3 Without prejudice to Condition 3 the Company's liability under this Condition applies only to defects appearing before the Buyer makes any modification or alteration to the Goods and while the Goods are being properly used or stored and in particular (but without limitation) the Company shall not be liable in the case of defects arising from normal deterioration or improper or faulty use, handling or processing by the Buyer or any third party.
- 7.4 If the Company replaces or credits to the Buyer the invoice value of any Goods claimed by the Buyer to be defective or if any defect resulted from any act or omission of the Buyer (including improper or negligent operation, maintenance and storage), the Buyer shall reimburse to the Company any amounts credited to the Buyer in respect of those Goods, and pay any costs and expenses incurred by the Company in replacing or retrieving those Goods.
- 7.5 Without prejudice to Condition 3 the above warranty does not extend to Free Issue Material from the Buyer or to parts, materials or components forming part of the Goods which are not of the Company's manufacture. In respect of such items, the Buyer shall be entitled only to the benefit of any manufacturer's warranty or guarantee, the benefit of which the Company is able to obtain.

8. ITEMS SUPPLIED BY BUYER

- 8.1 The Buyer shall be liable for all Free Issue Material, Buyer's Tooling, drawings, specifications and instructions issued to the Company with any order or pursuant to the Contract and shall indemnify and keep indemnified the Company against:-
- 8.1.1 All loss and liabilities directly or indirectly arising out of:-
- (a) Any defect in or unsuitability of such Free Issue Material or Buyer's Tooling; and
 - (b) Any error in or omission from such drawings, specifications and instructions; and
- 8.1.2 all costs, claims, demands and expenses whatsoever in respect of the infringement or potential infringement of any patent, copyright, registered design, design right or other third party right arising out of the Company's use of such drawings, specifications or instructions.

9. LIMITS OF LIABILITY

- 9.1 The Goods are supplied strictly on the terms as to which the Buyer has satisfied itself of their suitability for its purposes. The Buyer acknowledges that all specifications and details in catalogues, quotations and acknowledgements of order or similar documents or by word of mouth and all forecasts of performance, howsoever given, are approximate only and do not form part of the Contract and that in respect of such specifications details and forecasts the Company shall be under no liability nor shall the Buyer be entitled to any remedy under the provisions of the Misrepresentation Act 1967.
- 9.2 The Company's liability under Conditions 6 & 7 shall be accepted by the Buyer in lieu of any warranty or conditions, whether express or implied by law, as to the quality or fitness for any particular purpose of the Goods. Save as provided in these Conditions, the Company shall not be under any liability to the Buyer to the extent permitted by law (whether in contract, tort or otherwise including without limitation actions brought in nuisance and/or negligence) for any defects in the Goods, or for any damage, loss, death or injury resulting from such defects and the Buyer shall indemnify the Company against any claims in respect thereof. For the purposes of this paragraph the Company contracts on its own behalf and on behalf of and as trustee for its sub-contractors, servants and agents.
- 9.3 The Company shall not be liable, whether by way of indemnity or by reason of breach of contract, tort or breach of statutory duty or in any other manner for consequential or indirect loss of whatever nature suffered by the Buyer or for special damages, loss of use (whether complete or partial) of the Goods, or loss of profit or of any contract.
- 9.4 Nothing in these Conditions shall be construed as limiting or excluding the Company's liability for death or personal injury resulting from its negligence (as defined in Section 1 of the Unfair Contract Terms Act 1977).

- 9.5 The Company's total liability for the aggregate of claims of the Buyer arising out of or related to a single act or default of the company (whether due to the Company's negligence or otherwise) shall not exceed the Contract Price.

Indemnity

- 9.6 The Buyer shall indemnify and keep indemnified the Company against all actions, claims, costs, damages, demands and expenses or other loss arising out of a defect in the goods (including, without limitation, all liabilities incurred under the Consumer Protection Act 1987) to the extent occasioned or contributed to by any act or omission of the Buyer its servants agents or persons under its control.

10. JIGS, DIES AND TOOLS

- 10.1 Jigs, Dies and Tooling provided by the Company and required for the performance of the Contract together with all drawings and information relating to such Tooling shall (unless otherwise agreed in writing) remain at all times the property of the Company.
- 10.2 The Company shall retain Tooling in a good condition for 3 years after the date of the last supply but the Company shall not be obliged to retain Tooling for more than 3 years after such date unless otherwise agreed in writing.
- 10.3 This Tooling may be used for any other contract with a third party without the prior consent of the buyer notwithstanding that the cost of such tooling may be included in whole or part of the original contract price. The Buyer shall not copy or make use of Tooling or documents or information relating thereto without the Company's written prior consent.
- 10.4 Buyer's Tooling are operated at the Buyer's sole risk and the Company shall not be liable (whether in contract Tort or otherwise including actions brought in negligence and/or nuisance) arising out of the use of the Buyer's Tooling by the company.
- 10.5 The company shall have a general lien of the Buyer's Tooling in the respect of all sums owing by the buyer to the Company (whether or not such sums have become due and payable). Tooling maintenance and associated costs to be the responsibility of the Buyer.

11. RETENTION OF TITLE

- 11.1 Until the Company has received payment in full, in cash or cleared funds, of all sums owed to it on any account by the Buyer, whether arising out of this or any other contract, legal and beneficial title to the Goods shall remain in the Company, such Goods are referred to in these Conditions as "retained goods";
- 11.2 Retained goods:-
- 11.2.1 are held by the Buyer as fiduciary for the Company and the Buyer shall not pledge or in any way charge by way of security for any indebtedness, any retained goods;
- 11.2.2 shall be at the Buyer's risk, insured by the Buyer from the date of delivery at its own expense for their full replacement value against all usual risks; and kept safe in good condition and stored separately and clearly identifiable as the Company's property and with all identifying marks intact and legible; and
- 11.2.3 may, subject to Condition 10.4 below, be used or sold by the Buyer in the ordinary course of its business on the basis that the Buyer shall hold the proceeds of sale on trust for the Company absolutely, and account to the Company therefor and, pending such accounting, keep such proceeds of sale in a separate bank account and not mix the same with any other monies.
- 11.3 The Buyer shall store or otherwise denote consignments of the Goods in respect of which legal title rests with the Company in such a way that the same can be recognised as the property of the Company and where the same type of goods have previously been supplied by the Company and in which legal title has passed to the Buyer, the Buyer shall ensure that such Goods are lent, sold, hired or otherwise utilised in priority to the Goods supplied under this Contract.
- 11.4 The Buyer's powers of use and sale of retained goods shall terminate:-

- 11.4.1 forthwith on notice from the Company if the Buyer is in default of any of its obligations under this or any other contract with the Company or if the Company has reasonable doubts as to the ability or willingness of the Buyer to pay any sum to it on the due date; and
- 11.4.2 automatically upon the occurrence of any of the events specified in Condition 10.5 below ("the Events");
- 11.5 The Events are:-
- 11.5.1 the Buyer shall fail to pay any amounts due under this Agreement immediately as they fall due;
- 11.5.2 the Buyer, being a company, becomes unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986) or shall be liquidated or wound up or have a petition for winding-up presented against it or pass a resolution for winding up or if a petition for the appointment of an Administrator be presented against the Buyer or if the Buyer shall have any Receiver or Administrative Receiver appointed in respect of the whole or any part of its undertaking or assets or if the Buyer shall convene any meeting of its creditors or make a Deed of Assignment or arrangement or otherwise compound or compromise its creditors;
- 11.5.3 the Buyer, being an individual, becomes unable to pay its debts (within the meaning of section 268 of the Insolvency Act 1986) or is subject to an interim order or commits any act of bankruptcy or makes a voluntary arrangement with its creditors;
- 11.5.4 if any step is taken to levy distress or execution or if distress or execution is levied or threatened to be levied upon any chattels of or in possession of the Buyer.
- 11.6 The Company may, at any time on giving prior notice, enter the Buyer's premises for the purpose of inspecting retained goods and identifying them as the Company's property and the Buyer irrevocably authorises the Company to enter upon its premises for that purpose.
- 11.7 Upon suspension and revocation or determination of the Buyer's power of sale and use under Condition 10.4 the Buyer shall place all retained goods in its possession or under its control at the Company's disposal and shall be deemed irrevocably to authorise the Company to enter upon any of the Buyer's premises, with or without vehicles, for the purpose of removing such goods.
- 11.8 The repossession of retained goods by the Company in accordance with this Condition shall be without prejudice to all or any of the Company's other rights against the Buyer under the Contract.
12. **PAYMENT**
- 12.1 Subject to satisfactory trade, banker's and other requisite references, and where no other terms of payment have been specifically agreed in writing, the Company's terms are cash payment in full to be made twenty-one days following the month of invoice. The Company is entitled to invoice the Buyer for the Goods at any time after delivery (as defined in Condition 4).
- 12.2 Unless otherwise specifically agreed in writing payment for export orders shall be by irrevocable letter of credit confirmed by a London Clearing Bank and issued under the Incoterms then in force.
- 12.3 No discount or allowance will be made unless specifically stated by the Company in writing. Interest will be charged on all sums due under or by way of damages for breach of the Contract at the rate of 5% per annum above the base rate of Barclays Bank PLC from time to time in force and shall be calculated and accrued on a day to day basis from the date on which payment fell due until payment (whether made before or after judgement has been obtained by the Company against the Buyer).
- 12.4 Time for making payment shall be of the essence of the Contract. The Buyer shall not be entitled to withhold payment of any amount payable under the Contract by reason of any disputed claim of the Buyer in respect of defective goods, breach of Contract or otherwise whatsoever, nor to set off against any sum payable under the Contract any monies not then payable by the Company to the Buyer under the order of a court of competent jurisdiction or for which the Company disputes liability.
- 12.5 The Company may at any time, in its absolute discretion, appropriate any payment made by the Buyer in respect of goods to such outstanding debt as the Company thinks fit, notwithstanding any purported appropriation to the contrary by the Buyer.
- 12.6 The Company shall be entitled to cancel the Contract or to postpone any delivery until payment has been

received, in the event that the Company has reasonable doubts about the Buyer's ability or willingness to pay on the due date, or the Buyer fails to pay on the due date.

- 12.7 The Company reserves the right at any time at its discretion to demand security for payment before continuing with an order or delivering Goods or any instalment.
- 12.8 VAT will be charged at the rate ruling at the time of despatch of the goods or, if different, the basic tax point (as defined in regulations governing VAT from time to time in force).
- 12.9 If any invoice or part of an invoice rendered is subject to question by the Buyer then the payment by the Buyer of the invoice shall be withheld on those grounds and interest shall be payable at the rate set out in Condition 11.3 above on any amount which, although disputed or questioned, remains unpaid.
- 12.10 If required by the Company the Buyer shall provide an on demand bond or guarantee of an insurance company, a bank or other surety for the due performance of the Buyer's obligations under the Contract including without limitation the payment of all amounts due from the Buyer to the Company under this Contract and the Buyer shall provide such bond or guarantee at its own expense.

13. **PROPRIETARY INFORMATION**

The Buyer shall treat in strict confidence and shall not without the prior written consent of the Company disclose to any third party any confidential information, including (without limitation) drawings produced by the Company and information relating to the products, business, trading terms and technology of the Company, disclosed or otherwise acquired by the Buyer from any quotation or arising out of this or any other contract with the Company.

14. **CANCELLATION**

Without prejudice to any of the Company's other rights or remedies, the Company shall be entitled forthwith upon the happening of any of the Events to cancel the Contract or (in its absolute discretion) suspend further deliveries under this or any other contract with the Buyer without liability, and if goods have been delivered but not paid for, the price thereof shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary.

15. **FORCE MAJEURE**

- 15.1 The Company shall not be liable to the Buyer if unable to carry out any provision of the Contract for any reason beyond its control including without limitation Act of God, legislation, war, civil commotion, fire, flood, drought, failure of power supply, lock out, strike, stoppage or other action by employees or third parties in contemplation or furtherance of any dispute or owing to any inability to procure parts materials or goods required for the performance of the Contract.
- 15.2 Should a contingency referred to in Condition 14.1 above continue for more than three months either party may (subject to the Company repaying to the Buyer any advance payments made for undelivered Goods and the Buyer paying for Goods delivered) cancel the Contract without further liability to the other.

16. **NO WAIVER**

No waiver of any of the Company's rights under the Contract shall be effective unless in writing signed by a director or other authorised person on behalf of the Company. A waiver shall apply only to the specific circumstances in which it is given and shall be without prejudice to the enforcement of the Company's rights in relation to different circumstances or the recurrence of similar circumstances. A delay in exercising any right, power, privilege or remedy under the Contract shall not be construed as a waiver thereof.

17. **NOTICES**

Unless otherwise stated, any notice under these Conditions shall be properly given if in writing and sent by first class post, or facsimile to the address of the intended recipient as stated in the Contract or to such address as the Company and the Buyer from time to time notify to each other as their respective addresses for service and shall be deemed served in the case of postal notice, on the expiry of 48 hours from time of posting, and in the case of facsimile, on completion of transmission by the sender.

18. **CONSTRUCTION AND JURISDICTION**

- 18.1 English law shall govern construction and operation of the Contract and the Buyer agrees to submit to the exclusive jurisdiction of the English Courts.
- 18.2 Each of these Conditions hereof shall be construed as a separate condition. Should any provision hereof be found to be invalid or unenforceable or an unreasonable restriction of the Company's liability then such provision shall apply with such modification as may be necessary to make it valid and effective.