



**1. INTERPRETATION AND BASIS OF CONTRACT**

1.1. Definitions

- a) **Agreement** means these terms and conditions, together with the terms of any Purchase Order, supplemental terms and conditions or specification (as applicable) intended to more fully describe the sale of Goods and/or Services to the Buyer;
- b) **Background Intellectual Property** means any and all Intellectual Property owned, controlled, created, licensed or acquired by or on behalf of either party prior to the date of the Purchase Order;
- c) **Buyer** means Turbo Power Systems Limited, a company organized and existing under the laws of England and Wales, having its principal office at 1 Queens Park, Queensway North, Team Valley Trading Estate, Gateshead, NE11 0QD
- d) **Goods** means the items to be supplied to the Buyer by the Seller as detailed in the Purchase Order
- e) **Foreground Intellectual Property** means any Intellectual Property developed, created, conceived and/or reduced to practice by either party in performance of it's obligations under the Purchase Order;
- f) **Intellectual Property** means all the following whether arising under the Laws of England and Wales or of any other jurisdiction:
  - (i) patents, patent applications (including patents issued thereon), including reissues, divisions, continuations, continuations-in-part, extensions and re-examinations thereof, and all rights therein provided by international treaties or conventions;
  - (ii) copyrights in works of authorship of any type (including copyrights in Software), mask work rights and design rights, whether or not registered, and registrations and applications for registration thereof, and all rights therein provided by applicable international treaties or conventions, all moral and common law rights thereto, and all other intellectual property rights associated therewith;
  - (iii) trade secrets;
  - (iv) database, computer program and other digital media applications and registrations; and
  - (v) all other industrial and intellectual property rights arising from, or in respect to the Goods or Services supplied by the Seller
- g) **Purchase Order** means the standard Buyer document which includes or is attached to a statement of work describing the Goods and/or Services to be provided by the Seller and which provides a maximum value payable by the Buyer to the Seller;
- h) **Seller** means the party supplying the Goods or Services to the Buyer; and
- i) **Services** means the services to be supplied to the Buyer by the Seller as detailed in the Order.

1.2. This Agreement shall apply to the provision of all Goods and/or Services by the Seller to the Buyer under the Purchase Order to the exclusion of all other terms and conditions including any terms or conditions which the Seller may seek to apply under any purchase order, order confirmation or similar document.

1.3. The Purchase Order shall constitute an offer by the Buyer to purchase the Goods and/or Services from the Seller in accordance with this Agreement. The Purchase Order shall be deemed to be accepted by the earlier of:

- a) The Seller issuing written acceptance of the Purchase Order (including electronic communication);
  - b) Any act by the Seller consistent with fulfilling the Purchase Order; or
- If no counter offer or request for further information is received by Seller within 8 calendar days, in which case the PO confirms the binding intentions.

1.4. The language of the Purchase Order and all documents associated with it shall be English.

1.5. In the event of any conflict between the terms stated in the Purchase Order documentation and this Agreement the terms shall prevail in the following order of precedence:

- a) Any terms and conditions included in the Purchase Order;
- b) Supplemental or special terms and conditions appended to the Purchase Order;
- c) This Agreement; and
- d) Any specification or technical documentation appended to or referenced in the Purchase Order

**2. SUPPLY OF GOODS**

2.1. The Seller warrants that all Goods supplied under the Purchase Order shall:

- a) be free from any patent or latent defects in design, material and workmanship;
- b) conform to any specifications, drawings, or other description, furnished by the Buyer in the Purchase Order or any samples provided by the Seller;
- c) be new and of the best quality and designed and manufactured using state of the art technical and engineering procedures;
- d) ensure goods are ethically and responsibly sourced, including due diligence checks for Conflict minerals.
- e) be fit and suitable for the purposes intended by the Buyer;
- f) be supplied with all documentation the Buyer may reasonably require, including but not limited to Certificates of Analysis (C of A) and Certificates of Test (C of T);



- g) conform to any statements made on the container, labels or advertisements for such Goods;
- h) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods (Including adhering to REACH protocols) and
- i) be free from liens, claims, security interests, options, charges or any other encumbrance whatsoever;
- j) the Seller shall ensure that any of its sub-contractors also comply with the provisions under 2.1(a)-(j)

2.2. The Seller's warranty obligations under this clause shall exist for a period of thirty six (36) months after the date the Goods are incorporated into the Buyers product and delivered to the Buyer's customer, subject to 7.4 (Epidemic Defects)

2.3. The Seller shall ensure that at all times it has and maintains all licenses, permissions, authorisations, consents and permits that it needs to carry out the obligations under this Agreement in respect of the Goods.

2.4. Where the Goods involve critical sub-components incorporated from sub-suppliers, the Seller warrants it will not change its own suppliers in relation to the Goods without the prior written consent of the Buyer, not to be unreasonably withheld or delayed.

### 3. TITLE & DELIVERY

3.1. The Seller shall:

- a) ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and
- b) ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any) the type and quantity of Goods (including the code number of Goods where applicable), special storage instructions (if any) and, if the Goods are delivered by instalments, the outstanding balance of Goods remaining to be delivered.

3.2. Delivery of the Goods shall be made DDP to such location as the Buyer shall direct and in normal business hours (noting Buyer's HQ<sup>1</sup> is closed from 12 noon on Fridays) . For the avoidance of doubt carriage, customs duties, taxes and all other shipping expenses shall be paid for by the Seller.

3.3. Time of delivery shall be of the essence of the Agreement.

3.4. If the Seller delivers less or more than the agreed quantity of Goods stated in the Purchase Order the Buyer may, at its sole discretion, reject the Goods or the excess Goods and any rejected Goods shall be returnable at the Seller's risk and expense.

3.5. Title and risk to the Goods shall pass to the Buyer upon delivery.

3.6. If the Seller fails to deliver the Goods and/or perform the Services by the delivery date specified in the Purchase Order, the Buyer may, at its option:

- a) Refuse to accept any subsequent performance of the Services or delivery of the Goods which the Seller attempts to make;
- b) Require a refund from the Seller of any sums paid in advance of the Services that remain unperformed and/or Goods that remain undelivered;
- c) Recover from the Seller the cost of acquiring alternative Goods or Services from another third party;
- d) claim damages for any additional costs, losses and expenses which are incurred by the Buyer in relation to the Seller's inability to meet any delivery date; and
- e) terminate the Agreement with immediate effect upon notice to the Seller.

3.7. Additionally, if the Goods and/or Services are not delivered or performed by the delivery date specified in the Purchase Order, the Buyer may, at its option:

- a) claim or deduct 5% of the total price of the Purchase Order for each week of delay by way of liquidated damages, up to a maximum of 20% of the total price of the Purchase Order; and
- b) should the maximum amount of liquidated damages be paid and the Goods and/or Services remain undelivered, the Buyer may terminate the Agreement under the terms of clause 13.

### 4. INSPECTION & ACCEPTANCE

---

<sup>1</sup> Buyer Head Quarters offices: 1 Queenspark North, Queensway, Team Valley Trading Estate, Gateshead NE11 0QD



- 4.1. The Seller shall provide the Buyer with such progress reports, evidence or other information concerning the Goods and Services as may be requested by the Buyer from time to time.
- 4.2. The Buyer may inspect and test the Goods at any time before delivery, either at the Buyer or Seller's premises. The Seller shall remain fully responsible for the Goods despite any such inspection or testing and such inspection or testing shall reduce or diminish the Seller's obligations under the Agreement.
- 4.3. If following such inspection or testing the Buyer considers the Goods do not comply or are reasonably unlikely to comply with the Seller's warranties under clause 2.1 the Buyer shall inform the Seller and the Seller shall immediately take such remedial action as necessary to ensure compliance at its own risk and expense.
- 4.4. The Buyer may conduct further inspections in tests after the Seller has carried out its remedial actions.
- 4.5. Without prejudice to any other of its rights, the Buyer may by notice in writing to the Seller, reject any or all of the Goods or any or all of the performance of the Services if the Seller fails to comply with any of its obligations under the Agreement
- 4.6. The Buyer shall not be deemed to have accepted any Goods and/or Services until the Buyer has had a reasonable time to inspect or review them or carry out any necessary acceptance tests following delivery or performance (as the case may be).
- 4.7. Rejection of Goods or Services at any time by the Buyer shall vitiate delivery for all purposes and liquidated damages for late delivery may be charged by the Buyer, at its sole discretion, from the delivery date for the Goods or Services, until such rejected part of the Goods or Services is re-delivered to the Buyer in compliance with this Agreement

**5. SUPPLY OF SERVICES**

- 5.1. The Seller warrants that all Services provided under the Purchase Order:
  - a) shall be performed with the best skill, care and diligence and in accordance with best practice within its industry ("Best Industry Practice");
  - b) shall be performed within any deadlines stipulated in the Purchase Order, or if no deadlines are specified within a reasonable period of time as determined by the Buyer at its sole discretion;
  - c) shall be performed by Sellers personnel who are suitably skilled, qualified and experienced to perform the tasks assigned to them and in sufficient number to ensure that the Sellers obligations are fulfilled in accordance with the Agreement;
  - d) will be fit for any purpose that the Buyer may require, whether expressly or impliedly communicated to the Seller;
  - e) will not in any way infringe or violate any Intellectual Property Rights, trade secrets or rights in proprietary information, nor any contractual, employment or property rights, duties of non-disclosure or other rights of any third parties;
  - f) shall be performed with the best quality materials, standards and techniques and ensure that the any deliverables, material and supplies used in the Services are transferred to the Buyer free from defects in workmanship, installation and design;
  - g) conform to any specifications or other standards specified in the Purchase Order; and
  - h) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services.
  - i) upon Buyer's request Seller shall make available to Buyer all quality records and any other data which relates to the specified requirements.
- 5.2. The Seller shall provide all reasonable equipment, materials, tools, vehicles and other items as are required to provide the Services.
- 5.3. The Seller shall obtain and maintain at all times the required licenses, permissions, approvals and consents which may be required for the performance of the Services.
- 5.4. The Seller shall co-operate with the Buyer in all matters regarding the performance of the Services and shall comply with all reasonable instructions of the Buyer.



**6. PRICE & PAYMENT**

- 6.1. The total price payable under the Agreement shall be as stated in the Purchase Order (excluding VAT) and unless otherwise expressly agreed in writing between the Buyer and the Seller, the price quoted by the Seller shall be fixed and firm. Such price may be revised during the term of the Agreement under the terms of clause 7.
- 6.2. Except where otherwise provided elsewhere in the Agreement, the amount payable to the Seller for the Goods and the performance of the Services shall be inclusive of all costs of staff, facilities, equipment, materials and all other expenses whatsoever incurred by the Seller in discharging its obligations under the Agreement.
- 6.3. The Buyer may deduct from the price all sums owing to it from the Seller on any account. If the Seller fails to deliver the Goods or perform the Services to the satisfaction of the Buyer, then the Buyer shall be under no obligation to make payment to the Seller in respect of the same, but may, without prejudice to any other remedy, elect to accept the same subject to such fair and reasonable price reduction as the Buyer shall determine.
- 6.4. The Seller shall be entitled to invoice the Buyer for the price payable when all the Goods and Services performed have been delivered and accepted by the Buyer in accordance with the terms of the Agreement, subject to the parties expressly agreeing otherwise.
- 6.5. The Buyer shall pay for the Goods and Services within 60 days of the end of the month in which the Buyer receives a valid invoice from the Seller. An invoice shall not be valid unless it describes the Goods and/or Services the subject of the invoice correctly and in reasonable detail, and contains the Seller purchase order or contract number applicable to the relevant Purchase Order.
- 6.6. Under no circumstances is the Seller permitted to impose any credit limit or change of payment terms for the Goods and/or Services provided under the Purchase Order.

**7. QUALITY AND COMPETITIVENESS**

- 7.1. The Seller shall commit to continuous improvements and cost reduction programs to assist the Buyer in ensuring receiving continued competitive pricing compared to products like the Goods and Services offered by third parties. The Seller agrees to consult with the Buyer regarding the competitiveness of the Goods and Services provided under the Agreement. The two parties agree to work in good faith to address the product cost, quality and innovations required to maintain competitiveness.
- 7.2. The parties agree that the current price for the non-ferrous metals (particularly copper and aluminium and magnetics) and ferrous (steel) component of the Goods will be adjusted annually by the LME (London Metal Exchange cost indices for those materials) and the labour portion of the Goods and Services shall be adjusted annually using the BEAMA (British Electrotechnical and Allied Manufacturers' Association) indices.
- 7.3. In order to assist in the Buyer determining price competitiveness, the Buyer is permitted from the Commencement Date the right to obtain quotations from other suppliers for the Goods or Services in order to compare the Purchase Order price with the actual market price. If this market benchmarking confirms that the Purchase Order price are above the market price, the Seller shall, within three (3) months after the Buyer's request, present an action plan to reduce the Purchase Order prices to the level of the market. If the Seller fails to do so, the Buyer will be allowed to terminate the Agreement on notice.
- 7.4. The parties agree the quality of Goods and/or Services provided and timeliness of the Seller achieving any delivery dates will be monitored as a critical aspect of this Agreement. The following aspects shall be tracked by the Buyer and communicated to the Seller on a monthly basis, and the Seller commits to achieving a 3-month rolling average of the following:
  - a) Delivery - On Time In Full score of 95%;
  - b) DPPT Score (Defective Parts per Thousand) of 0.3%; and
  - c) Any further criteria as set out elsewhere in the Purchase Order.



- 7.5. The Parties agree to schedule business review meetings no less frequently than once per three calendar months. The Buyer will provide an agenda to the Seller prior to the meeting, which may cover but not limited to:
- a) Review of any delivery schedules required by the Buyer and early warning of any potential delays;
  - b) Review of performance and targets as defined in clause 7.4;
  - c) Review of any continuous improvement and cost reduction ideas as per clause 7.1; and
  - d) Review of any highlighted points arising from the Buyer's customer.
- 7.6. Should the Seller's performance diminish so that the targets set out in clause 7.4 are not achieved, the Buyer shall request that the Seller submits a recovery plan in order to bring it's performance in line with its obligations under the Agreement within a reasonable time of the request, but in no event later than 30 calendar days. If, in the Buyers reasonable opinion, the recovery plan submitted by the Seller will not rectify the non-compliance with clause 7.4 it may reject the recovery plan at its sole discretion
- 7.7. In the event that
- a) The Seller fails to agree a recovery plan with the Buyer within 30 calendar days of its rejection; or
  - b) The Seller's performance does not improve in line with its commitments of clause 7.4 within 3 calendar months
- the Buyer may, at its option, terminate the agreement in line with clause 13.1.

## 8. WARRANTY

- 8.1. If the Seller has delivered Goods that do not comply with clause 2 or performed any Services that do not comply with clause 5, or such a defect becomes apparent within the warranty periods stipulated then upon notice by the Buyer the Seller shall promptly repair or replace the defective portion of the Goods or reperform the defective Services at it's own expense within the timelines specified by the Buyer, but in any event no later than 14 days of receiving such notice.
- 8.2. Goods repaired or replaced shall be re-warranted for a further 24 months from repair with the same obligations as those originally delivered under this Agreement.
- 8.3. In order to contribute to the internal costs incurred by the Buyer caused by the supply of defective Goods or Services, solely due to the non-performance of the Seller, the parties agree that:
- a) the Buyer may charge to the Seller and the Seller shall pay a lump sum of two hundred fifty pounds sterling (£250) for each defect attributable to the Seller in Goods that have been delivered to the Buyer;
  - b) Such lump sum shall be by way of liquidated damages for the defective Good or Service and shall constitute a genuine pre-estimate of the loss suffered by the Buyer as a consequence of the defective Good or Service; and
  - c) This charge shall not be considered the Buyer's sole remedy for the defective performance of the Seller and is without prejudice to any other remedies available to the Buyer.
- 8.4. Should the defective portion of Goods or Services not be rectified within the time stated in clause 8.1 then, without limiting or affecting other rights or remedies available to it, the Buyer shall have one or more of the following rights whether or not it has accepted the Goods or Services and in addition to any rights and remedies implied by statute and common law;
- a) remedy the defect itself or through a third party with the Seller reimbursing the Buyer for all costs and expenses arising from doing so;
  - b) retain the non-conforming Goods and/or Services with an equitable adjustment reducing the Purchase Order price to reflect the diminished value of the defective Goods and/or Services being made;
  - c) reject or revoke acceptance of the Goods and/or Services, and procure replacement Goods and/or Services from a third party with the Seller reimbursing the Buyer all additional costs and expenses arising from doing so;
  - d) reject or revoke the acceptance of the Goods in whole or in part whether or not title has passed and to return them to the Seller at the Seller's own risk and expense; and
  - e) reject or revoke acceptance of the Goods and/or Services and the Seller shall provide a full refund for the price of the defective Goods or Services;



- 8.5. The Seller shall be responsible for the correction of Endemic Defects (a defect in any part of the goods which by its nature is likely to occur in all the goods or in the whole of such part of the goods, which are of a similar type) and Epidemic Defects (cumulative defects of any kind in identical goods, which occurs during any 12 month period of the warranty period, at a rate of 5% or higher on the total amount of goods incorporated into the Buyer's equipment) for a period of 48 months from date of acceptance from the Buyer's customer
- 8.6. The Supplier shall at its risk and cost take such remedial steps as may be necessary to rectify all of the Goods whether or not the Endemic or Epidemic Defect shall have manifested itself in all such Goods. In the event of any Endemic Defect or Epidemic Defect arising, the provisions of clause 8.4 shall apply.
- 8.7. In the event of any Endemic Defect or Epidemic Defect arising, upon rectification the provisions of clause 8.4 shall re-apply to all repaired or replacement Goods.

## 9. SPARES

- 9.1. The Seller commits to offer the Buyer spare parts in relation to the Goods at the same price as the Purchase Order (as amended by the terms of this Agreement) until 2 years from the expiry of the warranty period of the last set of Goods.
- 9.2. If the Seller intends to discontinue the manufacture of the Goods, or becomes aware that the manufacturer of a certain component of the Goods is to discontinue manufacture, whether by reason of obsolescence or any other reason, it shall inform the Buyer in writing at the latest twelve (12) months before ceasing this manufacture and sale and give the Buyer the opportunity to make a final order of such parts (Last Time Buy) at the price stated in the Purchase Order (as amended by the terms of this Agreement).

## 10. INTELLECTUAL PROPERTY

- 10.1. Each party shall retain ownership of its own Background Intellectual Property and except as otherwise provided herein, neither Party shall acquire any right, title or interest in the Background Intellectual Property of the other party.
- 10.2. All Foreground Intellectual Property Rights produced from or arising as a result of the performance of the Agreement shall, so far as not already vested, become the absolute property of the Buyer, and the Seller shall do all that is reasonably necessary to ensure that such rights vest in the Buyer by the execution of appropriate instruments or the making of agreements with third parties
- 10.3. The Seller grants to the Buyer a non-exclusive, worldwide, perpetual, transferable, royalty-free license (including the right to grant sub-licenses) in respect of all Intellectual Property Rights in the Goods or the Services which do not vest in the Buyer under clause 10.2 (inclusive) above all purposes reasonably contemplated by the Buyer.
- 10.4. The Seller irrevocably undertakes that neither it nor any other person will assert against the Buyer or any third party any moral rights in or relating to the Intellectual Property Rights and warrants that all such moral rights are irrevocably waived and extinguished. For the purpose of this clause "moral rights" shall have the meaning ascribed thereto by the Copyright, Designs and Patents Act 1988 (or any statutory amendment or re-enactment thereof) and all rights similar or corresponding thereto subsisting in any other country of the world from time to time
- 10.5. If use of any of the Intellectual Property Rights is judged as constituting an infringement, and if the Buyer so requests, the Seller shall modify or replace at its own expense the infringing item, provided that such amendment or replacement shall not affect the destination, value, usage or performance of the Goods and/or Services.
- 10.6. In the event the Seller discovers or devises an improvement to the Goods (where the intellectual property rights in the Goods is vested in the Buyer) then the Intellectual Property Rights to the improvement shall vest in the Buyer and the Seller shall at the Buyer's request execute all documents, make all applications, give all assistance and do all acts and things as may, be necessary or desirable to vest the Intellectual Property Rights in, and to register them in, the name of the Buyer.



**11. VARIATIONS**

11.1. The Buyer may, by written notice, make changes within the general scope of the Purchase Order in any aspect, including but not limited to:

- a) drawings, designs or specifications;
- b) method of shipment or packaging;
- c) place of inspection, delivery or acceptance; and
- d) quantity.

11.2. The Seller shall proceed immediately to perform the Services or manufacture or amend the Goods as changed. If any such change causes a decrease in the cost of, or the time required for the performance of any part of the Purchase Order, Buyer and Seller will agree upon an equitable adjustment, to the purchase price, or to the delivery schedule or both.

11.3. The Buyer shall make the adjustment to the delivery schedule as defined in clause 11.2 above only to the extent that the same is agreed between the Buyer and it's end-customer (if applicable).

11.4. The Seller shall not make any changes to the Goods in relation to any drawings, inspection and testing arrangements, change in the manufacturing process, changes to tooling, inclusion of additional tooling or added cavities to tooling currently approved for mass production, change the place of manufacture, change of its own sub-suppliers or change of any materials used in the Goods without the Buyer's consent, not to be unreasonably withheld or delayed.

**12. SUSPENSION**

12.1. The Buyer shall have the right at any time by written notice to the Seller to suspend the performance of the whole or any part of the Agreement for any reason whatsoever. In the event of a suspension requested by the Buyer, the Seller's entitlement shall be confined to a equitable time extension as agreed by the parties, corresponding to the period of suspension.

12.2. Should the suspension arise from the Buyer's own contract with it's end-customer, the Buyer shall only be entitled to grant an extension of the delivery schedule to the extent that the same is agreed between the Buyer and it's end-customer.

**13. TERMINATION FOR BREACH**

13.1. Without prejudice to any other right of termination, the Buyer may immediately terminate the Contract without liability if:

- a) the Seller commits any material breach of the Contract including, without limitation, any failure to comply with any relevant law or legislation relating to the Goods and/or Services;
- b) the Seller ceases or proposes to cease to carry on its business;
- c) there is a change of control of the Seller, with control as defined in section 1124 of the Corporation Tax Act 2010;
- d) the Seller shall at any time become insolvent, or shall have a receiving order or administration order made against him or shall make any composition or arrangement with or for the benefit of his creditors or pass a resolution or the Court shall make an order that the Seller shall be wound up (not being a member's winding up for the purpose of reconstruction or amalgamation) or if a receiver, administrative receiver or administrator shall be appointed over the whole or any part of its assets, or is subject to any similar event of insolvency in any other jurisdiction, or if the Buyer reasonably suspects that the Seller is likely to be subject to any of the events described;
- e) the Seller's financial position deteriorates to such an extent that in the reasonable opinion of the Buyer the capability of the Seller adequately to fulfil its obligations under the Agreement is placed in jeopardy
- f) the maximum amount of liquidated damages have been charged to the Seller by the Buyer;
- g) the Seller cannot demonstrate it's prices are competitive as per 7.1;
- h) is unable to rectify its breach of clause 7.4 within 3 calendar months of agreeing a recovery plan with the Buyer; or
- i) a corresponding contract exists between the Buyer and the end-user of the Goods and/or Services, and that corresponding contract is terminated.

13.2. Upon termination of the Agreement under this clause, the Seller shall:

- a) cease all performance of the Agreement or any part thereof as instructed by the Buyer and the Buyer shall be entitled to take the benefit of any work already carried out by the Seller;
- b) if requested deliver to Buyer within the time specified by the Buyer any part of Goods and/or Services yet undelivered (finished or unfinished), including without limitation special tools and test equipment, source



- code of any software, tooling, parts, assemblies, raw materials, and any other materials, completed or partially completed plans, drawings, technical data, and any other deliverable under this Agreement;
- c) indemnify the Buyer for all damages, losses, costs and expenses suffered or incurred by BT as a consequence of the default including the costs of procuring a third party to complete the Goods or Services, completing the Goods or Services itself, or obtaining equivalent Goods or Services from an alternative supplier.

13.3. The Seller will remain liable to the Buyer for the fulfilment of all remaining obligations under the Agreement which are not terminated by the Buyer.

**14. TERMINATION FOR CONVENIENCE**

14.1. The Buyer shall in addition to its rights under any other of the provisions of the Agreement have the right to terminate the Agreement at any time at it's convenience by giving to the Seller thirty (30) calendar days' written notice. Upon the expiry of the notice the Agreement shall be terminated.

14.2. Upon receipt of a notice of termination for the Buyer's convenience, the Seller shall:

- a) immediately discontinue work on the date and to the extent specified in the notice;
- b) cancel and place no further orders for materials other than as may be necessarily required for completion of any portion of the Goods or Services that is not terminated;
- c) promptly make every reasonable effort to either obtain cancellation terms of all orders to sub-suppliers or assign those orders to the Buyer; and
- d) assist the Buyer upon request in the maintenance, protection, and disposition of property acquired by the Buyer under this Agreement; and
- e) take reasonable measures to mitigate the Buyer's liability under this provision, with the parties agreeing this as a condition precedent for any further payments to the Seller in relation to termination for convenience.

14.3. The Buyer shall pay the Seller as a result of termination for convenience:

- a) the proportion of the Purchase Order price applicable to the Goods and/or Services delivered and accepted in accordance with the Agreement up to the date of termination, if not already paid for; and
- b) the reasonable and substantiated costs incurred by the Seller resulting from such termination for convenience, excluding and Goods that can reasonably be reallocated to other product lines or customers of the Seller, with a maximum value determined by the following notice period of termination:

Months Prior to Delivery	Maximum Termination Liability (% value of undelivered Goods/Services)
4+	0%
3	20%
2	40%
1	60%
0	80%

14.4. The Seller shall submit an invoice within thirty (30) Days of date of termination for convenience, setting out details of the work carried out and all necessary documentation to support the requested payment. All payments shall be subject to prior audit and approval by the Buyer, with Seller being able to demonstrate its reasonable efforts to mitigate the amounts payable by the Buyer under clause 14.3(b) as a condition precedent of such payments

14.5. Under no circumstances shall the Seller be entitled to anticipatory, unearned profits, consequential damages, unabsorbed or under absorbed overhead following a termination or partial termination under this clause.

**15. INDEMNITIES**

15.1. The Seller shall indemnify the Buyer against all costs, damages, expenses, penalties and losses incurred, as a result of or in connection with any breach by the Seller of the terms of the Agreement, including any claims brought against the Buyer alleging that any Goods and/or Services provided by the Seller in accordance with the specification infringes a patent, copyright, trade secret or other similar intellectual property right of a third party

**16. LIMITATION OF LIABILITY**





- 16.1. Nothing in this Agreement shall limit either party's liability for death or personal injury caused by its negligence, for fraud or fraudulent misrepresentation, or to the extent such limitation or exclusion is not permitted by law.
- 16.2. Subject to clause 16.1, the Buyer shall not be liable for any indirect loss, special loss or consequential loss or damage or any loss of profits, loss of contracts, loss of revenue, loss of business opportunities, or damage to goodwill suffered by the Seller under the Agreement.
- 16.3. Subject to clause 16.1, the total aggregate liability of the Buyer arising from the Agreement shall be limited to an amount equal to 50% of the total price of the Purchase Order.

**17. FORCE MAJEURE**

- 17.1. Neither party shall be liable to the other party if unable to carry out any provision of the Agreement for any reason beyond its control that could not have been foreseen before the Commencement Date including (but 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 of furtherance of any dispute or owing to any inability to procure parts or materials required for the performance of the Order ("Force Majeure Event").
- 17.2. For the avoidance of doubt, lack of financial resources of the Seller or its subcontractors shall not be considered as Force Majeure Events.
- 17.3. The affected party shall notify the other party as soon as reasonably practicable after a Force Majeure Event arises. During the continuance of the Force Majeure Event the affected party may, in its absolute discretion, withhold, reduce or suspend performance of its contractual obligations, without liability to the other party for any loss or damage whatsoever suffered directly or indirectly by reason of any such withholding reduction or suspension.
- 17.4. Should the Force Majeure Event continue for more than three months the affected party may (subject to the Seller repaying to the Buyer any advance payments made for undelivered Goods and the Buyer paying for Goods delivered) terminate the Agreement without further liability to the other party.

**18. INSURANCES**

- 18.1. The Seller shall hold and maintain insurance policies for the duration of the Agreement and six years thereafter covering its public, employers and professional liability under the obligations set out in the Agreement. These policies shall be taken out for an amount or amounts appropriate to the subject and value of the Purchase Order with reputable insurers authorised to carry on insurance business in the European Union.
- 18.2. The Seller shall promptly supply, upon request from the Buyer, certificates of insurance indicating the amount and extent of the insurance cover as well as their term of validity.
- 18.3. Should the Seller not maintain insurance policies acceptable to the Buyer, the Buyer reserves the right to procure insurance policies on the Seller's behalf at the Seller's cost.

**19. PERFORMANCE SECURITY**

- 19.1. Where requested by the Buyer, the Seller shall provide, at its cost, performance security by way of parent company guarantee, performance bond, bank guarantee or any other form required by the Buyer for the duration of its obligations under the Agreement.

**20. CONFIDENTIALITY**

- 20.1. A party (Receiving Party) 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 Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Order, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.



20.2. The restrictions set out in clause 20.1 above do not apply to any use or disclosure authorised by the Disclosing Party or required by law; or any information which is already in, or comes into, the public domain otherwise than through the Receiving Party's unauthorised disclosure.

20.3. The Seller shall not publish any reports, articles, press releases or other documents or information relating to the subject matter of this Purchase Order without the prior written consent of the Buyer, which consent shall not be unreasonably withheld or delayed. The restriction under this clause shall apply during the performance of the Purchase Order and for a period of 5 years after its termination or expiry.

**21. ASSIGNMENT**

21.1. The Seller shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Agreement or any part of it without the prior written consent of the Buyer. The Seller shall be wholly responsible for the actions, omissions or defaults of its employees, sub-contractors, consultants, its agents and suppliers and their respective employees.

**22. RELATIONSHIP OF THE PARTIES**

22.1. The Buyer and the Seller are independent contractors and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. Neither party shall make or hold itself out as having authority to make any commitments on behalf of the other party.

**23. THIRD PARTY RIGHTS & AUDITS**

23.1. A person who is not a party to the Purchase Order shall have no rights under the Purchase Order pursuant to the Contracts (Rights of Third Parties) Act 1999.

23.2. The Seller permits the Buyer (or nominated third party) to conduct audits to verify compliance with the terms of this Agreement at any time within usual business hours, providing the Buyer gives the Seller 30 days notice of its intention to do so.

**24. DATA PROTECTION**

24.1. Insofar as the Buyer shares any personal data with the Seller, the Seller shall process such personal data in compliance with all applicable laws, including National UK (GDPR) law The Data Protection Act 2018 and where applicable the General Data Protection Regulation (Regulation (EU) 2016/679), enactments, regulations, orders, and standards as may be amended from time to time.

24.2. The Seller shall thereby ensure that all reasonable precautions are taken to ensure the security of and prevention of any corruption or loss, damage or destruction of the personal data. However, in the event the Buyer's personal data has been accessed or obtained by an unauthorised person, the Seller will immediately notify the Buyer of any such unauthorised access and will cooperate with the Buyer in taking any measures deemed necessary to mitigate against any such loss or unauthorised access.

24.3. Where applicable, the Seller shall take all reasonable steps to ensure that all its agents, partners and sub-contractors comply with this clause whenever they are processing personal data as part of this Purchase Order.

**25. COMPLIANCE WITH LAW**

25.1. Each party shall comply with all applicable laws, regulations and ordinances. Each party shall maintain in effect all licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under the Purchase Order.

25.2. The Seller shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for payment of any duties thereon.

**26. NOTICES**

26.1. Any notice or other communication given to a party under or in connection with the Purchase Order shall be in writing, addressed to that party at its principal place of business 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 personally, sent by pre-paid first class post, recorded delivery, commercial courier or e-mail.

26.2. A notice of other communication shall be deemed to have been received: if delivered personally; when left at the address referred to in the Purchase Order; if sent by pre-paid first class post or recorded delivery, at 9:00 am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one working day after transmission.



**27. WAIVER**

27.1. The failure by either party to enforce at any time or for any period any one or more of the terms herein shall not constitute a waiver of them or of the right at any time subsequently to enforce all conditions of Agreement.

**28. SEVERABILITY**

28.1. If any term or provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been agreed with the invalid, illegal or unenforceable provision eliminated.

**29. DISPUTE RESOLUTION**

29.1. If a dispute arises out of or in connection with this Purchase Order or the performance, validity or enforceability of it (Dispute), then the parties may elect to (but shall not be obliged to) follow the procedure set out in this clause:

- a) either party shall give to the other written notice of the Dispute setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Head of Purchasing of the Buyer and the equivalent role nominated by the Buyer shall attempt in good faith to resolve the Dispute;
- b) if the Head of Purchasing of the Buyer and relevant person nominated by the Customer under clause 29.1(a) are for any reason unable to resolve the Dispute within 14 days of service of the Dispute Notice, the Dispute shall be referred to CEO of the Buyer and the Senior Manager or equivalent role nominated by the Seller who shall attempt in good faith to resolve it; and
- c) if the CEO of the Buyer and the relevant person nominated by the Seller under clause 29.1(b) are for any reason unable to resolve the Dispute within 14 days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR.

29.2. The commencement of mediation shall not prevent the parties commencing court proceedings in relation to the Dispute.

**30. ENTIRE AGREEMENT**

30.1. This Agreement and any documents incorporating them or incorporated by them in the Purchase Order constitute the entire agreement and understanding between the parties and the Seller acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Buyer which is not set out in the Purchase Order. As per clause 2.1, any other documentation or terms and conditions the Seller seeks to apply to the Purchase Order are expressly excluded.

**31. GOVERNING LAW**

This Agreement, the Purchase Order, 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

**32. GOODS CHANGES**

32.1 The Supplier agree to confirm to Turbo Power Systems Quality Manual (OP10-6) (A copy of which is available on the company website or upon request.