

1. DEFINITIONS

- 1.1. **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 Order;
- 1.2. **Buyer** means the organisation or person who buys Goods from the Seller;
- 1.3. **Goods** means the items to be supplied to the Buyer by the Seller as detailed in the Order
- 1.4. **Foreground Intellectual Property** means any Intellectual Property developed, created, conceived and/or reduced to practice by either party in performance of its obligations under the Order;
- 1.5. **Intellectual Property** means all the following whether arising under the Laws of England and Wales or of any other jurisdiction:
 - a) 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;
 - b) 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;
 - c) trade secrets;
 - d) database, computer program and other digital media applications and registrations; and
 - e) all other industrial and intellectual property rights arising from, or in respect to the Goods or Services supplied by the Seller
- 1.6. **Order** means these Terms and Conditions, together with the terms of any purchase order, quotation or specification (as applicable) intended to more fully describe the sale of Goods and/or Services to the Buyer;
- 1.7. **Seller** means Turbo Power Systems Limited, a company organised 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
- 1.8. **Services** means the services to be supplied to the Buyer by the Seller as detailed in the Order.

2. BASIS OF SALE

- 2.1. These Terms and Conditions shall apply to all Orders for the provision of Goods and/or Services by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may seek to apply under any purchase order, order confirmation or similar document.
- 2.2. A quotation for the Goods or Services given by the Seller shall constitute an offer open for acceptance and shall only be valid for a period of 30 calendar days from its date of issue unless otherwise specified or extended in writing by the Seller.
- 2.3. No acceptance of quotation or order submitted by the Buyer shall be deemed to be accepted by the Seller unless confirmed in writing by the Seller's authorised representative.
- 2.4. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of the Order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Order in accordance with its terms.
- 2.5. The language of the Order and all documents associated with it shall be English.
- 2.6. In the event of any conflict between the terms stated in the Order documentation and these Terms and Conditions the term stated in the Order shall prevail.

3. PRICE AND PAYMENT

- 3.1. Where stated in the Order, the price of the Goods and/or Services shall be fixed upon acceptance of the Seller's quotation and shall be exclusive of the current rate of value added tax and net of all withholding taxes (to be paid by the Buyer).
- 3.2. All first-time Buyers are subject to a proforma prepayment policy before goods will be shipped. Credit approval is at the discretion of the Seller as per clause 3.8 below.
- 3.3. Notwithstanding the foregoing, the Seller reserves the right to vary its prices should the Seller experience exchange rate fluctuations of +/- 5% that materially affect the price of the Goods and Services upon giving the Buyer 90 days' notice of its intention to do so.
- 3.4. The Seller shall be entitled to submit an invoice for the Goods upon delivery as per clause 4.4 or for Services immediately after completion thereof.
- 3.5. Payment must be made by the Buyer in the currency specified in the quotation within 30 calendar days of the date of the Seller's invoice. Time for payment shall be of the essence of the Order.
- 3.6. The Seller shall be entitled to withhold supply of any further Goods or Services yet to be delivered in the event of the Buyer's non-payment of invoices.
- 3.7. Without limiting any other right or remedy of the Seller, if the Buyer fails to make any payment due to the Seller under the Order by the due date for payment, the Seller shall have the right to charge interest on the overdue amount at the rate of 8% per annum above the then current base rate of the Bank of England, accruing on a daily basis from the due date of such payment until the date of actual payment of the overdue amount, whether before or after judgement, and compounding quarterly as per the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.8. The Buyer shall be subject to a credit check, approval and or review and will provide such credit information or assurance as is requested at any time. The Seller at its sole discretion may discontinue credit at any time.

4. DELIVERY AND RISK

- 4.1. The Seller shall use all reasonable endeavours to deliver the Goods and perform the Services in accordance with any specified delivery dates.
- 4.2. The parties acknowledge that any delivery dates specified by the Buyer in the Order are fixed and shall only be amended upon the agreement of both parties.
- 4.3. The parties expressly agree that time of delivery is not of the essence of the Order.
- 4.4. All Goods shall be delivered FCA Seller's facility. Risk of loss or damage to the Goods shall pass to the Buyer upon delivery and the Buyer shall be responsible for insurance of the Goods.

- 4.5. The title in the Goods shall remain vested in the Seller until full payment for the Goods has been received from the Buyer.

5. SELLER'S WARRANTIES

- 5.1. The Seller warrants that the Goods will be of new and of high quality, free from defects caused by faulty materials or workmanship, shall conform to specifications accurately and fully provided by the Buyer for the period stipulated in the quote provided as stated within the 'Particulars box'. If the particulars box is silent on the period, the default period of twelve (12) months after the date that Goods are delivered to the Buyer shall apply.
- 5.2. The Seller shall be under no liability in respect of any defect arising from any drawing, design or specification supplied by the Buyer, fair wear and tear, any wilful damage, negligence, subjection to abnormal conditions, failure to follow the Seller's instructions (whether verbal or in writing), misuse or alteration of the Goods without the Seller's approval, or any other act or omission on the part of the Buyer, its employees or agents or any third party.
- 5.3. The Seller shall perform any Services with all reasonable skill and care to be expected of a competent professional suitably experienced in performing similar Services and in accordance with good industry practice.
- 5.4. Subject to as expressly provided in this clause, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law including any implied warranty as to merchantability or adequacy or fitness for any particular purpose.
- 5.5. Any claim by the Buyer of a defect in the quality or condition of the Goods or their failure to correspond with any specification shall be notified to the Seller within 30 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 14 days after discovery of the defect or failure.
- 5.6. Any defective Goods shall be returned to the Seller to carry out an investigation of the failure (at the Buyer's risk and expense). Should no fault be found the Seller shall return the Goods to the Buyer at the Buyer's cost and expense and have no liability to correct the Goods.
- 5.7. In the event of a defect in the Goods as described in clause 5.1 being detected upon the Seller's investigation, the Seller's sole liability in relation to that defect shall be either (at the Seller's option) to repair or replace the defective portion of the Goods or refund the Buyer a proportionate price of the Goods so affected with the defect.

6. INTELLECTUAL PROPERTY

- 6.1. 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.
- 6.2. All Foreground Intellectual Property Rights produced from or arising as a result of the performance of the Order shall, so far as not already vested, become the absolute property of the Seller, and the Buyer shall do all that is reasonably necessary to ensure that such rights vest in the Seller by the execution of appropriate instruments or the making of agreements with third parties
- 6.3. The Seller hereby grants to the Buyer a non-exclusive, irrevocable, perpetual, royalty free license to use any Background Intellectual Property and Foreground Intellectual Property owned by the Seller necessary for the operation of the Goods. For the avoidance of doubt, the Buyer is strictly prohibited from adapting, modifying, decompiling or reverse engineering the Intellectual Property provided by the Seller under this clause or using the Intellectual Property for any other commercial purpose.
- 6.4. Any breach of clause 6.3 by the Buyer will entitle the Seller to terminate the licence immediately and the Buyer's rights to use the Background Intellectual Property and Foreground Intellectual Property will cease.

7. VARIATIONS

- 7.1. Any variation to the Order shall only be valid upon the express written consent of both parties.

8. TERMINATION AND SUSPENSION

- 8.1. The Seller may terminate the Order without liability to the Buyer by giving notice to the Buyer at any time if:
 - a) the Buyer breaches any term of these Terms and Conditions and (if such breach is remediable) fails to remedy that breach within 14 calendar days after receipt of notice in writing of the breach;
 - b) if the Buyer fails to pay any amount due under the Order on the due date for payment; or
 - c) the Buyer makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986), becomes bankrupt, becomes subject to an administration order, goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction) or the Buyer ceases, or threatens to cease, to carry on business.
- 8.2. The Seller may terminate the Order for its convenience upon giving the Buyer 30 days' notice of its intention to do so and in such a termination the Seller's sole liability to the Buyer shall be, at the Seller's option, either:
 - a) refunding any amounts paid to the Seller in advance any parts of the Order yet to be completed; or
 - b) transferring to the Seller any work in progress and all materials procured specifically for the Order
- 8.3. Without limiting its other rights or remedies, the Seller shall have the right to suspend the supply of Services or all further deliveries of Goods under the Order or any other contract between the Buyer and the Seller if the Buyer fails to make payment for any amount due under the Order (or any other contract) on the due date for payment or the Buyer becomes subject to any of the events listed under clause 8.1 (Termination) or the Seller reasonably believes that the Buyer is about to become subject to any of them.
- 8.4. The Seller shall resume performance upon cessation of the suspension within a reasonable time period, as decided by Seller

9. INDEMNITIES

- 9.1. The Buyer shall indemnify the Seller against all costs, damages, expenses, penalties and losses incurred, as a result of or in connection with any breach by the Buyer of the terms of the Order, including any claims brought against the Seller 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.

10. LIMITATION OF LIABILITY

- 10.1. Nothing in these Terms and Conditions 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.
- 10.2. Subject to clause 10.1, the Seller 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 Buyer under the Order.
- 10.3. Subject to clause 10.1, the total aggregate liability of the Seller arising from the Order shall be limited to an amount equal to the amount paid to the Seller for the Goods or Services supplied to the Buyer under the Order.

11. CONFIDENTIALITY

- 11.1. 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.
- 11.2. The restrictions set out in clause 11.1 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.
- 11.3. The Buyer shall not publish any reports, articles, press releases or other documents or information relating to the subject matter of this Order without the prior written consent of the Seller, which consent shall not be unreasonably withheld or delayed. The restriction under this clause shall apply during the performance of the Order and for a period of 5 years after its termination or expiry.

12. SET-OFF

- 12.1. The Seller may, without limiting its other rights or remedies, set-off any amount owing to it by the Buyer (in respect of any outstanding account) against any amount payable by the Seller to the Buyer in any contract between the Seller and Buyer.
- 12.2. The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set-off or counterclaim which the Buyer may have or allege to have for any reason whatsoever.

13. ASSIGNMENT

- 13.1. The Order between the Buyer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Buyer, without the prior written consent of the Seller.

14. FORCE MAJEURE

- 14.1. The Seller shall not be liable to the Buyer if unable to carry out any provision of the Order for any reason beyond its control 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").
- 14.2. The Seller shall notify the Buyer as soon as reasonably practicable after a Force Majeure Event arises. During the continuance of the Force Majeure Event the Seller may, in its absolute discretion, withhold, reduce or suspend performance of its contractual obligations, without liability to the Buyer for any loss or damage whatsoever suffered directly or indirectly by reason of any such withholding reduction or suspension.
- 14.3. Should the Force Majeure Event continue for more than three months the Seller may (subject to the Seller repaying to the Buyer any advance payments made for undelivered Goods and the Buyer paying for Goods delivered) cancel the Order without further liability to the Buyer.

15. RELATIONSHIP OF THE PARTIES

- 15.1. The Buyer and the Seller are contractors independent of each other, 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.

16. THIRD PARTY RIGHTS

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

17. DATA PROTECTION

- 17.1. Insofar as the Seller shares any personal data with the Buyer, the Buyer shall process such personal data in compliance with all applicable laws, including the General Data Protection Regulation (Regulation (EU) 2016/679), enactments, regulations, orders, and standards as may be amended from time to time.
- 17.2. The Buyer 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 Seller's personal data has been accessed or obtained by an unauthorised person, the Buyer will immediately notify the Seller of any such unauthorised access and will cooperate with the Seller in taking any measures deemed necessary to mitigate against any such loss or unauthorised access.
- 17.3. Where applicable, the Buyer 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 Order.

18. COMPLIANCE WITH LAW

- 18.1. 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 Order
- 18.2. The Buyer 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.

19. NOTICES

- 19.1. Any notice or other communication given to a party under or in connection with the 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.
- 19.2. A notice of other communication shall be deemed to have been received: if delivered personally; when left at the address referred to in the 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.

20. WAIVER

- 20.1. 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 the Order.

21. SEVERABILITY

- 21.1. If any term or provision of these Conditions 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 these Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

22. DISPUTE RESOLUTION

- 22.1. If a dispute arises out of or in connection with this 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 Contracts Manager & Head of Commercial of the Seller and the Account Manager or equivalent role nominated by the Buyer shall attempt in good faith to resolve the Dispute;
- b) if the Contracts Manager & Head of Commercial of the Seller and relevant person nominated by the Customer under clause 22.1(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 Seller and the Senior Manager or equivalent role nominated by the Buyer who shall attempt in good faith to resolve it; and
- c) if the CEO of the Seller and the relevant person nominated by the Buyer under clause 22.1(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. To initiate the mediation, a party must serve notice in writing (ADR notice) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than 14 days after the date of the ADR notice.
- 22.2. The commencement of mediation shall not prevent the parties commencing court proceedings in relation to the Dispute.

23. ENTIRE AGREEMENT

- 23.1. These Terms and Conditions and any documents incorporating them or incorporated by them in the Order constitute the entire agreement and understanding between the parties and the Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Order.

24. GOVERNING LAW

- 24.1. The 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

25. DIVISIBILITY

- 25.1. These conditions for the supply of goods are divisible. Each delivery made hereunder shall be deemed to arise from a separate contract and shall be invoiced separately; any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect of default in delivery of any other instalment.
- 25.2. These conditions for the supply of services are divisible. The work performed in each period during the currency of the contract shall be invoiced separately. Each invoice for work performed in any period shall be payable by the customer in full in accordance with the terms of payment provided for herein, without reference to and notwithstanding any defect or default in the work performed or to be performed in any period.