

Standard Terms and Conditions of Purchase

Part 1 - General

THE FOLLOWING STANDARD TERMS AND CONDITIONS SHALL APPLY TO ALL PURCHASE ORDERS:

1 Definitions

'Buyer'	shall mean Portsmouth Aviation Limited of The Airport, Portsmouth, Hampshire, PO3 5PF
'Contract'	shall mean the agreement between the parties governing the supply of the Goods and shall include these terms and conditions, the Purchase Order and the order for the Goods.
'EAR'	shall mean US Department of Commerce Export Administration Regulations.
'Goods'	shall mean all goods, services, materials and equipment to be supplied by the Supplier to the Buyer.
'ITAR'	shall mean US Department of State International Traffic in Arms Regulations.
'Purchase Order'	shall mean the Buyer's Purchase Order and any amendment thereto and where the context so admits any contract resulting therein
'Special Conditions'	shall mean the conditions set out or referenced on the Order (whether marked as Special Conditions or not).
'Specification'	shall mean the document (if any) which sets out the agreed design, performance, functionality of and procedures for the Goods and any training to be provided.
'Standard Conditions'	shall mean these Portsmouth Aviation Limited Standard Terms and Conditions of Purchase (2010 Edition).
'Supplier'	shall mean the person, firm or company to whom the purchase order is addressed.

2 Contract Formation

- 2.1 The Order is open for acceptance only upon the terms hereof. Save for variations complying with sub-clause 2.3 below, the Order including any special conditions set out and any

Documents referred to constitute the entire agreement between the procurement of Good(s) for PAL] shall be conclusively presumed to be acceptance of the Order on the terms hereof and no documents raised by the Supplier in connection with the supply of the Good(s) [including without limitation any invoice or confirmation of order] shall be effective to vary the terms and conditions set out herein.

2.2 Any prior quotation or offer by the Supplier purporting to incorporate further or different terms or conditions is hereby rejected to the extent inconsistent with these terms.

2.3 Variation of these terms and conditions shall be effective only if made in writing and signed by an authorised officer of the Buyer. Signature of a delivery note receipt or document of similar effect by an employee or direction of the Buyer shall not however constitute a variation for this purpose.

2.4 In the event of any conflict, the following order of precedence shall apply:

2.4.1 the Special Conditions;

2.4.2 these Standard Conditions;

2.4.3 the Specification; and then

2.4.4 any other relevant documents referenced in the Order.

3 Supplier's Responsibilities

3.1 The Supplier shall provide the goods to the Buyer in accordance with the Order.

3.2 The Supplier shall:

3.2.1 at all times comply with all legislation, standards and regulations, including but not limited to, those relating to health, safety and environment, which are relevant to any of the Goods;

3.2.2 upon receipt of a purchase order to provide any Goods which are intrinsically hazardous to life or harmful to the environment in their normal state, ensure that the goods are supplied appropriately packaged in accordance with current legislation to protect them during shipment;

3.2.3 ensure that waste and surplus materials and the like arising from any Suppliers are not deposited on any area other than a public or private disposal facility controlled or recognised by the Local Authority (and, where applicable, credit the Buyer with any relevant income arising from the surplus materials);

3.2.4 notify the Buyer as soon as it becomes aware of any health and safety hazards or issues which arise in relation to any Goods; and

3.2.5 in the case of an EU supplier, notify the Buyer if it is or when it becomes, or if it ceases to be, an Authorised Economic Operator.

3.3 The Supplier shall:

- 3.3.1 obtain, maintain and observe all regulatory approvals required for the provision of the Goods;
- 3.3.2 as the Goods may be exported, re-exported or transferred by the Buyer, notify the Buyer of any restrictions that may exist in respect of EU customers and/or UK export regulations and/or ITAR or EAR or any other US or other foreign Government regulations preventing such export, re-export or transfer by the Buyer or confirm in writing that no such regulations apply; and
- 3.3.3 if any of the hardware, technical data, software or technical assistance (as relevant) which are the subject of the Order are controlled under ITAR or EAR: (a) notify the Buyer forthwith; (b) provide the following information: US supplier details, description of material, part/reference number, US munitions list category/EAR Export Control Classification Number, license / technical assistance agreement or other authorising agreement reference number and copies of such agreements or relevant details including parties authorised to receive material and provisos and a listing of authorised end users, parties and/or consignees; and (c) clearly mark individual items and associated documentation as being subject to ITAR/EAR.

3.4 In the event that the Supplier processes any personal information on behalf of the Buyer, the Supplier agrees that it will enter into a data processing agreement in the form proposed by the Buyer and as required by the applicable data protection legislation.

3.5 The Supplier shall immediately notify the Buyer of the occurrence of any event or conditions that might delay or prevent completion of any of its obligations under the Order, the reason for such delay and the measures being taken by it to rectify the situation.

4 Supplier's Personnel

4.1 The Supplier shall provide its employees with and ensure that its employees, agents and sub-contractors use any protective clothing and safety equipment required in providing any Goods to the Buyer.

4.2 The Buyer shall be responsible for ensuring that any of the Supplier's employees, agents and sub-contractors who have a need to work on the Buyer's site (or the Buyer's customer's site) are cleared in accordance with the relevant security procedure. In the event that any such employees, agents and sub-contractors are not security cleared, the Buyer shall promptly notify the Supplier and the Supplier shall use all reasonable endeavours to replace such person.

4.3 The Supplier shall at all times be responsible for its employees, agents, and sub-contractors and shall ensure that they, when within the boundaries of the Buyer's site (or the Buyer's customer's site):

- 4.3.1 are made aware of and comply with rules, regulations and requirements of the site as may be in force for the time being (including any national security requirements), copies of which will be provided, on request, by the relevant site security manager;
- 4.3.2 shall not without the Buyer's prior written consent use any of the Buyer's (or the Buyer's customer's) site equipment or services;

- 4.3.3 permit the relevant site security personnel to stop and search them and any of their vehicles when entering or leaving that site and to also search any of their huts, toolboxes or other equipment or property on that site at any time; and
- 4.3.4 adhere to the rules and regulations notified in advance to the Supplier in writing, regarding their connection, either directly or via remote access, to any part of that site's IT network.

5 Quality

- 5.1 The Supplier shall provide the Goods subject to all reasonably applicable quality standards and to those set out as a Special Condition and/or in the Specification and/or in the Buyer's quality approval/authority issued to the Supplier.
- 5.2 Upon the Buyer providing reasonable notice, the Supplier shall (and procure that its agents and sub-contractors shall) at no additional cost to the Buyer or the Buyer's customer:
 - 5.2.1 allow the Buyer and persons authorised by the Buyer (which may include the Buyer's customer) access to the Supplier's premises (and those of its agents and sub-contractors) as are being used to carry out work on the Goods in order to inspect and audit the facilities, processes and procedures used in manufacturing the Suppliers;
 - 5.2.2 provide adequate data to the Buyer relating to progress of work on the Suppliers and their quality; and
 - 5.2.3 provide all necessary assistance (including, where appropriate, access to office accommodation, telephone and fax facilities) to enable the above-referenced rights to be fully exercisable.
- 5.3 Unless otherwise specifically agreed in writing, all Goods shall be new.

6 Delivery

- 6.1 The delivery term in respect of any Goods shall be DDU (Incoterms 2010).
- 6.2 All Goods must be properly and security packed.
- 6.3 The Supplier shall quote the Order number and item number on all documents and packages sent by it to the Buyer in respect of the Order.
- 6.4 On delivery of each consignment of the Goods, the Supplier shall deliver to the Buyer such documents as are required by the Order, including, without limitation, customs export documents, advice notes, certificates of conformity and civil approved certificates and, if the Supplier is not the original manufacturer of the goods, copies of the original manufacturer's certificate of conformity or civil approved certificate together with test figures, heat treatment particulars etc, where applicable.
- 6.5 If the Supplier fails to comply with the provisions of this Clause 6, the Buyer shall be under no obligation to accept delivery of the relevant consignment.

7 Acceptance

7.1 Where acceptance tests are set out as a Special Condition and/or in the Specification, acceptance of Goods delivered shall be subject to completion of the acceptance tests to the satisfaction of the Buyer.

7.2 Where no acceptance tests are set out as a Special Condition or in the Specification, the Buyer shall have the right to inspect the Goods after delivery and acceptance shall take place if the Goods are satisfactory to the Buyer on inspection or, if no inspection is made, the Goods shall be accepted on the earlier of (a) when they have been taken into final and beneficial use by the Buyer or (b) twenty-eight (28) days after delivery in accordance with Clause 6 above.

7.3 If the Buyer is not satisfied that the Goods are delivered in accordance with the Order, the Buyer may in its absolute discretion:

7.3.1 reject them in whole or in part; and/or

7.3.2 give notice to the Supplier to repair or replace them without delay at the Supplier's expense and risk.

8 Risk and Title

8.1 Risk in any Goods shall pass to the Buyer upon delivery in accordance with Clause 6 above.

8.2 Title to any Goods shall pass to the Buyer upon acceptance in accordance with Clause 7 above.

9 Price and Payment

9.1 Price is as stated on the Purchase Order.

9.2 Prices shall be non-revisable and shall be exclusive of VAT and also, the case of non-EU Goods, exclusive of import taxes.

9.3 If VAT is payable, it shall be separately identified on the invoice and shall be payable by the Buyer subject to receipt of a Valid VAT invoice.

9.4 No additional charges shall be payable by the Buyer for packaging, insurance or delivery unless otherwise agreed and set out on the Purchase Order and any such charge shall be separately identified on the invoice.

9.5 The Supplier shall submit to the Buyer on or after the provision of the Goods as invoice in respect of the Goods property provided.

9.6 The Supplier acknowledges and agrees that invoices shall only be passed for payment by the Buyer if they comply with the provisions of this Clause 9. Should any invoice contain incomplete information or an incorrect or invalid charge, the Buyer will be entitled to reject such invoice and return it to the Supplier or ask the Supplier to have it rectified and resubmitted, or request the Supplier to issue a credit note to correct the error.

9.7 Payments to the Supplier shall be made by the Buyer in Pounds Sterling (or the agreed currency of the Order) by Bankers Automated Clearing system (BACS) (or equivalent)

Electronic Funds Transfer (EFT) or any established standing order.

- 9.8 Without prejudice to any other right or remedy the Buyer may have, the Buyer shall be entitled to set-off any payment owed by it to the Supplier under the Order against any sums that are due and payable by the Supplier to the Buyer under the Order and/or any other agreement.

10 Warranty

- 10.1 The Supplier warrants to the Buyer that the Goods shall be provided:

10.1.1 in accordance with the terms of the Order;

10.1.2 free from defects (whether actual or latent) in design, materials and workmanship;

10.1.3 with reasonable care and skill;

10.1.4 in accordance with generally recognised commercial practices and standards in the industry; and

10.1.5 in compliance with all applicable laws and regulations as well as all of the Buyer's site (or, if applicable, the Buyer's customer's site) policies and rules.

- 10.2 The warranties in Clause 10.1 above shall, in respect of each of the Goods, continue for twenty four (24) calendar months from the date of acceptance of such of the Goods in accordance with Clause 7 above.

- 10.3 If there is a defect in the Goods during the warranty period, the Supplier shall without delay, upon receipt of notice from the Buyer but at the absolute discretion of the Buyer:

10.3.1 refund the Buyer the price of the defective Goods; and/or

10.3.2 repair or replace the defective Goods at the Supplier's own expense and risk provided that, if the Supplier fails to do so, the Buyer may arrange for them to be repaired or replaced (and all such costs incurred by the Buyer shall be refunded by the Supplier within seven (7) days of the date the Buyer's invoice is issued) and in either case the warranty shall continue for twenty four (24) calendar months from the date of acceptance by the Buyer of the repaired or replacement Goods.

- 10.4 The Supplier agrees that all warranties attaching to the Goods shall be capable of being assigned to a customer of the Buyer or other user by the Buyer without prior written notice to the Supplier.

- 10.5 The provisions of this Clause 10 shall survive termination of the Order, howsoever arising.

11 Indemnity

- 11.1 The Supplier shall indemnify and hold the Buyer harmless against any and all liability, loss, claims, costs, expenses or damages of any nature whatsoever incurred by the Buyer as a result of or in connection with:

11.1.1 the Supplier's breach of the Order;

- 11.1.2 any tortious (including negligent) acts, omissions or defaults of the Supplier in connection with the provision of the Goods; and
- 11.1.3 the Supplier's breach of any of its statutory obligations.
- 11.2 Nothing in the Order shall exclude or limit the liability of either Party to the other for death or personal injury resulting from its negligence.
- 11.3 The provisions of this Clause 11 shall survive termination of the Order, howsoever arising.

12 Insurance

- 12.1 The Supplier shall, as a minimum, maintain the following primary insurance policies with reputable insurers authorised to conduct business in the jurisdictions in which the Order is performed against all risks usually insured against by suppliers carrying on the same or a similar business as the Supplier which shall include protection for claims for third party legal liability for injury or damage and for negligent acts or omissions which result in a claim for any form of financial loss against the Buyer as a result of the provision to it of the Goods, including without limitation and without derogating from or limiting the provisions of clause 11 above:
 - 12.1.1 a policy of insurance relating to Public Liability Insurance of an amount not less than £10 million per event or series of events (or such other sum as the Buyer may specify) in respect of loss of or damage to property of the Buyer, customer or end user, or death, disease, illness or injury to persons resulting from provision of the Goods;
 - 12.1.2 a policy of insurance relating to Product Liability Insurance of an amount not less than £10 million per event or series of events (or such other sum as the Buyer may specify) in respect of loss of or damage to property of the Buyer, customer or end user, or death, disease, illness or injury to persons resulting from provision of the Goods;
 - 12.1.3 a policy of insurance relating to Employers' Liability Insurance for an amount not less than £10 million or, if outside of the UK, the minimum amount required per event or series of related events (or such other sum as the Buyer may specify);
 - 12.1.4 any other insurance which the Supplier may be statutorily required to maintain.
- 12.2 The Supplier shall ensure that such insurance is arranged on a continuing basis and evidence of such insurance protection shall upon request to provide to the Buyer.
- 12.3 The Buyer shall have the full benefit of such policies detailed in this Clause 12 and, where applicable, such policies shall contain an indemnity to principal clause.
- 12.4 The Supplier shall notify its insurance companies if it is required to provide some of the Goods on the Buyer's site (or the Buyer's customer's site) where there is construction movement and test of military and civilian aircraft, ships and vehicles and, where applicable, the Supplier shall procure adequate insurance cover as required by such insurance companies.

customer's site), regardless of howsoever or by whomsoever such damage or loss are caused.

13 Termination

- 13.1 The Order may be terminated for convenience by the Buyer at any time in whole or part by delivery to the Supplier of a Notice of Termination. In the event of notice to such effect being given the Supplier shall comply with any directions with regard to the Goods(s) which may be given by the Buyer subject to the Supplier submitting within three (3) months from the effective date of termination claim in the form prescribed by the Buyer in the Notice of Termination, the Buyer shall indemnify the Supplier against any commitments, liabilities or expenditure which in the opinion of the Buyer has been reasonably and properly incurred by the Supplier in connection with the Order and which would otherwise represent an unavoidable loss to the Supplier. The Buyer shall not be liable to pay under the provision of this Condition any sum which, when taken together with any sums paid or due or becoming due to the Supplier under the Order, shall exceed the total price of the Goods(s) the subject of the aforesaid Notice of Termination.
- 13.2 If the Supplier shall make default or commit any breach of its obligations hereunder then the Buyer may without prejudice to any other of its rights or remedies forthwith by written notice terminate the Order in which event the provisions of Clause 13.1 above shall not apply. Upon such termination the rights and liabilities of the Buyer and the Supplier shall be the same as if the Supplier had repudiated the Order and the Buyer had by its notice of termination elected to accept such repudiation.
- 13.3 If the Supplier becomes insolvent or has a receiver or administrator appointed to its business or is compulsorily or voluntarily wound up or if the Buyer believes that any of such events may occur, the Buyer shall have the right without prejudice to any other remedy to suspend the performance of or terminate the Order without incurring liability except in respect of Goods previously delivered.
- 13.4 Any termination of the Order shall not prejudice any rights or remedies which have accrued to either party and both shall use their best endeavour to mitigate their losses on such termination.

14 Force Majeure

- 14.1 Neither Party shall be deemed in breach of the Order or liable to the other for delay in performing its obligations, or failure to perform any such obligations, under the Order, if the delay or failure results from Force Majeure provided that the affected Party;
- 14.1.1 promptly notifies the other Party, in writing, of the known or anticipated event which causes or may cause it;
- 14.1.2 produces reasonable evidence of its occurrence;
- 14.1.3 uses all reasonable endeavours to eliminate or minimise the delay and continues to fulfil its obligations to the extent that they are not affected by the Force Majeure;
- 14.1.4 recommences its full performance as soon as is reasonably possible following its cessation; and

14.1.5 gives notice of the cessation of any event previously notified to the other Party as likely to result in prevention or delay in execution of the Order.

14.2 If a Party is affected by Force Majeure, it will use its reasonable endeavours to mitigate its effect. Neither Party will be entitled to any payment from the other for any costs or expenses incurred as a result of it.

14.3 If a Force Majeure exceeds a continuous period of thirty (30) days, then the Buyer shall have the right by written notice to the Supplier to terminate the Order immediately without having any liability to the Supplier except in respect of that part of the Goods already delivered to and accepted by the Buyer prior to such termination.

15 Intellectual Property Rights

15.1 The Supplier represents and warrants that the Goods and anything done by the Purchase or its customer in relation to the Goods will not infringe any Intellectual Property Rights of a third party.

15.2 The Supplier shall indemnify and hold the Buyer harmless against all losses, claims, demands, charges, fees (including legal and other professional costs), payment, royalties, damages, costs and expenses of any kind arising from the infringement or alleged infringement of any Intellectual Property Rights owned or controlled by a third party arising out of or in connection with work done under the Order or to anything done by the Buyer or its customer arising out of or in connection with the Goods.

15.3 Where applicable, the Supplier agrees that all Intellectual Property Rights created as a result of the work undertaken by the Supplier, its agents or sub-contractors for the purpose of the Order shall vest in and be the absolute property of the Buyer. Consequently, the Supplier assigns to the Buyer, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights created as a result of the Order and the Supplier shall (at its own cost) do all necessary acts to vest such Intellectual Property Rights in the name of the Buyer or its nominee, such acts to include (without limitation) the execution of documents.

16 Confidentiality

16.1 Except with the prior written consent of the Buyer, the Supplier shall not disclose any details of the Order or the Goods or any other technical or commercial information, know-how, specifications, inventions, processes or initiatives of the Buyer which are of a confidential nature to any person other than a person employed by the Supplier in the carrying out of the Order or any agent or sub-contractor of the Supplier accepting a like obligation. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purpose of the Order.

16.2 All documents, including (without prejudice to the generality) specifications, drawings, plans or other data and any information contained therein supplied by the Buyer for the purposes of the Order including all copies shall remain the property of the Buyer and shall be returned to the Buyer on completion of the Order or upon request of the Buyer. The Supplier shall not use or permit any third party to use such documents or such information or any document or information generated by the Supplier under the Order for any purpose

16.3 The provisions of this Clause 16 shall survive termination of the Order, howsoever arising.

17 Inducements and Ethics

17.1 Whether acting alone or with others, the Supplier undertakes that it will not do, and warrants that prior to accepting the Order it has not done, any of the following:

17.1.1 induce an employee, agent or sub-contractor of the Buyer to make any concession to or confer any benefit on the Supplier, refrain or withhold from doing any act or alter any of the requirements of the Order in return for any gift, money, benefit or other inducement; nor

17.1.2 without the prior written consent of the Buyer, pay money or give any other benefit to any third party (either directly or indirectly) in connection with the negotiation and/or issue of the Order; nor

17.1.3 encourage or facilitate an employee, agent or sub-contractor of the Buyer to commit any act of dishonesty against the Buyer which may benefit the employee, agent or sub-contractor of the Buyer or be a detriment to the Buyer, or both.

18 Publicity

The Supplier shall not publicise in any media or public announcement information regarding the terms of the Order or the Goods provided without the prior written consent of the Buyer.

19 Notices

Any notice under the Order sent by one Party to the other shall be in writing and shall be sent by first class post using recorded delivery to its address set out in the Order or to such other address as may from time to time be notified by the one to the other and shall be deemed to be delivered two (2) business days after posting. E-mail or facsimile transmissions will not be an acceptable means of sending notices unless otherwise agreed.

20 Waiver

No failure or delay by a Party to exercise any right or remedy provided under the Order or by law shall constitute a waiver of that right or remedy, nor shall it preclude or restrict the exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that right or remedy.

21 Severability

In any of the provisions of the Order are found to be invalid, illegal or unenforceable this shall not affect the validity of the remaining provisions. In the event of such occurrence, the Parties shall, in so far as it is legally permitted, agree on the replacement of the relevant provision with a valid one achieving the same or a similar purpose.

22 Amendment

No amendment to the Order shall be valid unless it is contained in an

23 Assignment and Sub-Contracting

- 23.1 The Buyer may at any time assign or transfer all or any of its rights and/or obligations under the Order without the consent of the Supplier.
- 23.2 The Supplier may not assign or transfer all or any of its rights and/or obligations under the Order without the prior written consent of the Buyer.
- 23.3 The Supplier may not sub-contract any of its obligations under the Order without the prior written consent of the Buyer except as is customary in the trade.

24 Entire Agreement

The Order constitutes the entire agreement between the Parties with respect to the subject matter of the Order and supersedes any prior discussions, oral or written agreement with respect to the subject matter of the Order provided that nothing in this clause shall exclude liability for fraudulent misrepresentation.

25 Contracts (Rights of Third Parties) Act 1999

A third party who is not a Party to the Order has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Order but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

26 Law and Jurisdiction

- 26.1 The Contract shall be governed by and construed in accordance with English Law and the parties hereby subject to the exclusive jurisdiction of the English Courts.
- 26.2 If there is any dispute at any time between the Parties arising out of or in connection with the Order, then the Parties shall use reasonable endeavours to resolve the dispute amicably.
- 26.3 Subject to provisions of Clause 26.2 above, the Parties agree that any dispute arising out of or connection with the Order, including any question regarding its existence, validity or termination, and any dispute relating to any non-contractual obligations arising out of or in connection with the Order, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitration shall be English.