

CONDITIONS OF SALE

1. Interpretation

1.1 In these conditions:

“SELLER” means MONARCH AIRCRAFT ENGINEERING LIMITED registered in England under number 902230 whose registered office is at Prospect House, Prospect Way, London Luton Airport, Luton, LU2 9NU, England.

“BUYER” meansregistered inwhose registered office is at

“GOODS” means the Goods listed in the order accepted by MAEL

“PRICE” means the price quoted in the order accepted by MAEL

“CONDITIONS” means the terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

“CONTRACT” means the contract for the purchase and sale of the Goods.

“WRITING” includes facsimile transmission and comparable means of communication.

1.2 Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis of the Sale

2.1 The Seller shall sell and the Buyer shall purchase the Goods for the Price subject only to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions.

2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

2.3 The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any such representations which are not so confirmed.

3. Orders and Specifications

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller’s authorised representative.

3.2 The quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer’s order (if accepted by the Seller).

3.3 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit) costs (including the cost of all labour and materials used), damages charges and expenses incurred by the Seller as a result of cancellation.

4. Price of the Goods

4.1 Unless otherwise agreed in Writing between the Buyer and the Seller the Price is given by the Seller on an ex works basis and where the Seller agrees to deliver the Goods otherwise than at the Seller’s premises the Buyer shall be liable to pay the Seller’s charges for transport packaging and insurance.

4.2 The Price is exclusive of any applicable value added tax, sales tax, import/export charges and applicable additional charges which the Buyer shall be additionally liable to pay to the Seller.

5. Terms of Payment

5.1 Subject to any special terms agreed in Writing between the Buyer and the Seller the Seller shall be entitled to invoice the Buyer for the Price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Buyer for the Price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

5.2 The Buyer shall pay the Price of the Goods upon delivery of the Seller’s invoice notwithstanding that delivery of the Goods may not have taken place and the property in the Goods has not passed to the Buyer. The time of payment of the Price shall be of the

essence of the Contract. Receipts for payment will be issued only upon request.

- 5.3 If the Buyer fails to pay the Price on the due date, then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
- (a) cancel the Contract or suspend any further deliveries to the Buyer; and
 - (b) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
 - (c) charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of four (4) per cent per annum above Barclays Bank base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. **Delivery**

- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or (if some other place for delivery is agreed) by the Seller delivering the Goods to that place.
- 6.2 Any dates quoted for delivery for the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the Price of the Goods.
- 6.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may:
- (a) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price under the Contract or charge the Buyer for any shortfall below the Price under the Contract.

7. **Risk and Property**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer when the Goods are despatched by the Seller to or collected by the Buyer or its agent.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 7.3 Until such time as the property in the Goods passes to the Buyer the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and keep the Goods properly stored protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Seller for the proceeds of sale or otherwise of the Goods whether tangible or intangible including insurance proceeds and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds properly stored protected and insured, notwithstanding that the Buyer may owe further monies to the Seller.
- 7.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

- 7.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
8. **Warranties and Liability**
- 8.1 Subject to the conditions set out below the Seller warrants that the Goods will correspond with their specification at the time of delivery and will at such date be free from defects in material and workmanship.
- 8.2 The above warranty is given by the Seller subject to the following conditions:
- (a) the Seller shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the Goods has not been paid by the due date for payment;
 - (b) where the Goods have been repaired by a third party who has given a warranty in respect of such repair then the Seller may (if the parties so agree) assign such warranty to the Buyer in writing and thereupon the Buyer's rights in respect of that repair shall be against the said third party instead of the Seller.
- 8.3 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977 as amended) all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with the specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within seven (7) days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within 7 days after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the Buyer shall be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.
- 8.5 Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer except as expressly provided in these Conditions.
- 8.6 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control;
- Act of God explosion flood tempest fire or accident;
 - War or threat of war sabotage insurrection civil disturbance or requisition;
 - Acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
 - Import or export regulations or embargoes;
 - Strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - Difficulties in obtaining raw materials labour fuel parts or machinery;
 - Power failure or breakdown in machinery.
9. **Insolvency of Buyer**
- 9.1 This clause applies if:
- (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - (b) an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Buyer; or
 - (c) the Buyer ceases or threatens to cease to carry on business; or

(d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

9.2 If this clause applies then without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangements to the contrary.

10. **Export Terms**

10.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.

10.2 Where the Goods are supplied for export from the United Kingdom the provisions of this Clause 10 shall (subject to any special terms agreed in Writing between the Buyer and the Seller) apply notwithstanding any other provisions of these Conditions.

10.3 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 the payment of any duties thereon.

10.4 Unless otherwise agreed in writing between the Buyer and the Seller the Goods shall be delivered fob the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.

10.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.

10.6 Payment of all amounts due to the Seller shall be made by a transfer of the price in sterling (unless otherwise agreed in Writing) to such branch of Barclays Bank in England as may be specified in the invoice relating to the Goods.

11. **General**

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall be not affected thereby.

11.4 The Contract shall be governed by the laws of England and Wales and both parties shall submit to the exclusive jurisdiction of England and Wales.

11.5 No term of this Contract is intended to confer a benefit as, or enforceable by, any person who is not the Buyer or the Seller whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

SIGNED by a duly authorised)
officer of the Seller)
on the)

SIGNED by a duly authorised)
officer of the Buyer)
on the)