

CONDITIONS OF SALE

1. CONTRACT

- 1.1 The terms and conditions hereinafter set out constitute the terms and conditions of any contract between Almond Engineering Ltd ("the Company") and any purchaser ("the Purchaser") in respect of the supply of any products manufactured by the company ("the Products").
- 1.2 These terms and conditions expressly override, supersede and exclude any terms and conditions stipulated or referred to by the Purchaser in negotiations or order or otherwise prior to the making of any contract (as hereinafter defined) between the Company and the Purchaser and no variation of or addition to the Contract or these terms and conditions shall be binding on the Company unless made or accepted in writing under the hand of a duly authorised officer of the Company.
- 1.3 All the Company's quotations are subject to confirmation on receipt by the Company of orders from the Purchaser. Such written confirmation shall constitute the acceptance by the Company of a Contract with the Purchaser incorporating these terms and conditions and the relevant quotation ("the Contract"). Acceptance is subject to supplies being available and unsold.
- 1.4 An order once accepted by the Company cannot be cancelled, deferred or altered by the Purchaser except by mutual agreement.
- 1.5 "The Contract Price" shall consist of the price specified in the Purchaser's order as confirmed by the Company on the basis of the Company's quotation (all quotations being on a net basis unless otherwise stated) and shall be subject to value added tax and any other applicable tax or duty.

2. PAYMENT

- 2.1 All invoices issued by the Company shall be settled within 30 days of the date of the invoice ("the Due Date") in respect of all Contracts with the Purchaser unless otherwise agreed in writing by the Company.
- 2.2 The Contract Price is calculated on the basis of the terms agreed. If the "call off" is reduced or delivery or acceptance of the Product is delayed or refused the Company reserves the right to charge any warehousing charge incurred by the Company to the Purchaser at the Company's sole discretion.
- 2.3 Interest shall be charged on all amounts in arrears on the Due Date in respect of the Company's invoices at the rate of 5% above Barclays Bank plc base lending rate from time to time in force.
- 2.4 The Contract Price shall be subject to upward revision in the event of war, natural disaster, change of fiscal policy, foreign exchange fluctuations, alteration in wage, labour or transport, conditions or increases in the price of materials or other contingencies as a direct or indirect result of which the Company incurs increased costs in between the date of the Contract and the date of delivery of the Products.
- 2.5 If during the continuance of any contract the Company incurs additional costs due to any of the events described in the foregoing clause the Company shall submit to the Purchaser a revised Contract Price. If the Purchaser shall reject such revised Contract Price, the Company shall have the option of terminating the Contract on giving to the Purchaser 10 days written notice.

3. DELIVERY AND RISK

- 3.1 All products supplied by the Company shall be at the Purchaser's risk and shall be insured by the Purchaser immediately on delivery to the Purchaser or into the custody of the Purchaser's designated carrier whichever is the sooner.
- 3.2 Delivery of the Products shall be deemed to be accepted by the Purchaser forthwith on notification by the Company that they are ready for delivery.
- 3.3 Any stipulated period of time for delivery shall run from the date of receipt by the Company of the Purchaser's written order to proceed with delivery or from the date when all necessary information and drawings enabling the company to manufacture the Products ordered is received which ever shall be the later.
- 3.4 Although the time shall not be of the essence of any Contract the Company will use its best endeavours to deliver the Products at the rate or within the time specified in the Contract but shall not be liable for any direct or indirect loss or damage which may be incurred by the Purchaser as a result of failure by the Company to deliver the Products at the rate or within the time specified or as a result of any accidental loss or damage of any kind or as a result of the unavailability of materials or articles required for the performance of the Contract or for any such loss or damage due to any other cause whatsoever.
- 3.5 In the event of any delay in delivery continuing for more than three calendar months the Company shall have the option of cancelling the Contract by written notice to the Purchaser in respect of any Products undelivered at the date of such notice.
- 3.6 Each delivery of a consignment of Products shall be a separate transaction and the delay or absence of any one delivery shall not prejudice due performance of the Contract as regards other deliveries.
- 3.7 When a charge is made for pallets the amount of the charge will be credited to the Purchaser when we are notified in writing that such pallets are available in good condition, for collection. Pallets for export orders are non returnable.
- 3.8 A shortage or surplus charged pro rata, not exceeding 5% will be considered due execution of any order unless otherwise agreed in writing by the Company.

4. PROPERTY AND TITLE

- 4.1 The acceptance by the Company of any order for Products shall constitute an agreement to supply the Products and shall not be a sale of them and no title to the Products shall pass to the Purchaser by reason of delivery or acceptance of the Products.
- 4.2 The Company shall remain the sole and absolute owner of the Products until such time as the Contract Price including any interest thereon shall have been paid to the Company by the Purchaser. Until such time the Purchaser shall be the bailee of the Products for the Company and shall store them on its premises separately from its own goods or products and from those of any other person and in a manner which make them readily identifiable as the Products of the Company.
- 4.3 Purchaser's right to possession of the Products shall cease on whichever is the earlier of the following dates:-
 - i. The Due Date in accordance with Clause 2.1 hereof; or
 - ii. The occurrence of any of the events listed in clause 4.4 below.
- 4.4
 - i. A petition is to be or has been presented for the appointment of an administrator or administrative receiver or receiver of the Purchaser under the Insolvency Act 1986.
 - ii. A petition is presented or a resolution passed for the voluntary or compulsory liquidation of the Purchaser save for the purposes of solvent reconstruction or amalgamation; or
 - iii. the purchaser decides to make an arrangements with its creditors; or
 - iv. the Purchaser has committed an act of bankruptcy; or
 - v. the occurrence of any event which caused the Company to consider on reasonable grounds that its title to the Products or the proceeds of sale thereof may be adversely affected.
- 4.6 The Company may for the purpose of recovering the Products enter any premises where they are stored or where they are reasonably thought to be stored and may repossess them.
- 4.7 The Purchaser shall be at liberty to sell on the Company's Products at any price not less than the Contract Price. If the Purchaser sells on its own account, it shall sell as agent and bailee of the Company in law and in equity and shall hold the proceeds thereof in trust for the Company and shall not mingle the proceeds with any other monies and shall not pay the cheque or cash therefore into an overdrawn bank account. The Purchaser shall open a fiduciary account with its bankers and will not advise its bankers that the Purchaser holds the entire proceeds of sale to a sub-purchaser as

trustee for the Company and that not until payment to the Company of the agreed price with interest thereon as appropriate shall the Purchaser be entitled to transfer any profit thereon to any other account. The Company shall be entitled to any interest earned on such fiduciary account.

- 4.8 If a receiver is appointed to the Purchaser and at the time of his appointment the Purchaser shall not have received the proceeds of sale, the Purchaser or the receiver as agent for the Purchaser shall assign to the Company within 7 days all rights against the person or persons to whom the Products have been sold.

5. SPECIAL COMMISSIONS AND VARIATIONS

- 5.1 Work produced by the Company whether experimentally or otherwise on the Purchaser's express instructions will be charged at a special rate to be agreed between the Company and the Purchaser.
- 5.2 Alterations by the Purchaser following the making of the Contract shall be subject to additional charges in the discretion of the Company.
- 5.3 Moulds, tools, cutters or similar dedicated items used in the manufacture of the Products shall be the property of the Company notwithstanding that the Purchaser may have borne part or all of the costs of developing such items. The company shall have the right to dispose of any of these items at its discretion should the company deem them to be inactive.
- 5.4 The manufacture of Products to drawings and designs supplied by the Purchaser is undertaken by the Company of the understanding that the Purchaser warrants that such manufacture will not infringe any intellectual property rights of third parties and that the Purchaser shall indemnify and keep the Company indemnified for and against all liabilities, costs and expenses resulting from any such infringement.
- 5.5 All designs, drawings, sketches and models submitted by the Company are of a confidential nature and unless otherwise agreed in writing between the Company and the Purchaser the copyright in all such material shall remain in the Company regardless of whether the Company has levied a charge for their development.

6. WARRANTIES

- 6.1 Except where and to the extent only that the Company may have given an express guarantee in writing in relation to a specific Product and save as provided by law, no representation, warranty or condition (whether express or implied or whether statutory or not) is given by the Company as to the fitness of the Company's Products for any specific purpose or process whether or not that purpose was known to the Company at the time of Contract was made and the Company shall not be liable either in contract or in tort for any direct or indirect or consequential loss or damage suffered by the Purchaser or by a third party directly or indirectly attributable to the Products or to the use or storage of the Products.
- 6.2 The provisions of this Clause shall be without prejudice to the statutory rights of consumers as such term is defined by law.
- 6.3 Any recommendation or suggestion relating to the use of the Products made by the Company either in technical literature or in response to specific enquiry or otherwise is given in good faith but it is for the Purchaser to satisfy itself of the suitability of the Products for its own particular purpose and to make satisfactory arrangements for the safe storage of the Products on the purchaser's premises and to affix such appropriate labels and warnings to the Products as shall be necessary for purposes of the Consumer Protection Act 1987.
- 6.4 The Purchaser shall insure against and shall keep the Company fully indemnified at all times for and against any claims arising under the Consumer Protection Act 1987 in respect of the Products.
- 6.5 The Company's materials are generally manufactured in accordance with the relevant International Standards.
- 6.6 The Company hereby gives notice to the Purchaser that the Company has information and product literature available on request concerning the conditions necessary to ensure that the Products will be safe and without risk to health when properly used.

7. TERMINATION

- 7.1 In the case of contracts providing for more than one delivery of Products and the Purchaser defaults in making payment of the Company's invoice of the Due Date, the Company shall be entitled to treat the Contract as repudiated and to claim such damages as the Company shall be entitled to be awarded by law.
- 7.2 Without prejudice to any other provision herein the Company may terminate any contract (with the Purchaser) on giving to the Purchaser 14 days written notice of termination and the Purchaser shall have no claim for damages in respect of such termination on notice.

8. LIMITATION AND EXCLUSION OF LIABILITY

- 8.1 The Company shall not be liable for any indirect or consequential losses or for any loss of profit or for any loss of business or for any loss of anticipated savings incurred by the Purchaser arising from any defects in the Products or for any errors in carrying out work commissioned by the Purchaser or for any delays in delivery or otherwise on the part of the Company or any third party.
 - 8.2 The Company shall not be liable for any losses incurred by the Purchaser attributable directly or indirectly to the Company's inability to or delay in delivering the Products due to circumstances beyond the control of the Company including but not limited to acts of God, natural disaster, war, industrial disputes, changes in taxation, fire, power failures or shut-downs of plant or machinery or shortage or unavailability of raw materials from normal sources or routes of supply or any other contingency.
- ## 9. CLAIMS
- 9.1 Claims shall be considered by the Company in its sole discretion and shall not be construed as an admission of liability on the part of the Company.
 - 9.2 Any claims shall be made by the Purchaser in writing to the Company so as to reach the Company:-
 - i. within 3 days of delivery of the Products if the Products have been damaged, delayed or lost in transit.
 - ii. Within 14 days of delivery of the Products.
 - iii. within one calendar month of delivery if the Products are claimed by the Purchaser to depart from the Contract specifications or otherwise defective failing notice as aforesaid the Company shall not be liable in respect of ay claims whatsoever.
 - 9.3 The Company shall not be obliged to consider or to compensate the Purchaser for any claim on the grounds that the Products supplied do not conform to certain dimensions where it can be shown that the Products come within the bounds of the tolerance specified in the Contract.

10. MISCELLANEOUS

- 10.1 All contracts shall be subject to Scottish law and the Company and the Purchaser hereby submit to the non-exclusive jurisdiction of the Scottish Courts.
- 10.2 Whenever the contexts may require any pronoun used herein shall include the corresponding masculine, feminine or neuter forms and persons shall include individuals, firms and Companies and vice versa.
- 10.3 Should any provision hereof be found unenforceable or void by any Court of competent jurisdiction such finding shall not affect the validity of the remaining provisions of these terms and conditions.
- 10.4 Contracts are personal to the Company and the Purchaser and may not be assigned to any third party by either the Company or the Purchaser without the other party's written consent.