

Artus Air Limited UK Standard Conditions of Sale

1. Definitions

- 1.1. **“Goods”** means the items supplied under the contract of sale by the Supplier, including its own products and services and those supplied by the Supplier as agent; **“Materials”** means any drawings, specifications, literature and any other materials prepared by or on behalf of the Supplier; **“Purchaser”** means the party who buys or agreed to buy the Goods; **“Supplier”** means Artus Air Limited.

2. Offer/Acceptance

- 2.1. Subject to any variation under Condition 3 all contracts whether oral or in writing for the supply of Goods excluding installation are entered into by the Supplier only upon these Conditions of Sale to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2. No contract shall be deemed to have been concluded between the Supplier and the Purchaser unless and until the Supplier has accepted the Purchaser's order either expressly or by supplying the Goods.

3. Variation

- 3.1. Variations to these Conditions of Sale shall only be effective if in writing and signed for on behalf of the Supplier. Such written variations shall take precedence over any conflicting terms herein.

4. Price and Price Increases

- 4.1. The contract price of the Goods is set out in the quotation.
- 4.2. The Supplier may unilaterally increase the quoted contract price by written notice to the Purchaser before the date of acceptance of the order.
- 4.3. The Supplier may unilaterally increase the contract price by prior written notice to the Purchaser after the date of acceptance of the order, but in such circumstances the Purchaser may promptly on receipt of the notice cancel the contract without liability.

5. Representations

- 5.1. Any technical descriptions or other matter of whatever kind in any literature or advertisement published by or on behalf of the Supplier shall not constitute any representation or warranty of any kind in relation to the Goods or any part thereof.

6. Technical Data

- 6.1. At the request of the Purchaser the Supplier will at reasonable additional cost to the Purchaser (payable at the same time and upon the same terms as the contract price) supply certified drawings and/or weights and dimensions relating to the Goods; and/or visit any site for any purpose connected with the contract or with the Goods.

7. Unit Performance

- 7.1. Predicted product performance is determined from an advanced mathematical model calibrated to data obtained from tests conducted in accordance with the industry recognised standard BS EN 14511-3:2-13.
- 7.2. Performance of the product in application will not differ from the predicted figures by more than the allowable deviations specified in table 7 of section VII of Eurovent RS 6/C/003 – 2016 (cooling capacity; -5%, EER at full load; -5%, ESEER; -9%).

- 7.3. Acoustic levels of the product in application will not differ from the predicted figures by more than the allowable deviations specified in table 7 of section VII of Eurovent RS 6/C/003 2016 (A – weighted sound power; +3dBA).
- 7.4. If the allowable deviations detailed in the aforementioned Eurovent documentation are not permissible then the Supplier must be informed of this fact prior to order stage as it may be necessary to reselect the equipment.
- 7.5. Please note that whilst the Supplier endeavours to ensure that the provided unit performance data is accurate at time of proposal, due to its continual development policy the Supplier may amend this information without due notice.

8. **Intellectual Property**

- 8.1. All intellectual property rights (including copyright) in Materials or any part thereof are the property of the Supplier.
- 8.2. Materials are confidential and no part of any Materials shall be disclosed to any third parties or reproduced without prior written consent of the Supplier.

9. **Intellectual Property Indemnity**

- 9.1. Insofar as the Supplier manufactures or supplies any Goods in accordance with any specification, drawing or design provided by or on behalf of the Purchaser and the Goods or their said manufacture or supply constitute an infringement of any patent or intellectual property rights of any person then the Purchaser shall indemnify and keep the Supplier indemnified against any claim, damage, loss or expenses made against or suffered by the Supplier arising out of or in connection with such infringement.

10. **Delivery/Collection**

- 10.1. Times and dates of delivery shall not be of the essence and the Supplier shall not be liable for any loss, expenses, damage or claim resulting from any delay in delivery however such delay is caused.
- 10.2. Subject to 10.1 above the Supplier shall deliver the Goods to the site or such other place by such date for delivery as agreed between the parties, and where it cannot deliver by such date for any reason, it shall deliver the Goods within a reasonable time.
- 10.3. If the contract provides for the Goods to be collected by or on behalf of the Purchaser the Supplier shall give the Purchaser notice of the date and place where the Goods will be ready for collection and delivery shall be deemed to take place upon the date and at the place so notified.
- 10.4. Without prejudice to the foregoing, if the Purchaser fails to collect the Goods within 14 days after receiving notification from the Supplier that the same are ready for collection then any loss or damage to or deterioration in the Goods thereafter shall be at the sole risk of the Purchaser who shall further reimburse the Supplier any extra expense or costs incurred by the Supplier in consequence of such failure together with a reasonable charge in respect of the storage and insurance of the Goods from the date upon which they should have been collected until the date of actual collection. The Supplier may issue an invoice for the Goods on the date that the Goods should have been collected and payment of such invoice shall be in accordance with Condition 15.
- 10.5. If the contract provides for the Supplier to consign the Goods to a UK mainland destination the delivery shall be deemed to take place when the Goods are handed over at the agreed destination.
- 10.6. If the contract provides for the Supplier to consign the Goods to a destination outside the UK mainland then delivery shall take place as has been agreed between the parties.
- 10.7. Should the contractual delivery date be delayed or postponed at the Purchaser's request or if the Purchaser otherwise fails to take delivery on the due date for delivery:
 - (a) the Supplier may issue an invoice for the Goods as if such delivery date had not been

delayed or postponed and payment of such invoice shall be due from the Purchaser in accordance with Condition 15; and (b) the Goods shall be deemed for all purposes (including any warranty) as being delivered by the Supplier to the Purchaser on the date originally agreed for delivery and any loss or damage to or deterioration in the Goods thereafter shall be at the sole risk of the Purchaser who shall further reimburse the Supplier any extra expense or cost incurred by it in consequence of such failure together with a reasonable charge in respect of the storage and insurance of the Goods from the date originally agreed for delivery until the date of actual delivery.

- 10.8. In the case of Goods consigned by the Supplier to a UK mainland destination the Purchaser shall provide safe means of access to the place of delivery and all means necessary to unload the Goods and shall be responsible for unloading the Goods. The Purchaser shall reimburse the Supplier any extra expense or cost incurred by it in consequence of any default hereunder on the part of the Purchaser.
- 10.9. If the Goods or any part thereof consigned by the Supplier to a UK mainland destination are received in a damaged condition or if any part of the consignment is not received the Purchaser shall notify the Supplier in writing within 24 hours of receipt of the Goods or part thereof and shall confirm the same to the Supplier in writing within three days of such receipt otherwise the Supplier will accept no responsibility for such damage or loss.
- 10.10. If within 28 days of the receipt by the Purchaser of notice from the Supplier that the Goods have been despatched, no part thereof has been received by the Purchaser then the Purchaser shall immediately notify the Supplier and confirm the same to the Supplier within three days thereafter otherwise the Supplier will accept no responsibility for any loss of the Goods.

11. Risk

- 11.1. All risk in the Goods shall pass to the Purchaser on delivery.

12. Retention of Title

- 12.1. Goods supplied by the Supplier shall remain the sole and absolute property of the Supplier until such time as the Goods have been paid for in full and all other monies due to the Supplier from the Purchaser have been paid to the Supplier.
- 12.2. Notwithstanding 12.1 above, the Goods shall be at the Purchaser's risk from the time of delivery to the Purchaser and the Purchaser shall until the Goods are paid for or returned to the Supplier:
 - a. be responsible for and adequately insure the Goods in the name of and for the benefit of the Supplier against loss or damage arising from any cause whatsoever in their full replacement value and shall produce to the Supplier on demand the policies of such insurance and receipts evidencing premiums paid;
 - b. keep the Goods separate from all property of other persons in an area set aside for such purpose and stored in accordance with recommendations made from time to time by the Supplier;
 - c. at all times keep a separate account of the Goods and supply to the Supplier upon request full details of the Goods or any part thereof including the same which has been utilised or sold by the Purchaser, its servants or agents; and
 - d. hold the entire proceeds of sale of the Goods or any part thereof which are used or sold by the Purchaser in trust for the Supplier in a separate bank account and not mix the same with any other funds.
- 12.3. The Purchaser acknowledges that it is in possession of the Goods as bailee and in a fiduciary capacity for the Supplier until such time as said items are paid for in full by the Purchaser.

12.4. The Purchaser grants the Supplier an irrevocable license to enter at any time any vehicles or premises owned or occupied by the Purchaser or in its possession for the purpose of repossessing and removing any Goods the property in which has remained with the Supplier under this Condition 12.

13. **Tests and Inspections**

13.1. Any tests of the Goods or any part thereof undertaken by the Supplier at the request or on the instructions of the Purchaser shall be at the expense of the Purchaser and the Purchaser shall reimburse the Supplier the cost thereof at the same time and upon the same terms as payment of the contract price.

13.2. Without prejudice to 13.1, if the Purchaser requires any such test to be witnessed by the Purchaser or its representative then the Supplier will give to the Purchaser reasonable notice in writing of the date and place of testing. If the Purchaser or its representative fails to attend on the date and at the place location so notified the Purchaser shall not be entitled to take any exception to the method, nature, extent, or results thereof and shall be bound by such results and shall reimburse the Supplier with the costs of such test.

14. **Packaging**

14.1. Goods to be delivered by the Supplier whether in or outside the UK will be packed in a manner suitable for the protection of the Goods under normal transport conditions and for dry indoor storage for up to three months from the date of such delivery provided that the packaging is not damaged or disturbed.

14.2. Goods to be delivered outside the UK mainland may be packed in some other manner agreed in writing between the parties and will be at the extra cost of the Purchaser payable at the same time and in the same manner as the contract price. All packaging will be non-returnable.

15. **Payment**

15.1. Unless otherwise provided in these conditions the Purchaser shall pay for the contract price of the Goods and any other costs, charges or expenses provided for by these conditions upon delivery of the Goods, or for approved credit accounts with the Supplier within 30 days from the date of the invoice.

15.2. Any payment not settled upon delivery of the Goods or within 30 days from the date of the invoice (as applicable under the clause above) will be liable to a surcharge of 2.5% of the invoice value for every month in which the payment is overdue, and the Supplier shall require up-front payment for subsequent purchases by the Purchaser or any of its group companies or affiliates.

15.3. The Purchaser shall not be entitled to make deduction from any amount due to the Supplier in respect of any set-off or counter-claim unless both the validity and the amount has been expressly agreed in writing by the Supplier.

15.4. Without prejudice to any other rights, failure to pay the contract price of the Goods or part thereof or other monies payable by the Purchaser to the Supplier will also entitle the Supplier at its sole discretion either to refuse to make delivery of any further goods agreed to be supplied or to cancel any other contract between the Purchaser and the Supplier, either in whole or in part, by notice in writing to the Purchaser. The Supplier shall not be liable for any loss caused by such a delay or cancellation.

15.5. The Contract price of the Goods shall become immediately due and payable in the event that the Purchaser goes into liquidation or administration or a receiver of its assets or any part thereof is appointed or any petition is presented for its winding-up or it enters into any scheme of arrangements with its creditors.

- 15.6. If the Supplier receives adverse information about the financial status of the Purchaser or any related company in the Purchaser's group, the Supplier may withdraw with immediate effect and at any time prior to settlement of invoice, any offer of credit it has made to the Purchaser (whether express or implied).
- 15.7. All amounts due to the Supplier are payable in pounds sterling unless agreed otherwise by the Supplier.

16. **Cancellation**

- 16.1. No order which has been placed with the Supplier may be cancelled by the Purchaser except with the agreement, in writing, of the Supplier and on the terms that the Purchaser shall indemnify the Supplier in full against all loss, costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

17. **Warranty**

- 17.1. The Supplier warrants the Goods in the manner set out in this Condition 17 and the 'UK Product Warranty Terms and Conditions' appended.
- 17.2. Subject to the terms of the UK Product Warranty Terms and Conditions, the Supplier will repair or replace as it shall in its sole discretion think fit any part of the Goods supplied to a mainland UK location which prove to be defective within a period of 12 months from the date of delivery of the Goods or the date of invoice whichever is sooner, and this shall be the Purchaser's sole remedy in respect of any defective Goods.
- 17.3. The warranty is limited to repair or replacement of defective parts only.
- 17.4. The Supplier may vary the period and conditions of warranty in individual sales quotations, in which case the period and conditions set out in the individual quotation shall supersede those set out in this Condition 17.
- 17.5. The Supplier shall not be liable to repair or replace any part of the Goods unless and until it is satisfied that the Goods have since delivery been used, installed, operated and maintained in accordance with good engineering practice and/or any instructions or advice given by the Supplier and that any such defect is not attributable to misuse or misapplication or to improper or inadequate storage of the Goods or any part thereof or storage thereof for more than three months.
- 17.6. Further, the Supplier shall incur no liability under this warranty unless the Purchaser returns any defective Goods within 21 days of any defect becoming apparent and unless the Purchaser provides the Supplier promptly with all relevant information concerning the Goods, such defects, and the user, installation, operation, maintenance and storage thereof since their delivery or any other relevant information that the Supplier may reasonably require.
- 17.7. The Purchaser shall pay for removing or dismantling any defective part to be replaced under this warranty, carriage of such parts to the Supplier's premises and any reinstallation.
- 17.8. If the Supplier has accepted liability to repair or replace under this warranty, the Supplier shall pay for non-express carriage of the repaired or replacement part back to the Purchaser for reinstallation in the UK.
- 17.9. Any spare part supplied by the Supplier to the Purchaser under the warranty shall be warranted for the unexpired period of the warranty or three months from delivery whichever is longer,
- 17.10. Any spare part supplied by the Supplier to the Purchaser outside the warranty period shall be warranted for three months from delivery or invoice whichever is the earlier.
- 17.11. Subject to 17.1, all representations, terms, conditions and warranties not contained in these Conditions of Sale in respect of the Goods, whether statutory or otherwise and

whether expressed or implied are hereby expressly excluded insofar as permitted by law.

18. **Limitation of Liability**

- 18.1. Nothing in these Conditions of Sale shall exclude either party's liability for death or personal injury caused by negligence or for fraud or fraudulent misrepresentation or anything else which cannot be limited or excluded by law.
- 18.2. Subject to Condition 18.1, the Supplier's total liability in contract (including by way of indemnity), tort (including negligence), misrepresentation, for breach of statutory duty or otherwise to all parties arising out of or in connection with the contract or the Goods shall be limited to the greater of the price of Goods under the order which has given rise to the relevant claim, or the amount that the Supplier may reasonably recover from its insurers under any policy of insurance that it has in force.
- 18.3. The Supplier shall not be liable for:
- a. any indirect or consequential loss or damage, including but not limited to:
 - i. any costs, expenses or other losses arising as a result of a defect;
 - ii. any loss of investment, loss of contract, loss of production, loss of profit; loss of business; loss of revenue; loss of time, delays, loss of use or depletion of goodwill;
 - b. any defect which may occur in any prior installation to which the Supplier's equipment may be connected;
 - c. any defect to the extent that it is caused by incorrect installation (where not installed by the Supplier) or lack of or poor maintenance of the Goods.

19. **Indemnity**

- 19.1. The Purchaser shall indemnify the Supplier in respect of any loss, injury, damage, expense or claim of whatever nature and however arising out of these Conditions of Sale, the contract or the Goods or their storage, installation, use, operation or maintenance save where the same is caused solely by the negligence of the Supplier.

20. **Termination**

- 20.1. If the Supplier is prevented from performing the contract by any cause beyond its control, then it may by notice in writing to the Purchaser terminate the contract without liability with immediate effect. Upon termination the Purchaser shall pay to the Supplier all reasonable costs incurred by the Supplier up to the date of such notice in partial and/or attempted performance of its obligations hereunder. Except as set out in this Condition 20.1, neither party shall have any liability to the other in connection with the contract.

21. **Severability**

- 21.1. If any part of these Conditions of Sale is deemed void, voidable, invalid, ineffective or unenforceable, such defect shall not affect the remainder of the contract which shall be construed as if the defective part or parts had been excluded therefrom at the time the contract was entered into.

22. **Notice**

- 22.1. Where under these Conditions of Sale notice is required to be given by either party to the other, such provision shall be satisfied by a written, typed notice signed by a person authorised by the relevant party and transmitted either by (a) email to an agreed email address; or (b) post to the Registered Office of such party where it is a company and to the address notified to the Supplier where the Purchaser is unincorporated.

23. **Trademarks**

- 23.1. The Purchaser shall ensure that any trademarks or other words or marks affixed to or used in relation to the Goods are not removed, obscured or omitted without the Supplier's prior written consent.
- 23.2. The Purchaser shall not add, affix or use any additional words or marks to or in relation to the Goods without the Supplier's prior written consent.

24. **Governing Law**

- 24.1. The contract shall be governed by English Law and the courts of England shall have exclusive jurisdiction to settle any dispute arising from or connected with it.