

Terms and conditions of Sale

The customer's attention is drawn, in particular to the provisions of clause 8 (Limitation of Liability).

1. Definitions and Interpretation**1.1 Definitions:**

Bonut: Bonut Engineering Ltd (registered in England and Wales with company number 00883368).

Business Day: a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.3.

Contract: the contract between Bonut and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

Customer: the person or firm who purchases the Goods from Bonut.

Delivery Location: means:

(a) where Bonut delivers the Goods to the Customer, the location set out in the Sales Order Confirmation or such other location as the parties may agree; or

(b) where the Customer collects the Goods, Bonut's premises or such other location as may be advised by Bonut prior to collection.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control (including, without limitation, the non-performance or delay by suppliers or subcontractors, the unavailability or shortage of raw materials at reasonable commercial rates, or extended lead-times for the procurement by Bonut of raw materials).

Goods: the goods (or any part of them) set out in the Sales Order Confirmation.

Order: the Customer's order for the Goods, as set out in the Customer's purchase order form or the Customer's written acceptance of Bonut's quotation, as the case may be.

Sales Order Confirmation: has the meaning given in clause 2.4.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and Bonut.

Technology: all methods, techniques, discoveries, inventions (whether patentable or not), formulae, formulations, technical and product specifications, equipment descriptions, plans, layouts, drawings, computer programs, technical information, designs, data, know-how and other information, in each case, that is necessary for the manufacture and assembly of the Goods.

Tooling: the equipment, that is necessary for the manufacture and assembly of the Goods, including the tooling, dies, drills, moulds, presses, vessels, tools and machinery, and related items.

Warranty Period: means 12 months from the date of delivery or collection of the Goods.

1.2 Interpretation:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to **writing** or **written** includes emails but excludes fax.

2. Basis of contract

- 2.1 A quotation shall only be valid for a period of 30 days from its date of issue.
- 2.2 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.3 A quotation for the Goods given by Bonut shall not constitute an offer, nor shall any Order constitute an offer. Neither the quotation nor the Order shall form part of the Contract.
- 2.4 If Bonut wishes to supply the Goods, Bonut shall issue a written sales order confirmation (**Sales Order Confirmation**), confirming Bonut's offer and intention to supply the Goods in accordance with these Conditions, and the Contract shall come into existence on acceptance by the Customer, being the earliest of:
 - (a) the date the Customer pays for the Goods; or
 - (b) the date that the Goods are delivered to, or collected by the Customer.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by Bonut and any descriptions or illustrations contained on Bonut's website, in Bonut's or any manufacturer's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 If the Customer seeks to amend or cancel the Contract after it has been accepted, the Customer is liable to Bonut for Bonut's costs reasonably incurred in fulfilling the Contract up until the date of deemed receipt of the amendment or cancellation. Bonut shall (without prejudice to any rights it otherwise has under the Contract or at law) be entitled to deduct an amount

equal to such costs from any refund to the Customer of an amount the Customer has already paid at the date of deemed receipt of the amendment or cancellation.

3. Supply of the Goods

- 3.1 The Customer agrees that any Goods manufactured by Bonut are described in the Specifications contained on Bonut's website, as may be as substituted or amended by Bonut from time to time and agreed in writing by the Customer and Bonut.
 - 3.2 The Customer is responsible for ensuring that the Specification is complete and accurate. Bonut reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and Bonut shall notify the Customer in any such event.
 - 3.3 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall:
 - (a) at its own cost, promptly disclose to Bonut such Technology as is necessary to enable Bonut to manufacture the Goods in accordance with the Specification; and/or
 - (b) where it has been agreed between Bonut and the Customer that Tooling will be supplied by the Customer to enable Bonut to manufacture the Goods in accordance with the Specification, the Customer shall promptly deliver to Bonut's premises any such Tooling at its own cost and as directed by Bonut; and/or
 - (c) where it has been agreed between Bonut and the Customer that Tooling will be supplied by Bonut to enable Bonut to manufacture the Goods in accordance with the Specification on the basis that the Customer pays part, but not all, of the Tooling cost, the Customer shall pay such Tooling costs promptly on receipt of an invoice from Bonut.
 - 3.4 To the extent that any Tooling is supplied by the Customer, or to the extent the Tooling has been paid for in full (but not in part) by the Customer under the terms of the Contract, the Tooling shall remain the absolute property of the Customer and accordingly, the Customer shall:
 - (a) have the sole risk of loss or damage to the Tooling;
 - (b) maintain, with a reputable insurance company, insurance cover for any loss or damage to the Tooling; and
 - (c) reimburse Bonut for any reasonable costs incurred by it relating to the repair or replacement of the Tooling.
 - 3.5 To the extent that any Tooling is supplied by Bonut and is not paid for in full by the Customer under the terms of the Contract, the Tooling shall remain the absolute property of Bonut and accordingly Bonut shall:
 - (a) be entitled to retain such Tooling for its own and future use without restriction, including, for the avoidance of doubt, the production of goods for Bonut's other customers;
 - (b) have the sole risk of loss or damage to the Tooling;
 - (c) maintain, with a reputable insurance company, insurance cover for any loss or damage to the Tooling; and
 - (d) Bonut shall be responsible for costs incurred by it relating to the repair or replacement of the Tooling.
 - 3.6 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify Bonut against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Bonut in connection with any claim made against Bonut for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Bonut's use of the Specification. This clause 3.6 shall survive termination of the Contract.
- 4. Quality**
- 4.1 Bonut warrants that (subject to clause 4.2 and clause 4.3) on delivery and throughout the Warranty Period, the Goods will:
 - (a) conform in all material respects with their description and any applicable Specification; and
 - (b) be free from material defects in design, material and workmanship, and (subject to clause 4.2 and clause 4.3) Bonut shall, at its option, repair or replace any Goods or refund the price of the defective Goods that fail to conform with this warranty.
 - 4.2 The warranty in clause 4.1 is subject to:
 - (a) the Customer giving notice in writing to Bonut during the Warranty Period and within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;
 - (b) Bonut being given a reasonable opportunity of examining such Goods; and
 - (c) the Customer (if asked to do so by Bonut) returning such Goods to Bonut's place of business at the Customer's cost.
 - 4.3 Bonut shall not be liable for the Goods' failure to comply with the warranty set out in clause 4.1 if:
 - (a) the Customer fails to give notice to Bonut of its claim under those warranties within the applicable Warranty Period;
 - (b) the Customer makes any further use of such Goods after giving notice to Bonut under clause 4.2(a) above;
 - (c) the defect arises because the Customer failed to follow Bonut's oral or written instructions as to the storage, commissioning, installation, use and

Terms and conditions of Sale

- maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (d) the defect arises as a result of Bonut following any drawing, design or Specification supplied by the Customer;
- (e) the Customer alters or repairs such Goods without the written consent of Bonut;
- (f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;
- (g) the defect arises in respect of ineligible Goods, such as fasteners (which are designed to deform or clamp during use) or valve products; Bonut warrants the materials used in manufacture of these Goods only; or
- (h) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 4.4 Except as provided in this clause 4, Bonut shall have no liability to the Customer in respect of the Goods' failure to comply with the warranties set out in clause 4.1.
- 4.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 4.6 These Conditions shall apply to any repaired or replacement Goods supplied by Bonut.
- 5. Delivery**
- 5.1 Bonut shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the type and quantity of the Goods and if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 5.2 Where:
- (a) Bonut delivers the Goods to the Customer, Bonut shall use its reasonable endeavours to deliver the Goods to the Delivery Location on or before the estimated date for delivery set out in the Sales Order Confirmation; or
- (b) the Customer collects the Goods, the Customer shall collect the Goods from the Delivery Location within three Business Days of Bonut notifying the Customer that the Goods are ready, and the date of delivery or collection (as applicable) is the date the Goods are delivered or collected and the terms "deliver" and "delivery" where used in these Conditions should be interpreted accordingly.
- 5.3 Delivery is completed on:
- (a) (where Bonut delivers the Goods) the completion of unloading of the Goods at the Delivery Location; or
- (b) (where the Customer collects the Goods) the completion of loading of the Goods at the Delivery Location.
- 5.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Bonut shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Bonut with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.5 If Bonut fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Bonut shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Bonut with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.6 If the Customer fails to take or accept delivery of the Goods within three Business Days of Bonut notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Bonut's failure to comply with its obligations under the Contract in respect of the Goods:
- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Bonut notified the Customer that the Goods were ready; and
- (b) Bonut shall, subject to clause 5.7, store the Goods until delivery takes place.
- 5.7 If, 30 days after the day on which Bonut notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted actual delivery of them, Bonut may resell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods.
- 5.8 If Bonut delivers up to and including 10% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, Bonut shall make a pro rata adjustment to the invoice for the Goods.
- 5.9 Bonut may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 6. Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
- (a) Bonut receives payment in full (in cash or cleared funds) for the Goods and any other goods that Bonut has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- (b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Bonut's property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- (d) notify Bonut immediately if it becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d); and
- (e) give Bonut such information as Bonut may reasonably require from time to time relating to:
- (i) the Goods; and
- (ii) the ongoing financial position of the Customer.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before Bonut receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as Bonut's agent; and
- (b) title to the Goods shall pass from Bonut to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 At any time before title to the Goods passes to the Customer, Bonut may:
- (a) by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
- (b) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Price and payment**
- 7.1 The price of the Goods shall be the price set out in the Sales Order Confirmation, or, if no price is quoted, the price set out in Bonut's published price list in force as at the date of delivery.
- 7.2 Bonut may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond Bonut's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- (c) any delay caused by any instructions of the Customer or failure of the Customer to give Bonut adequate or accurate information or instructions.
- 7.3 The price of the Goods:
- (a) excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to Bonut at the prevailing rate, subject to the receipt of a valid VAT invoice; and
- (b) excludes the costs and charges of insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.4 Bonut may invoice the Customer for the Goods on or at any time after the Sales Order Confirmation has been issued by Bonut.
- 7.5 The Customer shall pay each invoice submitted by Bonut:
- (a) prior to the estimated date for delivery set out in the Sales Order Confirmation or no later than or in accordance with any credit terms agreed by Bonut and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by Bonut, and time for payment shall be of the essence of the Contract.
- 7.6 If the Customer fails to make a payment due to Bonut under the Contract by the due date, then, without limiting Bonut's remedies under clause 9, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 7.8 Bonut may at any time assign its rights to payment of amounts due under the Contract to any third party of its choosing, including (without limitation) to debt collection agencies in the case of overdue debts.

Terms and conditions of Sale**8. Limitation of liability**

- 8.1 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- (a) death or personal injury caused by negligence;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987.
- 8.3 Subject to clause 8.2, Bonut's total liability to the Customer under or in connection with the Contract, including liability in contract, tort (including negligence) or otherwise, shall not exceed the price of the Goods shown in the Sales Order Confirmation.
- 8.4 Subject to clause 8.2, the following types of loss are wholly excluded:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of use or corruption of software, data or information;
 - (f) loss of or damage to goodwill; and
 - (g) indirect or consequential loss.
- 8.5 Bonut excludes all liability to the Customer in respect of any loss under or in connection with the Contract, including liability in contract, tort (including negligence) or otherwise, where the Goods are to be manufactured in accordance with a Specification supplied by the Customer, and:
- (a) the Customer makes specification variances which are not clearly transmitted to Bonut in drawings and/or otherwise by a written variation to the Specification details;
 - (b) where insufficient details are made available to Bonut, such that the Specification is not clear;
 - (c) where the Specification makes references to obsolete technical standards; and/or
 - (d) where Customer has chosen the materials to be used in the manufacture of the Goods.
- 8.6 This clause 8 shall survive termination of the Contract.

9. Termination

- 9.1 Without limiting its other rights or remedies, Bonut may terminate this Contract with immediate effect by giving written notice to the Customer if:
- (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
 - (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.2 Without limiting its other rights or remedies, Bonut may suspend provision of the Goods under the Contract or any other contract between the Customer and Bonut if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or Bonut reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, Bonut may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to Bonut all of Bonut's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, Bonut shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

10. Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

11. General**11.1 Assignment and other dealings.**

- (a) Bonut may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Bonut.

11.2 Entire agreement.

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in the Contract.

11.3 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

11.4 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.6 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by email to the address specified in the Sales Order Confirmation.
- (b) Any notice or communication shall be deemed to have been received:
 - (i) if delivered by hand, at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.6(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice or other communication given under the Contract is not valid if sent by fax.

11.7 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

11.8 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

11.9 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.