

## ACO Marine Standard Conditions of Sale

### 1. BASIS OF CONTRACT

- 1.1. Any estimate or quotation issued by us is not an offer capable of acceptance but is merely an invitation to treat. No contract will be created for the sale of any goods or supply of any services save only by written acceptance by us of an offer made by the buyer which acceptance shall incorporate the conditions of contract set out hereafter and no others, and all offers shall be and shall be deemed to be made on that basis unless and except insofar as expressly stated in writing by us with specific indication of what conditions are to be added or deleted or varied.
- 1.2. Any conditions put forward by a buyer shall not render our acceptance a counter-offer but shall be deemed to be a mere invitation to treat and no contract shall be concluded save by our acceptance incorporating our conditions (save as varied in accordance with subclause 1.1 above).
- 1.3. Terms of Carriage such as "ex-works", "FOB" and "CIF" shall be construed according to the definition of such terms contained in the Uniform Rules for the Interpretation of Trade Terms ("Incoterms") current at the time a contract is made.

### 2. DELIVERY

- 2.1. While dates or periods for readiness or despatch or delivery of goods are given in good faith the same are not of the essence of or in any way terms of the contract or representations of fact and no damages shall be payable for late readiness or despatch or delivery however caused or under any circumstances and our buyers shall be bound to accept goods sold when the same are ready for collection or are delivered.

### 3. DRAWINGS AND DESIGN

- 3.1. Save in the event of express stipulation in writing to the contrary, we are at all times entitled to alter or vary or modify without notice to the buyer the detailed specification of all goods sold by us so long always as the goods delivered are in substantial conformity with the description of goods as ordered.
- 3.2.1. Unless the contrary is expressly stated in writing by us, all illustrations and drawings and the like accompanying our quotation or contained in our catalogue or price list or advertisements whether incorporated in the contract or otherwise must be regarded as approximate indications only and are not binding in detail.
- 3.2.2. All weights, measures, powers, capacities, physical and chemical properties and other particulars of the goods offered by us are stated in good faith being approximately correct but deviation therefrom shall not be a breach of the contract between the parties, entitling rejection of goods or be made the basis of any claim against us.
- 3.2.3. After the formation of a contract we will upon request supply free of charge certified general arrangement drawings but if specially prepared drawings are required these will be charged for.
- 3.2.4. We shall be entitled to correct errors and omissions in our quotation or other documents whether contractual or otherwise before or after the conclusion of the contract.

### 4. PRICES AND TERMS

- 4.1. Where no other terms have been agreed in writing, prices quoted are net ex-works unpacked and payment shall be due on notification by us that the goods or any part of them are ready for despatch. Where credit terms have been approved by us in writing invoices in respect of goods supplied to an approved account are to be paid in the full amount in euros at Prague not later than 30 days from the date of our invoice. For unapproved accounts payment is to be made in the full invoice amount before dispatch from our factory or by confirmed irrevocable letter of credit against shipping documents in Prague whichever is considered the most appropriate.
- 4.2. All costs including bank charges in relation to any letter of credit shall be for the account of the buyer and all letters of credit shall be:-
  - 4.2.1. in our favour;
  - 4.2.2. consistent with the provisions of these conditions;
  - 4.2.3. in sufficient amounts and for the period necessary to meet with all payment obligations hereunder;
  - 4.2.4. irrevocable, transferable and divisible; and
  - 4.2.5. issued or confirmed by a Bank in Prague acceptable to us within 15 days after the date of the contract.
- 4.3. If the price for goods the subject of this contract or of any other contract between us and the buyer has not been paid in accordance with the terms of payment applicable to those goods we shall be entitled to withhold delivery of goods and to store them at such place or places as seem to us fit or return them to our works and in either event to charge all costs and expenses to the buyer.
- 4.4. If payment has not been made in accordance with the preceding clause or any agreement varying the terms of the preceding clause, then we shall be entitled to charge interest on the unpaid purchase price or any part of it for such period as it remains unpaid at the rate (if any) specified in the contract documents or, if none, at a rate calculated at two per cent above the Prague Inter-Bank Borrowing rate in force from time to time.

### 5. VESTING

- 5.1. All goods sold by us whether delivered or installed or not shall remain our sole property until all funds of whatever kind due to us from the buyer have been paid and cleared into our bank account.
- 5.2. Until property in goods sold or supplied passes to the buyer the buyer shall be responsible for any damage suffered to the goods and shall take all steps necessary to keep the goods in good condition and repair and shall keep the same in safe custody and shall not overload or overwork or in any way improperly use the same and shall not do any act or thing which leads or may lead to the goods being seized under distress or any legal process and shall at all times keep the goods comprehensively insured against all risks to their full price and shall take steps to effect that an endorsement be made on the policy recording our interest in the goods and providing that all the money payable to the buyer under the policy shall be paid to us as agents for the buyer and the buyer hereby appoints us as agents for the buyer for the purpose of receiving the said money and grants to us the right to satisfy from such sums any claims outstanding in our favour against him. If for any reason such insurance monies are not paid to us but are paid to the buyer, the buyer shall hold such monies up to the amount due to us as trustee for us.  
Further at all times while goods are in the possession of the buyer but while the property therein remains in us the buyer shall notify us immediately if any defect arises in the condition of the goods and shall at all times allow us access to the goods for the purpose of inspection and/or work to the goods and we shall be entitled to but not obliged to carry out such work as we deem necessary to the goods and only such work and shall be entitled to render to the buyer charges for such work unless such work is in respect of defects which are the subject of an express warranty under these conditions.
- 5.3. Where goods which have not been paid for are not clearly identifiable by way of serial number or otherwise to particular invoices the following rules shall apply to enable attribution to particular invoices:-
  - 5.3.1. Goods sold or supplied by us and held by the buyer shall be attributed to the last unpaid invoice rendering charges in respect of that type of goods;
  - 5.3.2. If the number of goods of a particular type sold or supplied by us and held by the buyer exceeds the number of goods of that type covered by the last unpaid invoice, then the goods unattributed to the last unpaid invoice shall be attributed to the penultimate unpaid invoice rendering charges in respect of that type of goods;
  - 5.3.3. If the number of goods of a particular type sold or supplied by us and held by the buyer exceeds the number of goods of that type covered by the last and penultimate unpaid invoices then the remaining goods shall be attributed to the prepenultimate relevant unpaid invoice and so on until so far as is possible all the goods sold or supplied by us held by the buyer have been attributed to unpaid invoices.
- 5.4. Where goods which have not been paid for have been sold on by the buyer then so much of the proceeds of such onward sale as is equivalent to the sum due to us shall be held on trust by the buyer for us and we shall be entitled to trace the same into the buyer's bank account. Where goods sold or supplied by us have been sold on by the buyer but cannot be attributed by serial number or otherwise to particular invoices of ours then they shall be attributable to the last unpaid invoice in accordance with the rules set out at sub-clause 5.3 above or (where goods have already been attributed to invoices in accordance with sub-clause 5.3 above) to the latest unpaid invoice to which goods have not already been attributed.
- 5.5. Where goods which have not been paid for have been incorporated into or with other goods so as to be no longer identifiable as the goods supplied or sold by us then so much of any proceeds of sale of the article(s) into or with which our goods have been incorporated as is equivalent to the sum due to us shall be held in trust by the buyer for us and we shall be entitled to trace the same into the buyer's bank account(s). Where goods the subject of this sub-clause cannot be attributed by serial number or otherwise to particular invoices of ours then they shall be attributed to the last unpaid invoice in accordance with the rules set out at sub-clause 5.3 above or (where goods have already been attributed to invoices in accordance with sub-clause 5.3 and 5.4 above) to the latest unpaid invoice to which goods of the relevant type have not already been fully attributed.

### 6. NOTIFICATION OF LOSS OR DAMAGE

- 6.1. The buyer shall examine the goods on arrival at the buyer's premises for any obvious damage or shortage and any claim that the goods are damaged or have been short delivered must be communicated in writing to us within 3 days of the arrival of the goods at the buyer's premises. Non-delivery must be reported to us within 3 days of the expected date of receipt.
- 6.2. If the buyer fails to give notice in accordance with this clause, the buyer shall be bound to pay for, and shall lose any right to make a claim, in respect of such non-delivery, short delivery or loss or damage covered by this clause. If notice is given the buyer shall not be entitled to reject the goods until we have been given a reasonable opportunity to inspect them and, if required, to remedy the problem within a reasonable period.

### 7. WARRANTY

- 7.1. The extent to which we give a warranty in respect of goods sold or supplied by us depends upon whether they are of our manufacture or not.
  - 7.1.1. In the case of goods manufactured by us, we undertake at our option to replace or repair or to credit a sum to be agreed in lieu thereof and if replaced or repaired to deliver carriage paid to any destination in the United Kingdom any such goods or parts thereof proved to our satisfaction to have been defective in materials or workmanship provided that:-
    - 7.1.1.1. In the case of goods or parts supplied other than for installation on board a ship the claim is notified to us in writing within a period of 12 months from the date of their original despatch from our works and the goods are returned to our works carriage paid within 2 months of such notification;
    - 7.1.1.2. In the case of goods or parts thereof supplied for installation on board a ship that the claim is notified to us in writing within 12 months of the completion of the ship's official trials or within 18 months from the original despatch of the goods from our works whichever date shall be the earlier and the goods are returned to our works carriage paid within 2 months from the date of notification of such claim;
    - 7.1.1.3. The provision of replacement goods or parts shall not cause the period of warranty to be extended beyond that prevailing in respect of the goods first delivered.
  - 7.1.2. In the case of goods not manufactured by us we give a like warranty as in respect of goods manufactured by us so far as defects readily observable upon such examination as it was reasonable for us to make of the goods before supplying the same to the buyer are concerned. Otherwise we offer in respect of such goods only a like warranty to that which we have and are able to enforce against the supplier of the goods to us.
- 7.2. Save as set out at sub-clause 7.1 above we give no guarantee or warranty or other assurance express or implied (under statute, custom of the trade, or otherwise) as to goods sold or supplied or any part thereof or as to the standard of our workmanship or our service or advice (if any) and any terms or conditions other than those expressly provided for in these conditions or elsewhere in our acceptance of order are hereby excluded.
- 7.3. Save as set out at sub-clause 7.1 above we shall not under any circumstances whatsoever be liable for any negligence (other than in respect of damages for personal injury or fatal accidents) or breach of duty (under statute or otherwise) or any other act or omission by us in respect of goods sold, supplied or manufactured by us, work done (or not done) by us, or advice given (or not given) by us.
- 7.4. We shall not under any circumstance whatsoever howsoever arising be responsible for or liable in respect of any representation, oral or otherwise, made before or after the conclusion of this contract unless the same shall have been made an express stipulation of the contract agreed by us in writing in which case the same shall be subject to all the other terms and conditions of this contract.
- 7.5. It is hereby agreed that the protections and immunities granted by these conditions to us shall extend to protect and save harmless our servants agents sub-contractors and suppliers and to protect us and save us harmless against any acts or omissions of our servants agents sub-contractors and suppliers. Further the buyer undertakes not to pursue directly any of our servants agents sub-contractors or suppliers in respect of matters arising out of or in connection with the performance of this contract.
- 7.6. In no circumstances whatsoever arising out of breach of contract, breach of duty (under statute or otherwise), negligence or otherwise shall our liability exceed the contract price (net of VAT).
- 7.7. Under no circumstances shall the Seller be liable to the Purchaser whether by way of indemnity or by reason of any breach of contract or negligence or otherwise, for any loss of profit, income, use, production or contracts, or any financial or economic loss, or any direct, special or consequential loss or damage whatsoever.

### 8. INDEMNITY

- 8.1. In the event of a buyer receiving an allegation of infringement of patent copyright or confidential information by equipment of our design in the form in which we supplied it and based solely upon such design and it the buyer informs us of such claim in writing delivered to our address at our Registered Office within 7 days of his receipt of such claim and gives us full authority to defend or settle such claim we will indemnify the buyer against any expenses incurred in resisting such claim or satisfying any judgement or settlement of such claim providing such expenses were incurred as a direct consequence of our instructions to the buyer to a net amount not exceeding the price of the goods (net of VAT) but save as aforesaid no claim shall be made against us in respect of breaches of patent or confidential information or any analogous claim or claims.
- 8.2. If any goods made by us are made to a design or specification supplied to us by or on behalf of the buyer the buyer will indemnify us and hold us harmless against any claim in respect of alleged infringement of patent, copyright or confidential information arising out of the manufacture of goods to the said design or specification and any damages, loss or expense whatsoever arising therefrom.

### 9. TOOLING

- 9.1. The buyer agrees that the jigs and fixtures and other similar items which may be referred to or included in any contract or pre-contract documents will unless otherwise stated expressly in our documents remain or become our property. In the event of such equipment being used for one year we reserve the right to discard and scrap such equipment without reference or credit to the buyer.

### 10. CANCELLATION AND SUSPENSION

- 10.1. If the buyer for any reason cancels the order after its acceptance by us, then the buyer shall be liable for all costs expenses and losses whatsoever including loss of profit resulting from such cancellation.
- 10.2. If the buyer shall fail to make a payment when due, or if any distress or execution or other legal process shall be levied upon or issued against any of the buyer's assets or if the buyer shall commit any act of bankruptcy, or shall enter into any composition or arrangement with creditors, or being a company shall suffer the appointment of a receiver administrator, administration receiver or manager of all or any of its assets or if a resolution or petition to wind up such company (other than for the purpose of amalgamation or reconstruction) shall be passed or presented we shall have the right forthwith and without prejudice to any other rights or remedies to take all or any of the following steps namely, to cancel the Contract, to suspend deliveries, to stop any materials in transit, to require payment in advance for any further deliveries, to require payment in respect of any delivery already made and to enter upon the buyer's property and to retake possession of any goods which are our property.

### 11. FORCE MAJEURE

- 11.1. We shall be under no liability for any delay of failure to perform in the event that the manufacture, supply or delivery of the goods is prevented or delayed by any act or circumstances beyond our reasonable control including but not limited to Act of God, legislation, war, fire, drought, failure of power supply, failure or defective functioning of computer hardware or software (whether our own or that of any third party), lock-out, strike or other action taken by employees in contemplation or furtherance of a trade dispute or owing to any inability to procure materials required for the performance of the contract.

### 12. APPLICABLE LAW

- 12.1. This Contract shall be construed solely in accordance with Czech Law and shall be subject to the non-exclusive jurisdiction of the Courts of the Czech Republic. This Contract shall be deemed to be made within the area of jurisdiction of the Prague Courts.

