APPLIED CUTTING SYSTEMS LTD'S (ACS) Registered in England. Company No. 4534529
4a Pickhill Business Centre, Smallhythe Road, Tenterden, Kent TN30 7LZ
TERMS AND CONDITIONS - CUTTING

1. Interpretation

"Buyer" means the person who accepts a quotation of the Seller for the sale of the Goods or supply of services, and whose order for the Goods or services is accepted by the Seller

"Conditions" means the Standard Terms and Conditions of sale set out here 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 goods.

"Goods" means the Goods or service (including any installment of the Goods or parts for them) which the Seller is to supply in accordance with these conditions.

"Seller" means Applied Cutting Systems Ltd. (registered in England no. 4534529).

"Writing" includes telex, email, facsimile transmission and other comparable forms of communications.

2. Basis of Sale

2.1 The Goods shall be Bought and sold in accordance with any written quotation of the Seller which is accepted by the Buyer, or any written Order by the Buyer which is accepted by the Seller, subject to these conditions which shall govern the contract to the exclusion of any other terms and conditions, subject to which any such quotation or order is accepted, or purported to be accepted. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of both Buyer and Seller. All orders hereafter made by the Buyer shall be deemed to be made subject to these terms.

2.2 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.3 Acceptance is subject to all information being available in order for the Seller to proceed with the order forthwith. Where any subsequent information is submitted which involves alteration of a quotation the Seller retains the right to amend the quotation to cover any cost arising from such alteration.

3. Prices

3.1 The acceptance of Order shall not preclude any consequent increase in price due to the Buyer negotiating an alteration to specification or quantity after the order has been accepted.

3.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the costs to the Seller which is due to any factor beyond the control of the Seller.

3.3 The price is exclusive of any applicable Value Added (or similar) Tax, which the Buyer shall be additionally liable to pay the Seller

3.4 All prices quoted are Ex-Works unless otherwise stated and carriage will be charged extra. The Seller shall in addition be entitled to make a surcharge for any special carriage arrangements requested by the Buyer (e.g. Sameday, Courier, Overnight).

4. Orders & Specifications

4.1 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.

4.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms and specification in any order submitted by the Buyer and accepted by the Seller, and for giving the Seller any necessary information in sufficient time to enable the Seller to perform the contract in accordance with its terms. The seller will not be responsible for any errors in files submitted by the buyer. Work done on files received from the buyer to make suitable for the cutting service will be charged for at standard rates.

4.3 Unless specifically agreed between the Buyer and Seller, the scope of the work shall be limited to the supply of goods and not its application. The seller reserves the right to deliver by installments.

4.4 Unless specifically agreed, the Seller does not undertake to provide samples or proofs for the Buyer's approval prior to the manufacture of the goods. If a proof or prototype is required an extra charge will be made. Author's correction on or after this proof, including alterations in the style, will be charged for. Such proofs will be submitted to the Buyer for written acceptance, after which no liability will be accepted by the Seller for any errors not corrected by the Buyer.

4.5 The description of the goods shall be that set out in the specification agreed. Material supplied by the buyer must conform to this specification. The seller reserves the right to adjust the quoted price to cover additional costs in cutting the material should it vary from that detailed in the specification.

4.6 The Seller reserves the right to make any changes to the specification of the Goods which are required to conform with any applicable safety or other statutory instrument.

5. Terms of Payment

5.1 The Buyer will make payment to the Seller for the Goods in accordance with the terms agreed in the Contract. Unless otherwise agreed, all prices are strictly Nett, and payment is due within 30 days from the invoice date. In the event of any delay beyond the agreed due date of payment, the Buyer agrees to pay the Seller in addition to the overdue amount, interest on that overdue sum calculated at the current rate set by the Late Payment of Commercial Debts (Interest) Act as may be amended from time to time.

5.2 Where no credit facility has been agreed for the Buyer by the Seller, no work shall commence after acceptance of the order by the Seller until the agreed amount for the Goods has been paid by the Buyer in full, and the Buyer shall be liable for any extra costs incurred by any delay in such payment.

5.3 The Seller may at its option cancel or suspend (or suspend and later cancel) all further deliveries under the contract in the event of default by the Buyer in making any payment due hereunder or under any other Contract between the Seller and the Buyer.

6. Buyer Suspension or Cancellation

6.1 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 the terms that the Buyer shall indemnify the Seller and agree to pay in full all losses (including profit) and costs, damages, charges and expenses incurred by the Seller up to and as a result of the cancellation. Completed or part completed goods will then become the property of the Buyer, and must be collected within seven days before they are destroyed.

7. Risk & Property

7.1 Risk of damage to or loss of the goods shall pass to the Buyer at the time the Seller notifies the Buyer that the Goods are available for collection, or at the time of delivery, or if the Buyer wrongfully fails to take delivery of the goods, at the time when the Seller or his agent has tendered delivery of the goods to the Buyer or his agent. Payment will then become due to the Seller.

7.2 Should the Buyer fail to take delivery of the Goods as in 7.1 above or fails to provide adequate delivery instructions within 14 days of receipt of notice from the Seller that the Goods are ready for collection, then without prejudice to any other remedy or right available to the Seller, the Seller may

7.2.1 As agent for the buyer but without surrendering its lien as an unpaid seller arrange to store the goods at the Sellers workplace or elsewhere until actual delivery and charge the Buyer for the reasonable costs (including insurance), and extra carriage.

7.2.2 Sell the goods at the best price readily available 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.

7.3 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 to the Buyer by the Seller for which payment is then due.

7.4 Until payment in full is made, the Buyer shall store the Goods separately and mark them to indicate that they are the property of the Seller.

7.5 If the Buyer shall, before the property in the Goods has passed to it, use the goods in manufacture or production of items or materials or if the goods are mixed with other goods, the title of the property in the items, materials or mixed goods so produced shall remain with the Seller until such time as the Buyer has paid in full for all Goods supplied by the Seller under this contract or any other contract.

7.6 The buyer may, in the ordinary course of business, sell the goods, items, materials or mixed goods, notwithstanding that the title of the property in the Goods, items material or mixed goods, has not passed to the Buyer. The Buyer shall receive the sale proceeds into a separate interest bearing account and shall not be entitled to use such moneys until the Buyer has paid in full for all goods supplied under this contract or any other contract. The Buyer shall if requested by the Seller assign free of charge the Buyer's rights to the unpaid proceeds of the Goods, items, material or mixed goods.

7.7 Each paragraph of this clause shall be severable and in the event that any such paragraphs shall be held to be invalid the remaining paragraphs of this clause shall have full force and effect.

8. Acceptance, Warranties & Liability

8.1. The seller shall not be liable for any loss of any kind to the Buyer arising from any damage to the Goods occurring after the risk has passed to the Buyer, however caused, nor shall any liability of the Buyer to the Seller be diminished by such loss.

8.2 Any claims arising from damage in transit, shortages, or non-receipt of the Goods must be notified to the Seller in writing within 2 days of receipt by the Buyer of the advice note or invoice.

8.3 The seller shall credit the buyer a corresponding proportion of the original invoice price for any Goods found, by the seller to be defective as to size or shape from that specified in the contract, taking into consideration 4.2 above and shall not be liable to the Buyer for any loss, direct or indirect, resulting from such deficiency. Any claim by the buyer which is based on any defect in the quality of the Goods or their failure to comply with specification shall be notified to the Seller within 2 days from the date of delivery. If the Buyer shall fail to give such notice the Goods shall be conclusively presumed to be in all respects in accordance with the contract and free from any defect which would be apparent on reasonable examination of the Goods and the buyer shall be deemed to have accepted the goods accordingly. In the event that the Buyer establishes to the Seller's reasonable satisfaction that the Goods are not in accordance with the specification the Buyer's sole remedy in respect of such defects shall be limited to the Seller refunding part of the contract price for the goods but the Seller shall have no further liability to the buyer.

8.4 The Buyer is responsible for ensuring that the Goods specified in the Contract are suitable for his required purpose. The Seller gives or implies no warranty or guarantee that the Goods supplied to the Buyer will be suitable or approved for any specific purpose, and no employee, agent or supplier of the Seller is authorised to warrant otherwise, either orally or in writing, or make any other representations concerning the Goods. Any advice or recommendation given by the Seller as to storage, application, durability, or use of the Goods is based upon experience, but is solely advisory and shall not place any liability upon the Seller.

8.5 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, failure to follow the Seller's instructions, or misuse of the Goods.

8.6 The Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification provided by the buyer.

8.7 The Seller, while making every endeavour to maintain continuity, accepts no responsibility or liability for any changes in material specification.

8.8 The dispatch time quoted by the Seller is given in good faith as an estimate only, and the Seller shall not be liable for any loss or damage, arising directly on indirectly from any delay in the receipt of the goods, nor shall any such delay provide the grounds for the cancellation by the Buyer of the contract. The Seller undertakes to inform the Buyer at the earliest opportunity of any such anticipated delay due to circumstances beyond his control.

8.9 The Seller shall not be liable to the Buyer, or deemed to be in breach of the Contract by reason of any delay in performing, or 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.

8.9.1 Act of God, explosion, flood, tempest, fire or accident.

8.9.2 War or threat of war, sabotage, insurrection, civil disturbance or requisition.

8.9.3 Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority.

8.9.4 Import or export regulations or embargoes.

8.9.5 Strikes, lockouts or other industrial action or trade dispute (involving Seller's or third party's employees).

8.9.6 Difficulties in obtaining raw materials, labour, fuel, parts or machinery.

8.9.7 Power failure or machinery breakdown.

8.10 The seller will use all reasonable endeavours to procure for the Buyer the benefit of such warranties and other rights as are conferred on the Seller in relation to defects in such part or parts of the Goods as are not of the Seller's manufacture by the terms of the Seller's agreement with the suppliers of the Goods.

9. Illegal Matter

9.1 The Buyer shall indemnify the Seller against all actions, suits, losses, costs, damages, and expenses awarded against or incurred by the Seller in connection with or paid or agree to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trademark or other intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

9.2 The Buyer shall likewise indemnify the Seller against all costs and liability resulting from the specified production of items of an illegal or libelous nature.

10. Use of Goods

10.1 Where the Goods have been constructed according to designs or configurations or by processes specified or supplied by the Buyer, the Buyer represents and warrants to the Seller that the Buyer has or will have satisfied itself that all necessary tests and examinations have been made or will be made prior to the Goods being brought into use to ensure that the design of the Goods and the relevant configuration and processes used or to be used in their construction are such as to render the Goods safe and without risk to the health or safety of workman or others using the same, and that it will take such steps as are necessary to secure that there will be available in connection with the use of the Goods adequate information about the use for which they are designed and have been tested and about any conditions necessary in relation to such not so as to ensure that when put to that use they will be safe and without risk to health.

10.2 Where the Goods have been constructed according to designs or configurations or by processes specified or supplied by the Buyer, the Buyer represents and warrants to the Seller that these do not infringe the rights of any person, whether in respect of any patent, trade mark, registered design, copyright, confidential disclosure or otherwise howsoever arising to prevent or restrict the sale of use of the Goods or the use of such processes in any part of the world. The Buyer shall indemnify the Seller against all actions, suits, claims, demands, losses, charges, costs and expense's which the Seller may suffer or incur in connection with any claim by any third party alleging facts which if established would indicate a breach of representations and warranties on the part of the Buyer.

10.3 The buyer shall indemnify the Seller against all actions, suits, claims, demands , losses, charges, costs and expenses which the Seller may suffer or incur in connection with any claim by any third party alleging facts, which, if established would indicate a breach of the representations and warranties contained in this clause.

11. Limitation of Liability

These conditions set out the Seller's entire liability under these terms shall be in lieu and to the exclusion of all other warranties, conditions, terms and liabilities express or implied statutory or otherwise in respect of the quality or the fitness for any particular purpose of the goods or otherwise howsoever (notwithstanding any advice or representations to the Buyer, all liability in respect of which, howsoever arising, is expressly excluded) except any implied by law or statute and which by law or statute cannot be excluded. Save as provided in these terms and except as aforesaid the Seller shall not be under any liability, whether in contract, tort or otherwise, in respect of defects in the Goods or failure to correspond to the specification or sample or for any injury, damage or loss resulting from such defects or from any work done in connection therewith.

12. Insolvency

12.1 If the Buyer ceases to pay his debts in the ordinary course of business, is unable or deemed unable to pay his debts, has an administration order, becomes bankrupt, or goes into liquidation, an encumbrancer takes possession, or a receiver is appointed over part or all his assets, if the Buyer ceases or threatens to cease to carry on business, or if the Seller reasonably apprehends any of these events might occur, then, without prejudice to any other right or remedy, the Seller shall be entitled to cancel the Contract. The Buyer shall become immediately liable for all costs incurred by the Seller prior to cancellation, whether or not the Goods are completed, and if the Goods have been completed but not paid for, the price shall become immediately due and payable, notwithstanding any previous agreement to the contrary.

13 Seller's Lien

13.1 In addition to any right of lien to which it may be by law entitled the Seller shall be entitled to a general lien on all goods of the Buyer in the Seller's possession (although such Goods or some of them may have been paid for) for all sums, whether liquidated or quantified or not , due from the Buyer to the Seller. The Seller shall not be liable for loss or damage to the Buyer's property in the Seller's possession either as a result of the exercise by the Seller or its lien or otherwise.

14. General

14.1 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.

14.2 All disputes, differences or questions arising out of the contract or as to the rights of liabilities of the parties thereunder or in connection therewith or as to the construction or interpretation thereof shall be referred to the arbitration of a single arbitrator to be agreed between the parties on in default of agreement appointed at the request of any party by the President for the time being of the Chartered Institute of Arbitrators.

14.3 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 provision in question shall not be effected thereby.

15. **Assignment**

The buyer shall not assign any benefit under the contract without the consent in writing of the Seller.