APPLIED CUTTING SYSTEMS LTD'S (ACS) Registered in England. Company No. 4534529
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TERMS AND CONDITIONS OF BUSINESS

1 **GENERAL**

1.1 In these Conditions:- "Buyer" means the person who accepts a quotation from the seller for the sale of goods and whose order is accepted by the Seller; "Goods" means the goods (including any instalment or Conditions); "Seller" means Applied Cutting Systems Limited.

1.2 All quotations are given and all orders are accepted on these terms, which supersede any other terms appearing elsewhere, and shall override and exclude any other terms stipulated or incorporated or referred to by the Buyer, whether in the order or in any negotiations, and any course of dealing established between the Seller and the Buyer. All orders hereafter made by the Buyer shall be deemed to be made subject to these terms.

1.3 The Buyer acknowledges that there are no representations outside these terms and which have induced him to enter into the contract (which expression shall include any contract of which these terms form part) and these terms and those on the face hereof shall constitute the entire understanding between the parties for the sale of the Goods.

1.4 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 involved alteration of a quotation the Seller retains the right to amend the quotation to cover any cost arising from such alteration.

2 **QUOTATIONS**

2.1 Quotations are subject to withdrawal at any time before receipt of an unqualified order from the Buyer and shall be deemed to be withdrawn unless the order is accepted by the Seller within 21 days from their date. No contract shall exist until the Buyer's orders are accepted in writing, by fax or by electronic means by the Seller.

3 **DELIVERY**

3.1 The Period of time quoted for delivery is to commence with the date of the Seller's acceptance of the Buyer's order or if later, from receipt by the Seller of a written or telegraphic order outlining all the necessary information to enable the Seller to put the work in hand. Orders for Goods once accepted by the Seller may not be cancelled without the Seller's written agreement and the Buyer shall indemnify the Seller against any loss arising from such cancellation.

3.2 The Seller shall use every endeavour to deliver on the date given, however all delivery dates are estimates only and the time of delivery shall not be of the essence of the contract. In no circumstances shall the Seller be liable to compensate the Buyer in damages or otherwise for non delivery or late delivery of the Goods or any of them for whatever reason or for any loss, consequential or otherwise, arising therefrom.

4 **GOODS**

4.1 All descriptions and illustrations contained in the Seller's catalogues, price lists and advertisements or otherwise communicated to the Buyer are intended merely to present a general ideal of the Goods described therein, and nothing contained in any of them shall form any part of the contract.

5 **THE PRICE**

5.1 Prices will be those ruling at the date of delivery to the Seller being either the date the Buyer collects the Goods or the Seller delivers them in accordance with the Buyer's instructions. Whilst every effort will be made to maintain quoted prices, sudden escalations in the price of Goods or services shall be passed onto the Buyer. The Seller reserves the right to increase the price of the Goods before delivery by an amount equivalent to any increase which may have arisen in the cost to the Seller of manufacturing or acquiring or delivering the Goods to that ruling at the date of despatch.

5.2 Prices quoted are strictly "Ex Works". Packing cases, packaging material and carriage will be charged extra, whether delivered by carrier or the Seller's own transport. Quotations for packing and carriage can be provided on request. Packing cases are non-returnable. Payment against Pro-Forma Invoice may be required from the Buyer where undue delays in payment of account have occurred. VAT is not included in the Seller's quoted prices and will be charged at the appropriate rate.

5.3 Without limiting the provisions of clause 6.1 where an order is accepted where the Seller has quoted on an "on cost basis" to the Buyer the price charged will represent the Seller's actual cost plus the cost charged by any sub-contractor together with a margin of profit to the Seller. Such an "on cost" acceptance will replace any price stated in the Seller's acceptance of an order.

6 **CANCELLATION**

6.1 The Buyer may not cancel the contract without the consent of the Seller, which if given shall be deemed to be on the express condition that the Buyer shall indemnify the Seller against all loss, damage, claims or actions arising out of such cancellation unless otherwise agreed in writing.

7 **PAYMENT**

7.1 Unless otherwise agreed, all prices are strictly nett, and payment is due within 30 days from the end of the month of Invoice. All liability on the Seller's part is subject to these terms of payment and all other of the Buyer's obligations to the Seller under the contract being strictly observed.

7.2 The Seller reserves the right to deliver by instalments. The failure of the Buyer to pay any instalment in accordance with these terms in due time shall entitle the Seller to treat such failure as a repudiation of the whole contract by the Buyer and to recover damage for such breach of contract.

7.3 Interest on all sums due shall run at the rate of five per cent per annum above the base lending rate of National Westminster Bank plc from time to time in force until payment is received after as well as before any judgement thereof.

8 **NON-DELIVERY**

8.1 Should the Seller be prevented from or hindered in delivering the Goods or any part thereof by reason of war, riot, explosion, fire, flood, strike, lockout, shortage of materials or labour or any cause beyond the Seller's control, the time for delivery shall be extended by a period equal to that during which the cause preventing or hindering delivery exists.

8.2 Should the Seller be prevented from delivering part of the Goods by reason of any of the causes specified in the preceding sub-clause, the Seller shall deliver and the Buyer shall take and pay for such part of the Goods as the Seller shall be able to deliver in accordance with the contract.

8.3 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection, or if some other place of delivery is agreed by the Seller, by the Seller delivering the Goods to that place.

8.4 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 or extinguished by reason of such loss.

8.5 Where the Goods are to be collected by the Buyer and the Buyer fails to collect the Goods within 14 days of receipt of notice from the Seller that the Goods are ready for collection and the Seller may:-

8.5.1 As agent for the Buyer but without surrendering its lien as an unpaid seller arrange for the Goods to be stored at the Seller's works or elsewhere, and the Buyer will pay and hereby indemnifies the Seller against all storage charges, insurance, demurrage or other costs expenses and charges arising from the Buyer's failure or neglect; or

8.5.2 Sell the Goods at the best price readily obtainable 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.

8.6 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, or in the event that the Buyer, being a natural person shall die or become bankrupt, or, being a company shall enter into liquidation or have a receiver or administrator appointed over its undertaking property or assets or any part thereof or shall enter or offer to enter into any voluntary arrangement or agreement or composition with his or its creditors, or in the event that anything similar or analogous to any of the foregoing shall occur under the laws of any jurisdiction in which the Buyer is incorporated, resident or carries on business.

9 **PASSING OF RISK AND PROPERTY**

9.1 Risk of loss of or damage to the Goods shall pass to the Buyer:-

9.1.1 In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection, or

9.1.2 In the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

9.2.1 Notwithstanding that the Buyer or his agents obtain possession of the Goods, all such Goods shall remain the property of the Seller until the Seller has received in cash or cleared funds payment in full for such Goods and other Goods supplied to the Buyer by the Seller under this contract or any other contract and the Seller shall be entitled to all rights of access to the Buyer's premises to enforce its rights hereunder.

9.2.2 If the Buyer does not pay on the due date for payment or if any of the events specified in clause 8.6 occurs, the Seller may (without prejudice to any of its other rights) sell or otherwise deal with or dispose of the Goods in such manner as it may deem fit.

9.2.3 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.

9.2.4 If the Buyer shall, before the property in the Goods has passed to it, use the Goods in the manufacture or production of items or materials, whether or not in association with any other goods, or if the Goods are mixed with other goods, the property in the items, materials or mixed goods so produced shall remain with the Seller until the Buyer has paid in full for all Goods supplied by the Seller under this contract or any other contract. Title in the goods mixed with the Goods supplied by the Seller hereunder shall pass to the Seller at the moment of manufacture or mixing and all the Seller's rights hereunder shall extend to such items, materials or mixed goods. Until property in the items, materials or mixed goods, passes to the Buyer, the Buyer shall store separately and mark the items, materials or mixed goods to indicate that they are the property of the Seller.

9.2.5 The Buyer may, in the ordinary course of business, sell the Goods, items, materials or mixed goods notwithstanding that the property in the Goods, items, materials or mixed goods has not passed and, in the event that the Buyer sells the Goods, items, material or mixed goods, 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 by the Seller 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.

9.2.6 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.

10 **INSPECTION OF GOODS AND LIABILITY FOR DEFECTS**

10.1 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 (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the Buyer shall fail to give such notice or if delivery is not refused 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 contract or are so defective, the Buyer's sole remedy in respect of such non-accordance or defects shall be limited as the Seller may elect to the replacement of the goods or refund of the purchase price against return of the Goods but the Seller shall have no further liability to the Buyer.

10.2 The repaired or new parts will be delivered free of charge to the Buyer. The Seller accepts no responsibility for rectification carried out without the Seller's consent.

11 **USE OF GOODS**

11.1 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 workmen 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.

11.2 Where the Goods have been constructed according to designs or configurations or by processes so used do not infringe the rights of any person, whether in respect of any patent, trade mark, registered design, copyright, confidential disclosure or otherwise howsoever to prevent or restrict the sale or 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 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.

11.3 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 undertakings representations and warranties on the part of the Buyer contained in this Clause 11.

12 **WARRANTIES AND CONDITIONS**

12.1 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.

13 **LIMITATION OF LIABILITY**

13.1 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 specification or sample or for any injury, damage or loss resulting from such defects or from any work done in connection therewith.

14 **SELLER'S LIEN**

14.1 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.

15 **INDEMNITY**

15.1 The Buyer shall indemnify the Seller in respect of all damage, injury or loss occurring to any person or property and against all actions, suits, claims, demands, charges or expenses in connection therewith arising from the condition or use of the Goods in the event and to the extent that the damage, injury or loss shall have been occasioned partly or wholly by any breach by the Buyer or its obligations to the Seller hereunder.

16 **ARBITRATION**

16.1 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 or, in default of agreement, appointed at the request of any party by the President for the time being of the Chartered Institute of Arbitrators.

17 **PROPER LAW**

17.1 The Buyer submits to the jurisdiction of the High Court of Justice in England but the Seller may enforce the contract in any court of competent jurisdiction.

18 **ASSIGNMENT**

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