

# TERMS & CONDITIONS

APOGEE INDUSTRIES LTD

STANDARD TERMS AND CONDITIONS OF SALE

## 1. DEFINITIONS

1.1 "The Company" means Apogee Industries Ltd.

1.2 "The Customer" means the person, firm or company that contracts with the Company for the purchase of goods or services.

1.3 "The Goods" means the products of any kind manufactured or sold by the company.

1.4 "The Services" means work of any kind carried out by the Company.

## 2. CONDITIONS APPLICABLE

2.1 These conditions shall apply to all contracts for the sale of goods or services by the Company to the Customer to the exclusion of all other terms and conditions, including any terms or conditions that the Customer may purport to apply under any purchase order, confirmation of order or similar documents.

2.2 All orders for goods or services shall be deemed to be an offer by the Customer to purchase goods or services pursuant to these conditions.

2.3 Acceptance of delivery of the goods or service shall be deemed conclusive evidence of the Customer's acceptance to these conditions.

2.4 Any variation to these conditions (including any special terms or conditions agreed between the parties) shall be inapplicable unless agreed in writing by a director of the Company.

2.5 In the event that information given by the Customer to the Company differs from that on which the quotation was based and involves the alteration of the quotation, the Company may increase the price quoted therein to cover any increase in cost that the alteration may incur and amend the delivery date.

## 3. THE PRICE AND PAYMENT

3.1 The price of the goods or service shall be the Company's quoted price which will be binding upon the Company provided that the Customer shall accept the Company's quotation within 15 days.

3.2 The price is exclusive of VAT which shall be due at the rate ruling on the date of the Company's invoice. Time for payment shall be the essence of the contract.

3.3 The Customer may be required to pay a deposit as required by the Company upon the placing of an order and the balance of the price must be paid within 30 days of completion of the Goods or Services unless other account terms are specified. If the Customer does not pay the balance of the price on the relevant date interest shall be payable on the amount outstanding for the period beginning with the date payment is due and ending with the date of payment at the rate of 10%.

## 4. WARRANTIES & LIABILITY

4.1 All other terms conditions and warranties relating to fitness for purpose, merchantability or condition of the goods or service whether made expressly by the Company or its servants or agents or implied by statute at common law or otherwise are excluded.

## 5. DELIVERY OF THE GOODS

5.1 The Company will make every endeavour to meet the delivery times for the provision of the goods or services that are specified in the quotation but no guarantee is given as to delivery times which are forecasts only. Time shall not be of the essence of the contract save in the case of payment due to the Company.

5.2 Delivery times shall run from the date of receipt by the Company of the Customer's order in writing or facsimile or email.

5.3 Delay in delivery shall not give the Customer the right to cancel the order.

5.4 The Company may deliver the goods or service by separate instalments in accordance with an agreed schedule. Each schedule shall be invoiced and paid in accordance with these terms and conditions.

5.5 The failure of the Customer to pay for any one or more of the said instalments on the due dates shall entitle the Company (at its sole option)

5.5.1 without further notice to suspend further deliveries of the goods or service pending payment by the Customer and/or

5.5.2 to treat the contract as repudiated by the Customer

5.6 The Customer shall promptly obtain all necessary import licenses, clearances, and other consents necessary for the purchase of goods.

5.7 The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the goods or service (or any of them or it) promptly or at all.

5.8 The goods or service may be delivered to the Customers at the Company's address. The risk in the goods shall pass to the Customer upon such delivery taking place. If the goods are delivered to the Customer at the Company's address and the Customer does not collect the goods at the agreed time the Company can charge the Customer for storage of the goods until they are collected and the

Customer must pay the storage costs on collection of the goods.

5.9 The Company may arrange for carriage of the goods to the Customer's address or the address of a third party. The costs of carriage and any insurance that the Customer reasonably directs the Company to incur shall be reimbursed by the Customer without any set off or other withholding whatsoever and shall be due on the date of payment of the price. The carrier shall be deemed to be the Customer's agent.

#### 6 DAMAGE, SHORTAGE AND LOSS

6.1 In the event that the Company delivers the goods to the Customer, or uses a carrier to do so, the Customer must notify the Company within three days of delivery of any damage, shortage or loss.

6.2 The Company shall not be liable for any loss or consequential loss arising from such damage or shortage.

#### 7 DEFECTS

7.1 The Customer must notify the Company within 7 days of receipt of the goods or service of any defects in them. The Customer shall return the goods to the Company carriage paid.

7.2 If the Company accepts the Customer's claim, the Company shall have the choice of rectifying the defect or crediting the Customer with the amount given on the quotation.

7.3 The Customer may not charge the Company for any work the Customer carries out to rectify a defect without written agreement from the Company.

7.4 The Company shall dispatch any rectified goods to the Customer carriage paid.

#### 8. ACCEPTANCE OF THE GOODS OR SERVICE

8.1 The Customer shall be deemed to have accepted the goods or service 7 days after delivery to the Customer.

8.2 After acceptance the Customer shall not be entitled to reject the goods or service that are not in accordance with the contract.

#### 9 TITLE AND RISK

9.1 Title and risk shall pass as hereinafter provided.

9.2 The goods shall be at the Customer's risk from delivery or collection as the case may be.

9.3 In spite of delivery being made, property in the goods shall not pass from the Company until

9.3.1 the Customer shall have paid the price plus VAT in full and

9.3.2 no other sums whatever shall be due from the Customer to the Company.

9.4 Until property in the goods passes to the Customer in accordance with clause 9.3, the Customer shall hold the goods and each of them on a fiduciary basis as bailee for the Company. The Customer shall store the goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property.

9.5 Notwithstanding, that the goods (or any of them) remain the property of the Company, the Customer may sell or use the goods in the ordinary course of the Customer's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or sue of the Company's property by the Customer on the Customer's own behalf and the Customer shall deal as principal when making such sales or dealings. Until property in the goods passes from the Company, the entire proceeds of sale or otherwise of the goods shall be held in trust for the Company and shall not be mixed with any other money or paid into any overdrawn bank account and shall be identified at all times at the Company's money.

9.6 The Company shall be entitled to recover the price (plus VAT) notwithstanding that property in any of the goods has not passed from the Company.

9.7 Until such time as property in the goods passes from the Company, the Customer shall upon request deliver up such of the goods as have not ceased to be in existence or resold to the Company. If the Customer fails to do so, the Company may enter upon any premises owned, occupied or controlled by the Customer where the goods are situated and repossess the goods. On the making of such request the rights of the Customer under clause 9.5 shall cease

9.8 The Customer shall not pledge or in any way charge by way of security for any indebtedness any of the goods that are the property of the Company. Without prejudice to the other rights of the Company, if the Customer does so, all sums whatsoever owing to the Company shall forthwith become due and payable.

9.9 The Customer shall insure and keep insured the goods to the full price against all risks to the reasonable satisfaction of the Company until the date that property in the goods passes from the Company, and shall whenever requested by the Company produce a copy of the policy of insurance. Without prejudice to the other rights of the Company, if the Customer fails to do so, all sums whatsoever owing by the Customer to the Company shall forthwith become due and payable.

#### 10 LIABILITY

10.1 No liability is accepted for any direct or indirect cost, damage or expense relating to property or injury or loss to any person firm or company or for any loss of profits or production arising out of or occasioned by any defect in or failure of materials or for parts thereof supplied by the Company or other consequential loss howsoever arising (except to the extent that any such liability may not be

excluded by statute).

10.2 The Company's liability whether in respect of one claim or an aggregate arising out of any contract shall not exceed the purchase price payable under the contract.

10.3 Where the Customer accepts or has been deemed to have accepted any goods, then the Company shall have no liability whatsoever to the Customer in respect of those goods.

10.4 Illustrations, weights, measures, specifications and performance schedules set out in the sales literature of the Company form no part of this contract.

#### 11 DELIVERED QUANTITY

11.1 The Company reserves the right to over or under deliver to the extent of 5% of the quantity given on the quotation, except for batches of 20 or less when the quantity that may be over or under delivered will be on item only. The Company will then invoice pro rata for the appropriate quantity.

#### 12 INTELLECTUAL PROPERTY

12.1 The specifications and designs of the goods (including the copyright, design right or other intellectual property in them) shall as between the parties be the property of the Company. Where any designs or specifications have been supplied by the Customer for the manufacture by or to the order of the Company then, the Customer warrants that the use of those designs or specifications for the manufacturing process, assembly or supply of the goods shall not infringe the rights of any third party.

12.2 The Customer shall indemnify the Company in full against all liability and cost of any infringement (alleged and proven) by the Customer of any patent, copyright, or other intellectual or industrial property.

12.3 The Customer shall not alter, deface, reproduce or use any of the Company's trademarks.

12.4 All drawings, documents and other information supplied by the Company are supplied on the express understanding that the Customer will not without written consent from the Company.

12.4.1 give away, loan, exhibit or sell any such drawings or extracts thereof or copies thereof

12.4.2 use them in any way except in connection with the components for which they are used.

#### 13 CUSTOMER DRAWINGS

13.1 The Company accepts no responsibility for the accuracy of information or drawings supplied by the Customer.

13.2 The Customer shall indemnify the Company from and against all actions, claims, costs and proceedings that arise due to the manufacture of components according to the drawings and specifications of the Customer, where such drawings and specifications of the Customer shall be erroneous.

#### 14 INSOLVENCY OR OTHER DEFAULT OF THE CUSTOMER

14.1 If the Customer fails to make payment for the goods in accordance with the contract of sale, or commits any other breach thereof or if any distress or execution shall be levied upon any of the Customer's goods or if the Customer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Customer or the Customer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Customer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Customer's business assets or if the Customer shall suffer any analogous proceedings under foreign law, all sums outstanding in respect of the goods shall become payable immediately. The Company may in its absolute discretion and without prejudice to any other rights that it may have

14.1.1. suspend all future deliveries of goods to the Customer and/or terminate the contract without liability upon its part and/or

14.1.2 exercise any of its rights pursuant to clause 9.

#### 15 SET OFF AND COUNTERCLAIM

15.1 The Customer may not withhold payment of any invoice or other amount due to the Company by reason of any right or set-off or counterclaim that the Customer may have or allege to have or for any reason whatsoever.

#### 16 BACK ORDERS

16.1 The Company shall be entitled to a general lien on all goods of the Customer in the Company's possession (including goods of the Customer that have been paid for) for the unpaid price of all goods sold to the Customer by the Company under this or any other contract.

#### 17 SUB CONTRACTING

17.1 The Company may licence or sub-contract all or any part of its rights and obligations under this contract without the Customer's consent.

#### 18 FORCE MAJEURE

18.1 The Company shall not be liable for any default due to any act of God, war, strike, lock-out, industrial action, fire, flood, drought, tempest or any other event beyond the reasonable control of the Company.

#### 19 NOTICES

19.1 Any notice required to be serviced pursuant to this contract of sale shall be in writing and serviced by first class post, hand or facsimile on the Company at the Company's registered office or principle place of business, and on the Customer at the Customers registered office or principle place of business.

#### 20 PROPER LAW OF THE CONTRACT

20.1 This contract is subject to the law of England and Wales.