



Updated December 2023

Terms & Conditions

Advanced Air (UK) Limited – Terms and Conditions for Supply of Goods

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISION OF CLAUSE 10 (LIMITATION OF LIABILITY)

Note:

1. Errors and omissions must be reported in writing within 5 working days.
2. Goods must not be returned without written consent.

1 INTERPRETATION

"Acknowledgement of Order" means the confirmation of the Goods to be provided by the Supplier to the Customer subject to these conditions;

"Customer" means the Company, person or firm as detailed in the Acknowledgement of Order as purchasing the Goods ;

"Conditions" means these terms and conditions;

"Contract" means the contract subject to the Conditions for the supply of Goods made between the Supplier and the Customer;

"Goods" means the goods, materials and/or other items as set out in the Acknowledgement of Order to be supplied pursuant to the Contract;

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and the main names rights and designs, rights in computer software, topography rights, moral rights, rights in confidential information (including knowhow and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;

"Parts" means Goods which are component parts sold to the Customer for the Customer to install which are to replace worn, broken or defective components;

"Price" means the price of Goods as set out in the Acknowledgement of Order [subject to Clause 3.3];

"Recommended Specification" means the technical specification of Goods provided by the Supplier to the Customer agreed in writing by both parties;

"Standard Delivery" means a single delivery per Contract during Normal Working Hours using a Standard Vehicle;

"Standard Vehicle" means an articulated curtain-sided vehicle;

"Supplier" means Advanced Air (UK) Ltd of Burrell Way, Thetford, Norfolk, IP24 3QU, registered number 1093689;

"Site" means the location(s) specified in the Acknowledgement of Order for the delivery of the Goods;

"Writing" includes manuscript, type-written or printed statement, facsimile transmission and electronic mail; and

"Working Days" means the hours of 08.30 to 17.00 hours Monday to Thursday and 08:30 to 14:00 on a Friday apart from Bank Holidays and other public holidays.

2 FORMATION OF CONTRACT

2.1 Except where these Conditions are varied in accordance with Clause 2.2, these Conditions shall apply to any Contract entered into between the Customer and Supplier to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any order or other document), whether referred to in previous dealings or discussions, or implied by law or otherwise, and shall constitute the entire agreement between the parties.

2.2 No variation to any of these Conditions shall be incorporated into these Conditions unless agreed by the authorised representatives of each of the parties in Writing and the parties acknowledge that these Conditions (with the incorporation of any such variations) constitute the entire agreement between the parties.

2.3 Any typographical, clerical or other error or omission in any sales literature, proposal, price list, acceptance of order, drawings, specifications, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

2.4 Any advice or recommendation given by the Supplier to the Customer in relation to the Goods , which is not confirmed in Writing by a duly authorised representative of the Supplier, is followed or accepted by the Customer entirely at the Customer's own risk and the Supplier shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any change to an order acknowledgement by the Customer must be provided within 24 hours of receipt; once this time has lapsed the order cannot be changed.

3 CONTRACT PRICE

3.1 The Price payable for the Goods and these shall be that set out in the Acknowledgement of Order.

3.2 The Price will not be subject to any retention as commonly understood within the construction industry and will be payable in full in accordance with these Conditions.

3.3 The Supplier shall be entitled at any time and from time to time to increase the Price referred to in Clause 3.1 by giving notice in Writing to the Customer at any time prior to the delivery of Goods or any part of the Contract to reflect any increase in the Supplier's cost in performing the Contract which is due to any factor beyond the Supplier's control (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of import/export duties, increase in the cost of labour, materials or costs of manufacture or performance) any change in quantities or specification of the Goods requirements requested by the Customer or failure to give the Supplier adequate information or instructions.

3.4 Unless otherwise agreed by the Supplier in Writing, the Price includes Standard Delivery costs to the Site and insurance while the Goods are in transit. Offloading of materials and any fall arrest equipment is deemed to be the responsibility of the Customer and no allowance is made within the Price. Standard Delivery will be considered as using a Standard Vehicle unless otherwise notified by the Customer.

3.5 The Price is exclusive of any Value Added Tax or any other tax or duty payable and the Customer will bear the cost of any such tax or duty in addition to the Price.

3.6 The Customer will ensure that the Site is prepared to enable the Supplier to deliver the Goods, and to enable the Customer to accept delivery or performance of the same, including, without limitation, arranging access to the Site, providing cranes, hoists or other safety equipment, utilities, other services and workmen. In the event that the Site is not prepared as required by this Clause 3.6, at the time of delivery of the Goods, the Supplier may arrange any equipment or services necessary to prepare the Site for delivery by the Supplier and acceptance by the Customer and charge the cost of such equipment and services and any associated administration charges to the Customer in accordance with Clause 6, and/or store and maintain the Goods in accordance with Clause 5.3 until the Customer has prepared the Site and an alternative delivery date has been agreed.

3.7 The Customer will indemnify the Supplier against all costs, charges expenses, actions, suits, claims and demands in connection with any equipment or services arranged by the Supplier under Clause 3.6.

3.8 Where the Customer requests Goods outside of those referred to in the Acknowledgement of Order then the Supplier shall be entitled to charge for such in accordance with its then current pricing structure.

4 TRANSFER OF TITLE AND RISK

4.1 Risk in the Goods and all liability to third parties in respect thereof shall pass to the Customer on delivery to the Site.

4.2 Ownership of the Goods shall not pass to the Customer until the Supplier has received in full (in cash or cleared funds) all sums due to it in respect of the Goods.

4.3 Until ownership of the Goods has passed to the Customer, the Customer must:

4.3.1 Hold the Goods on a fiduciary basis as the Supplier's bailee;

4.3.2 Store the Goods (at no cost to the Supplier) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Supplier's property;

4.3.3 Not destroy, deface or obscure any identifying mark on or relating to the Goods;

4.3.4 Maintain the Goods in satisfactory condition insured on the Supplier's behalf for their full price against all risks to the reasonable satisfaction of the Supplier. On request the Customer shall produce the policy of insurance to the Supplier; and

4.3.5 Hold the proceeds of the insurance referred to in condition 4.3.4 on trust for the Supplier and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

4.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:

4.4.1 Any sale shall be effected in the ordinary course of the Customer's business at full market value and the Customer shall hold such part of the proceeds of sale as represent the amount owed by the Customer to the Supplier on behalf of the Supplier and the Customer shall account to the Supplier accordingly;

4.4.2 Such part of the proceeds of any sale as represent the amount owed to the Supplier are held on trust for the Supplier and will not be mixed with any other money nor paid into an overdrawn bank account, but be placed in a separate bank account in the Supplier's name;

4.4.3 Any such sale shall be a sale of the Seller's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale; and

4.4.4 Actual delivery of the Goods to the Customer has been effected.

4.5 At any time before title to the Products passes to the Customer, the Supplier may:

4.5.1 by notice in writing, terminate the Customer's right under clause 4.4 to resell the Products or use them in the ordinary course of its business; and

4.5.2 require the Customer to deliver up all the Products 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 relevant Products are stored in order to recover them.

4.6 the Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.

4.7 The Customer grants the Supplier, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

5 DELIVERY

5.1 The Supplier will issue an estimated time for delivery on the Acknowledgement of Order. Removal from their transportation vehicle(s), installation and positioning of the Goods is the responsibility of the Customer and the Supplier accepts no liability for removing the goods from the transportation vehicle or installation or positioning.

5.2 Delivery of Goods is subject to availability and delay in the delivery shall not entitle the Customer to:

5.2.1 refuse to take delivery of the Goods;

5.2.2 claim damages; or

5.2.3 terminate the Contract.

5.3 If for any reason either the Customer will not accept delivery or the Supplier is unable to deliver the Goods because the Customer has not provided appropriate instructions, documents, licences or authorisations (an Aborted Delivery) then:-

5.3.1 The Goods will be deemed to have been delivered and risk in the Goods will pass to the Customer;

5.3.2 The Supplier may store and maintain the Goods until actual delivery to Site and the Customer will be liable for all related costs and expenses including, without limitation, storage, redelivery and insurance in accordance with Clause 6;

5.3.3 Within 7 days of the Aborted Delivery the Supplier shall notify the Customer in Writing of a new delivery date;

5.4 The Customer is deemed to accept that the Goods or any part thereof have been delivered to the Customer's satisfaction unless the Supplier is notified in Writing to the contrary within 5 working days of the Supplier's delivery.

5.5 Commissioning of the Goods is subject to the Supplier's Terms and Conditions for the Supply of Services.

6 TERMS OF PAYMENT

6.1 Subject to Clause 6.8.3 or any variation as stated in the Acknowledgement of Order, amounts owing to the Supplier under the Contract shall be paid in Pounds Sterling (£) and shall be due and payable within the agreed Customer credit terms

6.2 The Supplier reserves the right to grant to and remove from the Customer any credit period agreed in Writing whether in the Acknowledgement of Order, these Conditions or otherwise, by issuing notice in writing to the Customer. On issue of such notice by the Supplier, the Price shall become payable forthwith in full by the Customer.

6.3 The Supplier reserves the right at any time:

6.3.1 To require the Customer to provide such security or guarantee in respect of any credit advanced to the Customer under this Contract as the Supplier may in its absolute discretion deem necessary; or

6.3.2 To vary the terms and conditions of any credit advanced to the Customer without notice.

6.4 No payment shall be deemed to have been received until the Supplier has received cleared funds.

6.5 All payments to the Supplier under the Contract shall become due immediately upon termination of this Contract.

6.6 The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

6.7 The Supplier reserves the right to suspend further deliveries of any Goods under this or any other Contract with the Customer in the event of late or non-payment.

6.8 In the event that the Supplier exercises its rights under Clause 6.7 above the Supplier:

6.8.1 Is entitled to remove from the Site all its equipment, materials and other property brought onto the Site by its employees;

6.8.2 May charge the Customer the value of the Goods delivered prior to suspension and:

6.8.3 All sums under this Clause 6.8 are payable immediately on presentation by the Supplier of an invoice for the same.

6.9 If the Customer fails to pay the Supplier any sum due pursuant to the Contract, the Customer will be liable to pay interest to the Supplier on such sum from the due date for payment at the annual rate of 8% above the base rate from time to time of the Bank of England accruing on a daily basis until payment in cleared funds is made, whether before or after any judgment.

6.10 The Customer will indemnify the Supplier against all costs and expenses incurred as a result of any breach of the Customer's payment obligations in Clauses 3 and 6, including legal fees in obtaining payment.

7 ACCESS TO THE SITE

7.1 In the event that access to the Site is refused for any reason, the Customer will pay all of the Supplier's cost in delivering the Goods caused by the refusal of access, including, but not limited to the cost of re-attending the Site, re-supply of Goods, associated administration charges and all other costs and expenses.

7.2 the Supplier will use reasonable endeavours to ensure its employees, subcontractors and agents comply with the Customer's site rules and relevant health and safety standards.

7.3 The Customer will notify the Supplier in advance of any unusual operating conditions which may affect the delivery of the Goods.

8 INTELLECTUAL PROPERTY RIGHTS

8.1 All Intellectual Property Rights in or arising out of or in connection with the Goods or Contract shall be owned by the Supplier.

8.2 The Customer acknowledges that, in respect of any third-party Intellectual Property Rights in the Goods or Contract, the use of any such Intellectual Property Rights by the Customer is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to licence such rights to the Customer.

8.3 The Supplier retains all Intellectual Property Rights in the Goods whether pre-existing or developed specifically for the purposes of the Contract. The Customer shall be granted a royalty free, non-assignable, non-transferable licence to use the Intellectual Property Rights of the Supplier for the purposes of operation or maintenance of the Goods.

9 WARRANTY

9.1 Except where Clauses 9.2 or 9.3 apply:

9.1.1 Goods supplied pursuant to this Contract shall be guaranteed as regards parts and labour against all defects of workmanship and/or materials for a period of either 12 (twelve) months from actual delivery (in accordance with Clause 5);

9.1.2 Parts supplied pursuant to this Contract shall be guaranteed as regards replacement against all defects of workmanship and/or materials for a period of 12 months from the date of delivery; provided in each of the above situations that the Supplier has received Written notice of such defect within the Warranty Period.

9.2 Replacement Goods provided under any of the provisions of Clause 9.1 shall be guaranteed for the unexpired period of the original Warranty Period only.

9.3 The guarantee in Clause 9.1 will not apply to Goods which are:

9.3.1 Not maintained by the Supplier or its authorised representative in accordance with the Supplier's instructions;

9.3.2 Not stored or used at the recommended temperature or humidity;

9.3.3 Not installed correctly;

9.3.4 Not stored indoors and protected from the weather;

9.3.5 Accidentally or deliberately misused by the Customer;

9.3.6 Not stored or used in accordance with the Recommended Specification for the Goods;

9.3.7 Damaged by any other act beyond the Supplier's control;

9.3.8 Replacement Goods not installed by the Supplier or its authorised representative. In the event of a claim under Clause 9.1 the Supplier has the right to inspect the Goods in order to decide whether the guarantee applies to the Goods in accordance with Clause 9.3

9.3.9 Not paid for in full

9.4 Subject to conditions listed in Clause 9.3, if any of the Goods do not conform with the guarantee at Clause 9.1 the Supplier shall at its option repair or replace such Goods or if the Goods cannot be repaired or replaced for any reason, refund the price of such Goods provided that, if the Supplier so requests, the Customer shall, at the Supplier's reasonable expense, return the Goods or the part of such Goods which is defective to the Supplier.

9.5 If the Supplier complies with Clause 9.4 it shall have no further liability for a breach of warranty in Clause 9.1 in respect of such Goods.

9.6 Any Goods returned to the Supplier which cannot be repaired and returned to the Customer will belong to the Supplier and any replacement Goods will be guaranteed in accordance with Clause 9.2. Any repaired goods will be guaranteed for the remainder of the relevant warranty period granted at Clause 9.1.

9.7 In relation to Goods, all warranties, conditions and other terms implied by statute or common law are excluded from the Contract, save for the terms implied by section 12 of the Sale of Goods Act 1979.

10 LIMITATION OF LIABILITY

10.1 Subject to Clause 9, the following provisions set out the entire financial liability of the Supplier, including any liability for the acts or omissions of its employees, agents and sub-contractors, to the Customer in respect of:

10.1.1 Any breach of these Conditions; and

10.1.2 Any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 Nothing in these Conditions excludes or limits the liability of the Supplier for:

10.2.1 Death or personal injury caused by the Supplier's negligence; or

10.2.2 For the Supplier's fraudulent misrepresentation.

10.3 Subject to conditions 10.1 and 10.2:

10.3.1 The Supplier's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the Price; and

10.3.2 The Supplier shall not be liable to the Customer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

10.3.3 The Supplier shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any instructions supplied by the Customer whether in the Customer's order or otherwise which are incomplete, incorrect, inaccurate, illegible or which arise from their late arrival or non-arrival, or any other fault of the Customer.

11 TERMINATION

11.1 Either party may terminate the Contract immediately:

11.1.1 By notice in Writing to the other if the other commits any material breach of these Conditions which is capable of remedy and fails to remedy the same within 30 days after being required by Written notice to do so (for the avoidance of doubt, late or non-payment will be a material breach of condition); or

11.1.2 Without notice if the other party has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or being a body corporate convenes a meeting of creditors or enters into liquidation or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or a resolution is passed or a petition presented to any court for the winding up of the other party or for the granting of an administration order in respect of the other party, or any proceedings are commenced relating to the insolvency or possible insolvency of the other party or if the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.

11.2 On termination or expiry of the Contract:

11.2.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;

11.2.2 the Customer shall return all of the Supplier Materials and any Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

11.2.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

11.4 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Goods under the Contract or any other contract between the Customer and the Supplier if:

11.4.1 the Customer fails to pay any amount due under the Contract on the due date for payment; or

11.4.2 the Customer becomes subject to any of the events listed in 11.1.2 or the Supplier reasonably believes that the Customer is about to become subject to any of them.

12 APPLICABLE LAW

12.1 This Contract shall be construed in all respects under English Law. Any dispute of difference arising under this Contract shall be subject to the exclusive jurisdiction of the English Courts.

12.2 If the Customer and Supplier wish to resolve any dispute or difference arising out of or in connection with this Contract by mediation then any mediation will be conducted in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.

13 CONFIDENTIALITY

13.1 Both parties shall keep confidential and shall not without the prior consent in Writing of the other disclose to any third party any technical or commercial information which it has acquired from the other relating to the Goods or the Contract.

14 FORCE MAJEURE

14.1 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 events, circumstances or causes beyond its reasonable control.

15 DELAY

15.1 The Supplier shall not be responsible for any losses or costs incurred by the Customer, including the payment of liquidated and ascertained damages, as a result of any delay caused by the Supplier. The Supplier shall have no responsibility for delay howsoever caused.

16 CANCELLATION CHARGES

16.1 If the Customer at any time cancels its order for Goods as detailed within an Acknowledgement of Order the Customer shall be liable to pay the Supplier upon cancellation 100% (one hundred per cent) of the Price in any event.

17 RETURNS

17.1 The supplier does not accept returns

18 ASSIGNMENT

18.1 The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Supplier.

18.2 The Supplier may assign the Contract or any part of it to any person, firm or company.

19 NO THIRD PARTY RIGHTS

21.1 Pursuant to Section 1 (2) of the Contracts (Rights of Third Parties) Act 1999 ("the Act") the parties intend that no terms of these conditions may be enforced by a Third Party. For the purposes of this Clause "Third Party" shall have the meaning given in the Act.

20 GENERAL

20.1 Each right or remedy of the Supplier under the Contract is without prejudice to any other right or remedy of the Supplier whether under the Contract or not.

20.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, avoidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

20.3 Failure or delay by the Supplier in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.

20.4 Any waiver by the Supplier of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

20.5 Any samples of Goods or Parts provided shall be deemed to be accepted as correct and satisfactory unless written notice of any defect or non-compliance with specification is given to the Supplier by the Customer within 7 working days of the delivery of such sample. Failure to provide such written notice shall have the effect that any Goods or Parts supplied by the Supplier that are in accordance with the sample previously provided shall be deemed to be in accordance with the Contract.

21 NOTICES

21.1 Where stipulated in this Contract communications between the parties about this Contract must be in Writing.

21.2 Delivery, by hand or sent by pre-paid first class post, electronic mail or sent by facsimile transmission shall be:

21.2.1 (in case of communications to the Supplier) to its registered office or such other address as shall be notified to the Customer by the Supplier; or

21.2.2 (in the case of the communications to the Customer) to the registered office of the addressee (if it is a company) or (in any other case) to the address of the Customer set out in the Acknowledgement of Order which forms part of this Contract or such other address as shall be notified to the Supplier by the Customer.

21.3 Communications shall be deemed to have been received:

21.3.1 if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);

21.3.2 if delivered by hand, on the day of delivery;

21.3.3 if sent, by facsimile transmission or electronic mail and provided sent to the correct number or email address of the addressee (with correct transmission confirmed), on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.