

McLAREN APPLIED TECHNOLOGIES LIMITED
CONDITIONS OF SALE OF GOODS AND/OR SERVICES

1. Interpretation

1.1 In these Conditions:

"Seller" means McLaren Applied Technologies Limited.

"Buyer" means the person whose order is accepted by the Seller.

"Deliverables" means all goods and/or services which are supplied to the Buyer by the Seller under any contract between them.

"Claims" means all claims (whether known or unknown to the parties, whether contemplated or not, and whether or not presently known to the law).

"Conditions" means the standard terms and conditions of sale set out in this document.

"Contract" means any contract between the Seller and the Buyer for the purchase and sale of the Deliverables.

"Specification" means the specification for the Deliverables determined pursuant to the Contract.

1.2 Any reference in these Conditions to any provision of a statute or statutory instrument shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Basis for Sale

2.1 The Seller shall sell and the Buyer shall purchase the Deliverables. By placing an order for the Deliverables the Buyer shall be deemed to have accepted the Conditions, which shall govern the terms and conditions for the supply of the Deliverables to the exclusion of any other terms and conditions.

2.2 No variation to these Conditions shall be binding unless agreed in writing by the authorised representatives of the Buyer and the Seller.

2.3 The Seller's employees or agents are not authorised to make any representations concerning the Deliverables unless confirmed by the Seller in writing. In agreeing to these Conditions, the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representation which is not so confirmed.

2.4 The Seller shall not be liable for any advice given by the Seller or its employees or the agents to the Buyer or its employees or agents as to the storage, application or use of the Deliverables unless such advice is confirmed in writing by the Seller.

2.5 Nothing in this clause 2 shall exclude any liability of the Seller for representation made fraudulently or any misrepresentations as to a fundamental matter made by the Seller or Buyer.

3. Formation of Contract and Specification

3.1 A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise any quotation at any time prior to the Seller's acceptance of the Buyer's order.

3.2 The contract for the supply of the Deliverables, subject to these Conditions, shall be formed when the Buyer's order is confirmed in writing by the Seller's authorised representatives.

3.3 The description of the Deliverables shall be as set out or referred to in the Specification.

- 3.4 The Seller reserves the right to make any changes to the specification of the Deliverables which are required to conform with any applicable safety or other statutory requirements, or where the Deliverables are to be supplied to the Seller's specification, which do not materially affect the quality or performance of the Deliverables.
- 3.5 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 terms that the Buyer shall indemnify the Seller in full against all losses (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 3.6 The Buyer shall indemnify and keep indemnified the Seller fully on demand against any and all losses, damages, costs and expenses incurred by or awarded against the Seller as a result of the carrying out of any work required to be done to the Deliverables in accordance with the requirements or specifications of the Buyer involving an infringement or alleged infringement of any rights of any third party.
- 3.7 Any typographical, clerical or other error or omission in any documentation issued by the Seller may be corrected by the Seller without liability on the part of the Seller.

4. Price

- 4.1 The price of the Deliverables shall be the Seller's quoted price or, where no price has been quoted, the price listed in the Seller's published price list current at the date of delivery.
- 4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Deliverables to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller including (without limitation) alterations in taxation, increases in the cost of labour, materials or other costs of manufacture, any change of delivery dates, quantities or specifications of the Deliverables which are requested by the Buyer, or any delay caused by any instructions of the Buyer, or failure of the Buyer to give the Seller adequate information or instructions.
- 4.3 Unless otherwise agreed in writing, all prices are FCA Woking England and in respect of Deliverables to be exported FCA Woking England (Incoterms 2010) shall apply.
- 4.4 The price is exclusive of Value Added Tax and all other taxes and duties (apart from corporation taxes referable to income or capital gains of the Seller), which shall be payable by the Buyer.
- 4.5 The Buyer shall be responsible for all international and domestic duties, taxes and shipping, with no deduction for any service or any other charges or fees by any bank or any other entity.

5. Payment

- 5.1 The Buyer shall pay the price of the Deliverables in full within 30 days of the date of the Seller's invoice, notwithstanding that delivery may not have taken place and the property in the Deliverables has not passed to the Buyer. The Buyer shall not be entitled to make any deduction from such payment or exercise any right of set-off or contribution howsoever arising. The time of payment of the price shall be of the essence.
- 5.2 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall (at its option) be entitled to:
- 5.2.1 treat the contract between the Seller and the Buyer as repudiated by the Buyer and suspend any further deliveries to the Buyer, claim damages from the Buyer and charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of 8 per cent per annum above Bank of England base rate from time to time, until payment in full is made; or
- 5.2.2 affirm the contract, claim damages from the Buyer and charge the Buyer interest (in accordance with Clause 5.2.1)

6. Delivery

- 6.1 Delivery of the Deliverables shall be at the Seller's premises at any time after the Seller has notified the Buyer that the Deliverables are ready for collection, unless otherwise agreed by the Seller in writing.
- 6.2 Any dates quoted for delivery of the Deliverables are approximate only and the Seller shall use its reasonable endeavors to deliver on the quoted dates.
- 6.3 Where delivery of the Deliverables is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 5 per cent more or 5 per cent less than the quantity ordered and in such event the Buyer shall pay for the actual quantity delivered.
- 6.4 Subject to Clause 6.3, if the Seller is satisfied that the Deliverables have been short delivered, the Seller shall at its option:
 - 6.4.1 make up any short delivery by despatching to the Buyer such Deliverables as the Seller is satisfied were not delivered; or
 - 6.4.2 allow the Buyer credit in respect thereof.

The Seller's liability shall be limited to making up the delivery or allowing credit as above.

- 6.5 Where the Deliverables are to be delivered in installments, each delivery shall constitute a separate contract.
- 6.6 If the Buyer fails to take delivery of the Deliverables or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:
 - 6.6.1 store the Deliverables until actual delivery and charge the Buyer for the reasonable costs (including handling and insurance) of storage; or
 - 6.6.2 sell the Deliverables 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 these Conditions or charge the Buyer for any shortfall below the price under these Conditions.

7. Risk

The risk of loss and damage to the Deliverables shall pass to the Buyer immediately upon delivery unless the Deliverables are to be collected by the Buyer when the risk of loss and damage to the Deliverables shall pass to the Buyer upon the Seller notifying the Buyer that the Deliverables are ready for collection.

8. Title

- 8.1 Notwithstanding delivery and the passing of risk in the Deliverables, the property in the Deliverables shall not pass to the Buyer and shall remain in the Seller until either such time as the Buyer shall have paid to the Seller the full price for all Deliverables sold by the Seller to the Buyer under any and all contracts between them or the Seller shall have written to the Buyer notifying the Buyer that the property in the Deliverables has passed to the Buyer.
- 8.2 Until such payment the Buyer shall carefully store the Deliverables in such a way as to enable them to be identified as the property of the Seller and keep them insured against all loss or damage howsoever caused at its own expense.
- 8.3 The Buyer shall not attach the Deliverables to any real property without the prior written consent of the Seller.
- 8.4 The Seller reserves the immediate right of re-possession of any Deliverables to which the Seller has retained title as aforesaid exercisable at any time after delivery or collection of the Deliverables and the Buyer hereby grants an irrevocable right and licence to the Seller's servants and agents to enter upon all or any premises where the Deliverables are stored without prior notice for this purpose.

8.5 The Buyer may in the ordinary course of its business:

8.5.1 process the Deliverables in such fashion as it may wish and/or incorporate them in or with any other product or products; and

8.5.2 sell the Deliverables to any third party as principal but not as agent for the Seller

9. Confidentiality / Publicity

9.1 Any information supplied by the Seller to the Buyer in connection with the Deliverables hereunder or the Buyer's business or the business of any associated company of the Seller shall be treated as confidential information and shall not be disclosed to any third party or used by the Buyer except in accordance with the terms of a Contract or with the Seller's express written agreement.

9.2 The Buyer will not and will procure that no person that directly or indirectly supplies or is supplied by the Buyer will, without first obtaining the written consent of the Seller (which may be withheld in its absolute discretion), in any way whatsoever advertise or publish the fact that the Seller has contracted to supply the Buyer the Deliverables or otherwise publish any material using the Seller or any associated company's name, or the name and/or image of any car, driver, premises or employee of the Seller or any associated company of the Seller.

9.3 The Buyer shall keep all confidential information secure and protected against theft, damages, loss or unauthorised access and shall return all such information to the Seller at the Seller's request.

9.4 The Buyer shall not use the trade name, logo, names, livery or other indicia belonging to the Seller or any associated company of the Seller or the image or likeness of any of the Seller's or any associated company of the Seller products, drivers, personnel in any form whatsoever without the Seller's prior written agreement.

9.5 The Buyer expressly acknowledges that breach of this Clause 9 may result in injury or loss to the Seller which may be difficult to assess and the Buyer accordingly consents (to the extent permitted by law) to the entry or injunctive or other equitable relief against it to restrain such breach.

9.6 The Buyer will not do or authorise any third person to do any act which would or might damage or be inconsistent with the trademarks used by the Seller in relation to the Deliverables or to the goodwill associated therewith and, in particular, will not do or authorise the alteration, obliteration, covering up or incorporation of other marks (in whole or in part) on to the Deliverables. Any advertising, promotion and selling materials supplied by the Seller to the Buyer shall remain the property of the Seller and the Buyer shall not permit any other person to make use thereof. The Buyer recognises the great value of the goodwill associated with the Seller's trademarks and acknowledges that the Seller's trademarks and all rights therein and goodwill pertaining thereto belong exclusively to the Seller. The Buyer further agrees that it is critical that such goodwill be protected and enhanced and, toward this end, the Buyer shall not during the term of these Conditions or thereafter: (i) attack the title or any rights of the Seller in or to the Seller's trademarks; (ii) attack the validity of these Conditions; (iii) do anything either by an act of omission or commission that might impair, violate or infringe the Seller's trademarks; (iv) claim (adversely to the Seller or anyone claiming rights through the Seller) any right, title or interest in or to the Seller's trademarks; (v) misuse or harm the Seller's trademarks or bring the Seller's trademarks into disrepute; (vi) for its benefit, directly or indirectly, register or apply for registration of the Seller's trademarks or any mark that is, in the Seller's reasonable opinion, the same as or confusingly similar to any of the Seller's trademarks; and (vii) for its benefit, directly or indirectly, register, maintain or apply for registration of a domain name that is, in the Seller's reasonable opinion, the same as, confusingly similar to or incorporates any of the Seller's trademarks. In no event may the Buyer bid on or use any of the Seller's trademarks in search engine advertising or online advertising.

10. Liability

10.1 Subject to the terms of this Clause 10, the Seller warrants that where the Deliverables comprises standard goods available from the Seller's current catalogue of goods offered for sale they will correspond with the Specification at the time of delivery and will be free from defects in material and workmanship for a period of six months from the date of invoice or date of delivery, whichever is the first to expire.

- 10.2 The Seller shall be under no liability in respect of any defect in the Deliverables:
- 10.2.1 arising from or attributable to any drawing, design or specification supplied by the Buyer;
 - 10.2.2 arising from fair wear and tear, neglect, failure to follow the Seller's instructions, misuse or improper alteration or repair of the Deliverables;
 - 10.2.3 if the total price for the Deliverables has not been paid by the due date for payment; or
 - 10.2.4 if the Buyer fails to notify any claim in respect of any of the Deliverables which is based on a breach of the warranty in Clause 10.1 within 14 days after the discovery of the breach.
- 10.3 The Seller's Software Licence Agreement available on request or at <http://www.mclaren.com/appliedtechnologies/static/pdfs/software-t-and-cs.pdf> shall apply to any software incorporated in the deliverables and due to the complexity of software and in line with the usual practices of the software industry, the Seller makes no warranty, representation, promise or guarantee, either express or implied, statutory or otherwise, with respect to any software incorporated in the Deliverables, user documentation or any related technical support including software quality, performance, merchantability or fitness for a particular purpose.
- 10.4 Where the Deliverables comprise a research and development project or amount to a feasibility programme the Seller shall perform its obligations under the Contract in accordance with the standards and diligence of a professional entity familiar with the provision of similar to the Deliverables but the Buyer accepts and acknowledges that due to the nature of such work the Seller cannot provide any warranty or assurance that the Specifications or delivery timetables can be met.
- 10.5 The warranty in Clause 10.1 does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee given by the manufacturer to the Seller, and which the Seller will, so far as possible, assign to the Buyer upon the written request of the Buyer.
- 10.6 Where any valid claim in respect of any of the Deliverables which is based on a breach of the warranty in Clause 10.1 is notified to the Seller within the warranty period set out in Clause 10.1, as Buyer's sole remedy, the Seller shall at its discretion be entitled to repair or replace the Deliverables (or the part in question) free of charge or, at the Seller's discretion, refund to the Buyer the price of the Deliverables in question.
- 10.7 Except as expressly provided in these Conditions, all conditions, warranties, terms and representations expressed or implied by statute, common law or otherwise in relation to the Deliverables are hereby excluded.
- 10.8 Except as expressly provided in these Conditions, the Seller shall be under no liability to the Buyer for any loss, injury or damage (whether such losses or damage were foreseen, foreseeable, known or otherwise), whether direct or indirectly, whether resulting from defective material faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Seller, its employees or agents in connection with the Deliverables or otherwise in connection with these Conditions.
- 10.9 The Seller's prices are determined on the basis of the limits of liability set out in these Conditions. The Buyer may by written notice to the Seller request the Seller to agree a higher limit of liability provided insurance cover can be obtained therefor. The Seller shall effect insurance up to such limit and the Buyer shall pay upon demand the amount of any and all premiums. The Buyer shall disclose such information as the insurers shall require. In no case shall the Buyer be entitled to recover from the Seller more than the amount received by the Seller from the insurers.
- 10.10 The Seller's maximum aggregate liability to the Buyer in respect of any particular unit of the Deliverables (whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise) shall not exceed 125% of the price for that particular unit or those units, provided always that the Seller's maximum aggregate liability to the Buyer under or in connection with these Conditions (whether arising in or for breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise) shall in no circumstances exceed £1,500,000.

- 10.11 Nothing in this Clause 10 or otherwise in these Conditions shall exclude or in any way limit the Seller's liability to the Buyer for: (i) fraud; (ii) death or personal injury caused by the Seller's negligence (including negligence as defined in s.1 Unfair Contract Terms Act 1977); (iii) breach of terms regarding title implied by s.12 Sale of Deliverables Act 1979 and/or s.2 Supply of Deliverables and Services Act 1982; or (iv) any liability to the extent the same may not be excluded or limited as a matter of law.

11. Intellectual Property Rights

- 11.1 Each party shall retain sole ownership of all intellectual property rights, know-how and other related rights owned by it prior to commencement of the Contract or that is developed independently of the Contract including all development, improvements and modifications thereto made by either party under the Contract ("Background IP").
- 11.2 All intellectual property rights, know-how and other related rights developed under the Contract other than the Background IP ("Foreground IP") shall be the property of the Seller save that the Buyer is granted a worldwide, non-exclusive and non-assignable licence to use the Foreground IP for the purposes set out in the Specification.
- 11.3 The Seller shall have no liability to the Buyer in the event of the Deliverables infringing or being alleged to infringe the rights of any third party.
- 11.4 The Buyer will not do or authorise any third person to do any act which would or might damage or be inconsistent with the trade marks used by the Seller in relation to the Deliverables or to the goodwill associated therewith and, in particular, will not do or authorise the alteration, obliteration, covering up or incorporation of other marks (in whole or in part) on to the Deliverables. All advertising, promotion and selling materials supplied by the Seller to the Buyer shall remain the property of the Seller and the Buyer shall not permit any other person to make use thereof.

12. Force Majeure

- 12.1 The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of the Deliverables by the Seller being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Seller's reasonable control including (but not limited to) Act of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of the Deliverables or of raw materials therefor by the Seller's normal source of supply or the manufacture of the Deliverables by the Seller's normal means or the delivery of the Deliverables by the Seller's normal route or means of delivery.
- 12.2 If due to such circumstances or events the Seller has insufficient stocks to meet all its commitments the Seller may apportion available stocks between its customers at its sole discretion

13. Licences and Consents

If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the Deliverables by the Buyer the Buyer shall obtain the same at its own expense and if necessary produce evidence of the same to the Seller on demand. Failure so to do shall not entitle the Buyer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Seller resulting from such failure shall be for the Buyer's account.

14. Insolvency of Buyer

- 14.1 This clause applies if:
- 14.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction) or passes a resolution for its voluntary winding up or has a petition for its compulsory winding up presented against it;

- 14.1.2 an encumbrancer takes possession, or a receiver or administrative receiver is appointed, of any of the property assets of the Buyer; or
 - 14.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
 - 14.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer or any other matter which in the opinion of the Seller may prejudice its rights against the Buyer.
- 14.2 if this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel a Contract or suspend any further deliveries under a Contract without any liability to the Buyer, and if the Deliverables have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

15. General

- 15.1 Failure by the Seller to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- 15.2 If any provision or part of these Conditions shall be, or be found by any court of competent jurisdiction to be, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of these Conditions, all of which shall remain in full force and effect.
- 15.3 Any notice hereunder shall be deemed to have been duly given if sent by prepaid first class registered post to the party concerned at its registered office or principal place of business or such address as may have been notified pursuant to this provision to the party giving the notice. Notices sent by first class registered post shall be deemed to have been given seven days after despatch.
- 15.4 These Conditions shall be governed by and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English Courts provided that Seller may sue the Buyer in the courts of any country, such proviso being for the sole benefit of Seller.
- 15.5 Except as necessary for the Buyer's intended use of the Deliverables as communicated to and agreed by the Seller, the Buyer shall not, without prior written consent of the Seller, use the name McLaren Applied Technologies Limited (or any shortened form thereof) or the fact that it has purchased the Deliverables from the Seller in any manner.
- 15.6 McLaren Technology Group Limited or any subsidiary or associated company of the Seller may enforce the terms of these Conditions subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. Except as provided in this clause 15.6, a person who is not a party to these Conditions has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of these Conditions but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 15.7 These Conditions and the documents referred to herein contain all the terms agreed between the parties regarding its subject matters and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the parties prior to a Contract. Neither party shall have any remedy in respect of any untrue statement made by the other upon which that party relied in entering into a Contract unless such untrue statement was made fraudulently, and that party's only remedies shall be for breach of contract as provided in these Conditions.