

# Aerco Terms and Conditions of Sale

## 1. Interpretation

### 1.1. In these Conditions:

“**Business Days**” means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

“**Buyer**” means the person who submits an Order to the Seller;

“**Conditions**” means the standard terms and conditions of sale set out in this document;

“**Contract**” means the contract for the purchase and sale of the Goods in accordance with these Conditions and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller;

“**Goods**” means the goods (including any instalment of the goods or any part for them) which the Seller agrees to supply in accordance with these Conditions;

“**Order**” means the Buyer’s order for the supply of Goods, as set out in the Buyer’s purchase order form, or in any other written order submitted by the Buyer, or in the Buyer’s written acceptance of the Seller’s quotation, as the case may be;

“**Seller**” means Aerco Limited (registered in England under company registration number 572109);

“**Specification**” means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and the Seller; and

“**Writing**” includes email and comparable means of electronic communication.

1.2. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time and includes all subordinate legislation made under that legislation or legislative provision.

1.3. A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.4. A reference to a party includes its personal representatives, successors and permitted assigns.

1.5. Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

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

## 2. Basis of the sale

2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2. The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Buyer are complete and accurate.

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- 2.3. The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point and on which date the Contract shall come into existence.
- 2.4. The Seller may require the Buyer to pay the price of the Goods (including any applicable charges for transport, packaging and insurance, where relevant) before the Seller accepts an Order. In such a case:
  - 2.4.1. the Seller shall issue a “proforma” invoice to the Buyer in advance;
  - 2.4.2. the price quoted in the “proforma” invoice shall only be valid for a period of 30 days from the date the “proforma” invoice is issued;
  - 2.4.3. the Seller shall only treat the Order as accepted once payment has been received in full and cleared funds; and
  - 2.4.4. the Seller shall not be obliged to order any Goods from its Suppliers to satisfy that Order until payment has been received in full.
- 2.5. The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions.
- 2.6. The Seller’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.7. Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer’s own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.8. 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 liability on the part of the Seller.
- 2.9. A quotation for the Goods given by the Seller shall not constitute an offer.

## 3. Orders and Specifications

- 3.1. The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any Order (including any applicable specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.
- 3.2. The quantity, quality and description of and any specification for the goods shall be those set out in the Order.
- 3.3. If or to the extent that the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a Specification submitted by the Buyer, the Buyer shall indemnify the Seller against all liabilities, loss, damages, costs and expenses (including any direct,

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indirect or consequential loss, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other intellectual property rights of any other person arising out of or in connection with the Seller's use of the Specification.

- 3.4. Where the Goods are to be supplied in accordance with a Specification supplied by the Buyer, the Seller reserves the right to amend the Specification if required by any applicable safety, statutory or regulatory requirements, provided that such amendments do not materially affect the Goods' quality or performance.
- 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 on demand against all loss (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 the cancellation of such Order.
- 3.6. If the Seller has purchased Goods from a third party ("**Supplier**") in order to fulfil an Order ("**Third Party Purchase**"), and the Buyer notifies the Seller of its desire to cancel the Order at any time before delivery of the Goods then, unless otherwise agreed by the Seller, the Buyer shall remain fully liable for the cost of the Order.

## 4. Price of the goods

- 4.1. The price of the Goods shall be the Seller's quoted price. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer
- 4.2. 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 cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is 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. Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in Writing between the Buyer and the Seller, all prices are given by the Seller on an EXW (Incoterms® 2020) basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.
- 4.4. The price of the Goods is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller at the prevailing rate and excludes the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Buyer.

## 5. Terms of payment

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- 5.1. In the circumstances described in clause 2.4, the Seller shall issue a “proforma” invoice to the Buyer on receipt of the Buyer’s Order and require payment in full before the Seller accepts that Order.
- 5.2. Subject to clause 5.1 and to any special terms agreed in Writing between the Buyer and the Seller, the Seller may invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.
- 5.3. Subject to clause 5.1 and to any special terms agreed in Writing between the Buyer and the Seller, the Buyer shall pay each invoice submitted by the Seller within 30 days of the end of the month of the date of the Seller’s invoice, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer, in full and cleared funds to a bank account nominated in writing by the Seller. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.4. If the Buyer fails to make any payments on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
  - 5.4.1. cancel the Contract or suspend any further deliveries to the Buyer;
  - 5.4.2. appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer);
  - 5.4.3. charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of five per cent per annum above the Bank of England’s base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); and
  - 5.4.4. recharge to the Buyer (and the Buyer shall pay) any costs, expenses (including legal expenses on a full indemnity basis) and other liabilities incurred by the Seller in recovering any unpaid amounts from the Buyer.
- 5.5. All amounts due to be paid by the Buyer under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 6. Delivery

- 6.1. 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 for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
- 6.2. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods resulting from: (i) a delay in the delivery of the Goods to the

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Seller by the manufacturer of the Goods or other Supplier; or (ii) a Force Majeure Event (as defined in clause 9.1) or (iii) the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing.

- 6.3. The Seller reserves the right to deliver cable or wire with an overall tolerance of plus/minus 10% than the quantity ordered provided that there is a pro rata adjustment to the price to reflect the Goods actually delivered and the quantity so delivered shall be deemed to be the quantity ordered.
- 6.4. The Seller warrants that it shall supply any Goods which have a "shelf-life" with at least 50% of such "shelf-life" remaining at the time of delivery. For example, if the Goods have a "shelf-life" of 3 years, the Seller warrants that on delivery, the Goods will have a remaining "shelf-life" of at least 18 months.
- 6.5. Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.6. If the Seller fails to deliver the Goods for any reason other than a Force Majeure Event or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.7. If the Buyer fails to take delivery of the Goods within five Business Days of the Seller notifying the Buyer that the Goods are ready for collection, or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of a Force Majeure Event or by reason of the Seller's failure to comply with its obligations under the Contract in respect of the Goods) then, without prejudice to any other right or remedy available to the Seller, then:
  - 6.7.1. delivery of the Goods shall be deemed to have been completed at 9.00 a.m. on the fifth Business Day after the day on which the Seller notified the Buyer that the Goods were ready for collection; and
  - 6.7.2. the Seller may store the Goods until actual delivery takes place and charge the Buyer for all related costs and expenses, including (but not limited to) insurance and storage.
- 6.8. If 30 days after the day on which the Seller notified the Buyer that the Goods were ready for collection the Buyer has not taken actual delivery of them, the Seller may sell or dispose of part or all of the Goods and (after deducting all reasonable storage and selling expenses) account to the Buyer for any excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## 7. Risk and property

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

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- 7.1.1. 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
- 7.1.2. 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.
- 7.2. Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, title to 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 by the Seller to the Buyer for which payment is then due.
- 7.3. Until such time as title to the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 7.4. Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 7.5. The Buyer shall not be entitled to pledge or in any way charge by way of security for the indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

## **8. Warranties and liability**

- 8.1. Subject to clause 8.3, the Seller warrants that the Goods will, at the time of delivery:
  - 8.1.1. correspond with their description (or, if the Seller has agreed to provide Goods according to a Specification, with that Specification) at the time of delivery.
  - 8.1.2. be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
  - 8.1.3. be fit for any purpose held out by the Seller in Writing.
- 8.2. All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose (whether statutory or otherwise) other than those expressly set out in the Contract are excluded from the Contract to the fullest extent permitted by law.
- 8.3. The above warranty is given by the Seller subject to the following conditions:



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- 8.3.1. the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or Specification supplied by the Buyer; and
- 8.3.2. the above warranty 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 as is given by the manufacturer to the Seller.
- 8.4. The Seller shall be under no liability in respect of any defect in the Goods arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval.
- 8.5. Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond 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 delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 8.6. Where the Buyer notifies the Seller of a valid claim under the warranty in clause 8.1 in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer in respect of that breach of warranty.
- 8.7. Nothing in the Contract limits or excludes any liability that cannot be lawfully limited or excluded, including but not limited to liability for:
  - 8.7.1. death or personal injury caused by negligence;
  - 8.7.2. fraud or fraudulent misrepresentation;
  - 8.7.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- 8.8. Subject to clause 8.7 and 8.9, the Seller's total liability to the Buyer shall not exceed the price of the Goods.
- 8.9. Subject to clause 8.7, the Seller shall not be liable to the Buyer for any of the following types of loss: loss of profits, loss of sales or business, loss of agreements or contracts, loss of anticipated savings, loss of use or corruption of software, data or information, loss of or damage to goodwill, and indirect or consequential loss.

## 9. Force Majeure

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

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prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Seller's reasonable control (each a "**Force Majeure Event**"):

- 9.1.1. Act of God, explosion, flood, tempest, fire or accident;
- 9.1.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 9.1.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 9.1.4. import or export regulations or embargoes;
- 9.1.5. strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- 9.1.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 9.1.7. power failure or breakdown in machinery; or
- 9.1.8. epidemic or pandemic.

## 10. Termination

- 10.1. Without limiting its other rights or remedies, the Seller may terminate this Contract with immediate effect by giving written notice to the Buyer if:
  - 10.1.1. the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 10 Business Days of that party being notified in writing to do so;
  - 10.1.2. the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 10.1.3. the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - 10.1.4. the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 10.2. Without limiting its other rights or remedies, the Seller may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Seller if the Buyer becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.4 inclusive, or the Seller reasonably believes that the Buyer is about to become subject to any of them.
- 10.3. Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.



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- 10.4. On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Seller shall submit an invoice, which shall be payable by the Buyer immediately on receipt.
- 10.5. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 11. Export terms

- 11.1. In these Conditions "Incoterms® Rules" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms® Rules shall have the same meaning in these Conditions.
- 11.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.
- 11.3. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 11.4. The Buyer is responsible for obtaining, at its own cost, such export and import licences and other consents in relation to the Goods as are required from time to time (whether relating to delivery, export or import) and, if required by the Seller, the Buyer shall make those licences and consents available to the Seller prior to the relevant shipment.
- 11.5. Unless otherwise agreed in Writing between the Buyer and the Seller, the Goods shall be delivered EXW at the Seller's premises Incoterms® 2020 and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- 11.6. The Buyer shall be responsible for arranging for inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.
- 11.7. Payment of all amounts due to the Seller may, at the option of the Seller, be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in United Kingdom before acceptance of the Order; or to waive this requirement, by acceptance by the Buyer and delivery to the Seller of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Seller at such branch of Lloyds Bank Plc in England as may be specified in the bill of exchange.

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## 12. Confidentiality

- 12.1. The Buyer undertakes that it shall not at any time during the term of the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Seller or of any member of the group of companies to which the Seller belongs, except as permitted by clause 12.2.
- 12.2. The Buyer may disclose the Seller's confidential information:
- 12.2.1. to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. The Buyer shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the Seller's confidential information comply with this clause 12; and
- 12.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3. The Buyer may not use any the Seller's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

## 13. General

- 13.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing and either: (i) delivered by hand, or sent by pre-paid first class post or other next working day delivery service to that other party at its registered office or principal place of business; or (ii) sent by email to such email address as one party may provide to the other from time to time, or in either case to such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. A notice shall be deemed to have been received: (a) if delivered by hand, at the time the notice is left at the proper address; (b) if sent by pre-paid first-class post or other] next working day delivery service, at 9.00 am on the second Business Day after posting; or (c) if sent by email, at the time of transmission, or, if this time falls outside between 9am and 5pm in the place of receipt, the next Business Day. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 13.2. A waiver of any right or remedy is only effective if given in Writing. 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. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 13.3. If any provision of the Contract is or becomes invalid, illegal or unenforceable in whole or in part, it shall be deemed deleted, but the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby. If any provision of the Contract is deemed deleted under this clause the parties shall negotiate in good faith to agree a replacement

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provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

- 13.4. No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.
- 13.5. The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 13.6. The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 13.7. Any dispute arising under or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English.
- 13.8. The Seller may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract. The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.
- 13.9. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to the Contract. Incoterms® Rules shall apply but where they conflict with the Contract, the Contract shall prevail.

## 14. Privacy Notice

- 14.1. The Seller may collect and process personal data and, if it does so, it will only use that personal data as set out in its privacy notice, a copy of which is at URL: <https://aerco.co.uk/privacy-notice>