

TERMS AND CONDITIONS OF SALE

Version 1, Issue 01, 07 November 2015

1. DEFINITIONS:

In these terms and conditions (“Conditions”), the following definitions apply:

- 1.1 “Buyer” means the person, entity or firm who buys the Works from the Seller whose details are set out in the Order;
- 1.2 “Contract” means the agreement between the Buyer and Seller for the supply of the Works formed in accordance with clause 2.2;
- 1.3 “Intellectual Property Rights” means patents, trade marks, trading names, service marks, registered designs, copyright, utility models, design rights, applications for registration of any of the foregoing and the right to apply for them in any part of the world, inventions, drawings, designs, computer programs, software, and source codes, confidential information, trade secrets, know-how specifications feasibility studies, operating and testing procedures, technical studies, technical processes, CAD models, product designs and information, formulae and rights of like nature arising or subsisting anywhere in the world in relation to all of the foregoing whether registered or unregistered;
- 1.4 “Order” means the Buyer’s purchase order for the Works accepted by the Seller;
- 1.5 “Price” means the price agreed between the parties for the Works;
- 1.6 “Seller” means Vert Rotors UK Limited (SC441152) having its registered office at Unit A1, Gracemount Business Pavilions, Edinburgh, EH17 8QF;
- 1.7 “Seller’s Order Acceptance” means the written acceptance of the Buyer’s order issued by the Seller incorporating these Conditions;
- 1.8 “Specification” means the detailed description of the Works provided by the Seller to the Buyer and which is incorporated into the Contract;
- 1.9 “Works” means the goods, materials, documentation and services supplied by the Seller.

2. APPLICATION OF THESE CONDITIONS

2.1 These Conditions apply and form part of the Contract between the Seller and the Buyer, together with the Seller’s Order Acceptance and the Specification (if supplied). They supersede any previously issued terms and conditions of supply or purchase. No terms or conditions endorsed on, delivered with, or contained in the Buyer’s purchase order, or any confirmation of order issued by the Buyer, or other document will form part of the Contract. No variation of these Conditions will be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of both parties.

2.2 Each Order by the Buyer to the Seller will be deemed to be an offer to purchase the Works and be subject to these Conditions. A Contract will be formed upon the earlier to occur of the issuing of the Seller’s Order Acceptance; or the execution of a specific written agreement by both the Seller and the Buyer. In the event of any conflict the documents shall be interpreted in the following order of precedence (i) the Seller’s Order Acceptance; (ii) the Specification; (iii) these Conditions; and (iv) the terms of the Order.

3. SELLER'S OBLIGATIONS

3.1 The Seller shall perform the Works in a professional manner and with reasonable skill and care, using suitably qualified personnel and will use all reasonable endeavours to achieve the results set out in the Specification. The Seller shall use reasonable endeavours to meet any agreed timescales specified in the Contract.

4. EXCLUSION OF WARRANTIES

Due to the nature of the Works, the Seller does not guarantee that the Works will provide a particular result or will perform in a particular manner unless any such guarantee or warranty is expressly set out in the Specification. Except as expressly provided, any warranty, condition or guarantee, relating to the Works, which might otherwise be incorporated into the Contract whether by statute, common law or otherwise, are, insofar as it is lawful to do so, hereby excluded.

5. PAYMENT

5.1 Seller shall submit invoices for the Price (in whole or in part) as set out in the Seller's Order Acceptance. Unless otherwise specified, payment in full is due within 30 days from the date of invoice. Invoices shall be paid without deduction or set-off other than as required by law. If the Buyer fails to pay the Seller on the due date: (i) the Buyer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank Plc base rate from time to time. Interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment; (ii) the Seller may suspend completing the Works until payment has been made in full; and (iii) the Buyer will reimburse the Seller in respect of any costs or expenses incurred by the Seller in recovering any sums due from the Buyer.

6. TITLE & RISK

Legal and beneficial ownership of the Works (in so far as they incorporate physical property) shall remain vested in the Seller until full payment of the Price has been made. The Works (in so far as they incorporate physical property) will be at the Buyer's risk from the time of delivery, or if delivery is delayed for any reason due to the Buyer's fault, from the time that delivery should have taken place.

7. INSURANCE

7.1 Seller shall maintain the following insurance coverage: (1) Public Liability insurance with a limit of £1,000,000 in the aggregate; and (2) Employers' liability coverage as required by applicable law. The Seller shall evidence such insurance by providing copies of an appropriate certificate of insurance on request.

8. LIMITATION OF LIABILITY

8.1 Nothing in these Conditions limits or excludes the Seller's liability for (i) death or personal injury caused by its negligence; (ii) breach of terms implied by s 12 of the Sale of Goods Act 1979 or by s2 of the Supply of Goods and Services Act 1982; (iii) for fraud or fraudulent misrepresentation; or (iv) any other liability that cannot be limited or excluded by applicable law. The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded.

8.2 Subject to clause 8.1, the Seller shall not be liable to the Buyer by any way of indemnity or by reason of breach of contract or of statutory duty or by reason of tort (including but not limited to negligence) or any other reason whatsoever for any loss of profit, loss of sales or business, loss of agreements or contracts, loss of revenue, loss of data, loss of use, loss of contracts, loss of anticipated savings or for any special, economic, or consequential losses whether arising directly or indirectly.

8.3 Subject to clause 8.1, the Seller's total liability to the Buyer, whether by way of indemnity, breach of contract, warranty or guarantee obligations or by reason of any tort (including but not limited to negligence), statute or otherwise arising under or in connection with the Contract shall (i) In the case of direct damage to physical property be limited to the value of any recoveries made under any insurance policies held by the Seller pursuant to clause 7 and (ii) in all other circumstances shall in no event exceed the Price actually paid by the Buyer.

9. INTELLECTUAL PROPERTY

9.1 Unless expressly stated otherwise in Seller's Order Acceptance, all Intellectual Property Rights in the Works and in their design and in the specifications, drawings, manuals or information prepared or supplied by the Seller, or which arise under or in the course of the Seller's performance of the Contract (Seller's Intellectual Property Rights"), are, shall be and shall remain the Seller's absolute property. Nothing in the Contract shall have the effect of assigning, transferring or granting any of the Seller's Intellectual Property Rights to the Buyer.

9.2 The Buyer agrees that it will not (a) copy, sell, transfer, make available or distribute or disclose the Seller's Intellectual Property Rights to any third-party; (b) reverse engineer, decompile, disassemble, or otherwise attempt to derive any source code form or structure of the Seller's Intellectual Property Rights; (c) access the Seller's Intellectual Property Rights in order to build a competitive product or service or copy any ideas, features or functions of the Seller's Intellectual Property Rights.

10. TERMINATION

10.1 The Contract may be terminated by either party immediately (a) if the other party breaches any material term of the Contract and fails to cure such breach (in the event of any breach that is capable of remedy) within seven (7) days after written notice thereof. In the event that a breach is not capable of remedy, termination will be immediate on the service of notice of termination providing details of the breach or; (b) if the other party becomes the subject of any voluntary or involuntary petition in bankruptcy or any voluntary or involuntary proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors or any analogous proceeding. Termination of the Contract under this clause shall be without prejudice to any rights of the parties at law 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.

10.2 On termination or expiry of the Contract (i) the Buyer shall immediately pay to the Seller all of the Seller's outstanding unpaid invoices, expenses and interest and, in respect of Works supplied but for which no invoice has been submitted, the Seller may submit an invoice, which shall be payable immediately on receipt; and (ii) any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect including clause 1, 8, 9, this clause 10.2, 11 and 13.

11. CONFIDENTIALITY AND PUBLICITY

11.1 In the event that the parties have entered into a separate non-disclosure relating to the Works, the terms of such non-disclosure agreement shall prevail. In the event that no such non-disclosure agreement has been entered into then this clause 11 shall apply.

11.2 Each Party agrees that during the course of the Contract, information that is confidential may be disclosed to the other party, including, but not limited to sales, cost and other unpublished financial information, product and business plans, advertising revenues, projections, and marketing data (“Confidential Information”). Confidential Information shall not include information that the receiving party can demonstrate (a) is in the public domain at the time of its disclosure, or thereafter becomes part of the public domain through a source other than the receiving party, (b) was known to the receiving party as of the time of its disclosure, (c) is independently developed by the receiving party, or (d) is subsequently learned from a third party not under a confidentiality obligation to the providing party. Except as provided for in this Contract, each party shall not make any disclosure of the Confidential Information to anyone other than its employees, contractors, advisers, or affiliates who have a need to know in connection with the execution of the Contract. Each party shall notify its employees, contractors, advisers, affiliates of their confidentiality obligations with respect to the Confidential Information and shall require its employees, contractors and affiliates to comply with these obligations and shall be responsible for any non-compliance. The receiving party may disclose Confidential Information of the providing party to the extent it is compelled by law to do so provided that the receiving party (to the extent it is legally permitted to do so) gives prior notice to the providing party of the compelled disclosure. This obligation will remain in force for a period of 5 years from the date of expiry or termination of the Contract

11.3 The Buyer acknowledges that the Seller’s Intellectual Property Rights are valuable and contains trade secrets that are valuable and proprietary to the Seller, including without limitation, software, technical processes and formulas, source codes, CAD models, drawings, and product designs (“Seller’s Trade Secrets”). Disclosure of the Seller’s Trade Secrets could cause the Seller irreparable damage. The Buyer agrees that it will not disclose at any time and always keep secret the Seller’s Trade Secrets. The Buyer will put in place measures to keep the Seller’s Trade Secrets, secure from any unauthorised disclosure. The obligations in this clause 11.3 will remain in force indefinitely notwithstanding termination or expiry of the Contract.

12. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors

13. GENERAL

13.1 Entire agreement.

(a) These Conditions together with the documents referred to in clause 2.2 constitute the entire agreement between the parties and supersede and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(b) Each party agrees that it shall have no remedies in respect of 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 this Contract.

13.2 Variation. No variation of the Contract shall be effective unless it is in writing and signed by the parties.

13.3 Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not: (i) waive that or any other right or remedy; or (ii) prevent or restrict the further exercise of that or any other right or remedy.

13.4 Severance. If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

13.5 Compliance with Laws. Each party agrees that it shall comply with all applicable laws and regulations in force from time to time including without limitation the Data Protection Act 1998 and the UK Bribery Act, 2010.

13.6 Export Licenses. The Buyer is responsible for obtaining, at its own cost, such import and export licenses and other consents in relation to the Works as are required from time to time and, if required by the Seller, the Buyer shall make those licenses and consents available to the Seller prior to shipment.

13.7 Notices. Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier or e-mail. Email shall not be a valid method of serving notice in respect of any notices served under clause 10.1.

13.8 Third party rights. No one other than a party to this agreement shall have any right to enforce any of its terms.

13.9 Governing law. This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of Scotland.

13.10 Jurisdiction. Each party irrevocably agrees that the courts of Scotland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).