

# TERMS AND CONDITIONS OF SALE

Version 2, Issue 03, 14 January 2018

## 1. DEFINITIONS:

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

1.1 "Buyer" means the person, entity or firm who buys the Products 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 Products incorporating these Conditions and formed in accordance with clause 2.2;

1.3 "Data Protection Laws" means as binding on either party (i) Directive 95/46/EC and/ or the Data Protection Act 1998 or the General Data Protection Regulation ("GDPR"); (ii) any laws which implement such laws; and (iii) any laws that replace, extend or re-enact, consolidate or amend any of the foregoing. The terms "Controller", "Data Subject", "Personal Data", "Processor", "processing" and related expressions shall have the respective meanings given to them in the GDPR.

1.4 "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;

1.5 "Order" means the Buyer's purchase order for the Products;

1.6 "Price" means the price set out in the Quotation or as otherwise agreed in writing between the parties for the Products;

1.7 "Products" means the goods, materials, documentation and services supplied by the Seller.

1.8 "Quotation" means the detailed technical specification, quantity and price of the Products offered by the Seller to the Buyer;

1.9 "Seller" means Vert Rotors UK Limited (SC441152) having its registered office at Unit A1, Gracemount Business Pavilions, Edinburgh, EH17 8QF, United Kingdom;

1.10 "Seller's Order Acceptance" means the written acceptance of the Order issued by the Seller incorporating these Conditions;

## 2. APPLICATION OF THESE CONDITIONS

2.1 These Conditions apply to and form part of the Contract between the Seller and the Buyer. 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 issued by the Buyer will form part of the Contract. No variation of these Conditions and/ or the Contract 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 Products and be subject to these Conditions. The Seller may accept or reject an Order at its discretion. A Contract will be formed upon the earlier to occur of the issuing of the Seller's Order

Acceptance; the execution of a specific written agreement by both the Seller and the Buyer, or the Seller commencing manufacture of the Products. 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 Quotation; (iii) these Conditions; and (iv) the terms of the Order.

## 3. SELLER'S OBLIGATIONS

The Seller shall deliver Products matching the quantity, quality and description, and packaging as specified in the Quotation. The Seller shall use reasonable endeavours to meet any agreed timescales specified in the Quotation.

## 4. EXCLUSION OF WARRANTIES

The Seller does not guarantee that the Products will provide a particular result or will perform in a particular manner unless any such guarantee or warranty is expressly set out in the Quotation. Subject to the foregoing, in the event that the Products are found not to be in accordance with the Quotation, Seller shall at its option, repair, replace or re-perform the non-conforming Products. Repair or replacement of the Products shall be the Buyer's sole remedy in respect of any non-conformance. The Seller shall have no liability for any defects arising due to wear and tear, wilful damage, the Buyer's negligence, Buyer's failure to follow Seller's instructions or modifications by the Buyer not approved by the Seller. Except as expressly provided, any warranty, condition or guarantee, relating to the Products, 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

Seller shall submit invoices for the Price (in whole or in part) as set out in the Quotation or as otherwise agreed in writing. Payment terms are set in the Quotation. 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 Products 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. DELIVERY, TITLE & RISK

6.1 Unless otherwise expressly agreed in writing, price offered is Ex Works Incoterms 2010. Any dates specified for delivery of the Products are an estimate only although the Seller shall use reasonable endeavours to meet such delivery dates. If no dates are specified, delivery shall be within a reasonable time.

6.2 Legal and beneficial ownership of the Products shall remain vested in the Seller until full payment of the Price has been made. The Products 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

Seller shall maintain the following insurance coverage: (i) Public Liability insurance with a limit of at least £1,000,000 in the aggregate; and (ii) 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 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 agreed to in writing and signed by an authorised signatory of the Seller, all Intellectual Property Rights in the Products 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 from the Products; (c) access the Seller's Intellectual Property Rights in order to build a competitive product or service, or to 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 (without limiting the foregoing, breaches of clause 13 or 14 shall be considered to be material breaches 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 Products 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 to 16.

## 11. CONFIDENTIALITY AND PUBLICITY

11.1 In the event that the parties have entered into a separate non-disclosure relating to the Products, 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 information relating to customers, suppliers, sales, costs and other unpublished financial information, product and business plans, technical information, and other commercially sensitive or information of a confidential nature ("**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, subcontractors, advisers, or affiliates who have a need to know in connection with the execution of the Contract. Each party shall notify its employees, subcontractors, advisers, affiliates of their confidentiality obligations with respect to the Confidential Information and shall require its employees, subcontractors 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 contain 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 appropriate measures to keep the Seller's Trade Secrets, secure from any unauthorised disclosure which shall be no less stringent than the procedures that the Buyers adopts in relation to its own proprietary information. The obligations in this clause 11.3 will remain in force indefinitely notwithstanding termination or expiry of the Contract.

11.4 Notwithstanding clause 11.2 or the terms of any separate non-disclosure agreement entered into between the parties, the Seller may make general references to the Buyer, the provision of the Products

and the existence of the Contract on its website and in advertising and reference materials provided to third parties and potential clients. The Seller will seek the prior consent of the Buyer to the release of any press releases or case studies referring to the Buyer and/ or the Products purchased under 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. ANTI BRIBERY

13.1 Words and expressions used in this clause 13 shall be construed in accordance with the Bribery Act 2010 ("Bribery Act") and legislation or guidance published under it.

13.2 Each party shall comply with the Bribery Act and all other applicable bribery laws. Each party shall put in place adequate procedures to prevent bribery and shall each ensure that its personnel, any parties associated with it and any subcontractors involved in performing the Contract so comply. Without limitation to the foregoing, neither party shall make or receive a bribe or other improper payment or allow any to be made or received on its behalf, either in the UK or elsewhere and shall maintain adequate procedures to ensure that such bribes or payments are not made or received directly or indirectly on its behalf.

13.3 Each party shall immediately notify the other as soon as it becomes aware of a breach of this clause 13.

## 14. EXPORT CONTROL

14.1 The parties acknowledge that the Products may be subject to laws and relating to import and export control and financial sanctions in the UK and elsewhere ("Trade Control Laws"). The parties agree that in the performance of the Contract they shall each comply with all applicable Trade Control Laws. The Buyer agrees that it will not use, resell, lease supply, transfer, tranship or otherwise divest of any part of the Products in breach of Trade Control Laws.

14.2 The Buyer is responsible for obtaining, at its own cost, such import and export licenses and other consents in relation to the Products 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.

## 15. DATA PROTECTION

15.1 In performing the Contract, each party shall comply with its obligations under the Data Protection Laws and shall only process personal data in accordance with the Data Protection Laws. In performing the Contract, the Seller may collect and process names, email addresses and other data regarding employees, consultants, contractors

and other persons associated with the Buyer. The Seller shall use and process such information for the purpose of fulfilling its obligations under the Contract or as otherwise set out in the Seller's Privacy Policy available on its website - <http://vertrotors.com>.

## 16. GENERAL

16.1 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 extinguish 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.

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

16.3 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.

16.4 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.

16.5 Compliance with Laws. Each party agrees that it shall comply with all applicable laws and regulations in force from time to time in connection with its performance of the Contract.

16.6 No partnership or agency. The parties are independent of each other and are not partners, principal and agent or employer and employee and save as expressly stated otherwise, this agreement does not create any joint venture, trust, fiduciary or other relationship between them. Neither of the parties will have, nor will represent that it has any authority to make commitments on behalf of the other party.

16.7 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.

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

16.9 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.

16.10 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).