

TERMS AND CONDITIONS OF SUPPLY OF GOODS AND SERVICES OF PRECISION PNEUMATICS LIMITED

1 Definitions

“Supply” means the supply of Goods and/or Services described in the Purchase Order; “Buyer” means the party buying Goods or procuring Services, who is named in the Purchase Order; “Precision Pneumatics” means Precision Pneumatics Limited (company No. 02603606), whose registration office is at Villiers Court, Knowsley Business Park, Liverpool, L34 9ET and who supplies the Goods and/or Services to Buyer; “Purchase Order” means an order placed on Precision Pneumatics by Buyer; “Goods” means products, consumable materials, equipment, equipment components, spare parts, software and other Goods and materials supplied by Precision Pneumatics to Buyer; “Services” means any services supplied by Precision Pneumatics to Buyer which are described in the Purchase Order.

2. Formation of Contract and Order of Precedence

- (a) A Purchase Order whether or not based upon a quotation shall not be binding Precision Pneumatics unless accepted by it in writing.
- (b) These Conditions shall form part of every contract of supply entered into between Precision Pneumatics and Buyer. Any purported variation or exclusion (whether contained in any document of Buyer or otherwise) shall be of no effect unless accepted in writing by Precision Pneumatics.
- (c) Once acknowledged the Purchase Order and these Conditions shall constitute the entire agreement between Precision Pneumatics and Buyer for the supply of Goods and/or Services (“the Contract”).
- (d) In the event of any conflict between these Conditions and an accepted Purchase Order, the accepted Purchase Order shall prevail.
- (e) Any representations or warranties made or given by anyone on Precision Pneumatics’ behalf prior to its acceptance of a Purchase Order and not contained in Precision Pneumatics’ written quotation or Purchase Order acknowledgement are hereby expressly excluded.
- (f) Only such Goods and/or Services as are specified in Precision Pneumatics’ Purchase Order acknowledgement are included in the scope of the Contract.
- (g) Precision Pneumatics shall not be obliged to alter the performance or features of the Goods following its acceptance of Buyer’s Purchase Order unless, at its absolute discretion, it agrees in writing to do so and subject to the payment by Buyer of an extra charge.

3. Specifications – Intellectual Property Rights

- (a) All drawings, descriptive matter, weights, dimensions and specifications supplied by Precision Pneumatics are approximate only unless otherwise stated and all descriptions and illustrations contained in Precision Pneumatics’ catalogues, price lists and advertising matter are by way of general description, are stated by Precision Pneumatics in good faith based on Precision Pneumatics’ experience as being correct within acceptable tolerances but are approximate only, in no way are binding on Precision Pneumatics and do not form part of the Contract unless specifically stated to do so. Precision Pneumatics will supply a set of certified outline drawings after conclusion of the Contract and on request of Buyer if separately contracted so to do. Unless agreed otherwise in writing, it is Buyer’s responsibility to ascertain whether the capacity and performance of the Goods are sufficient and suitable for Buyer’s purposes.
- (b) Precision Pneumatics retains ownership in any technical information, drawings, specifications and other intellectual property rights relating to the Supply. All such information shall be kept confidential by Buyer and shall not be disclosed to any third party unless and until the same is or becomes public knowledge nor shall any such information be used by Buyer for any purpose other than for the purpose of using any Goods supplied under the Contract without Precision Pneumatics’ prior written consent. Precision Pneumatics’ trade marks and names and those of its associated companies shall not be used by Buyer otherwise than as applied by Precision Pneumatics to Goods or associated documentation.
- (c) Any software owned by Precision Pneumatics is installed on compatible equipment to record the performance and the use of each of these units (“the Data”). A free royalty and non-exclusive license to use basic data (monthly use) is hereby granted to Buyer for 3 years from the commissioning of such equipment and Precision Pneumatics reserves the right to use the Data as it sees fit.

4. Tests

- (a) The Goods are carefully inspected, and where appropriate, submitted to Precision Pneumatics’ standard tests. Unless otherwise agreed such tests will be carried out at Precision Pneumatics’ premises or any of its affiliates’ premises.
- (b) If a special test or witness test in the presence of Buyer or his representative is required, this will be charged for, and in the event of Buyer failing to attend such test within 14 days of Precision Pneumatics giving it notice that the test is ready for performance, the test will proceed in Buyer’s absence and the Goods will be deemed accepted in Buyer’s absence.

5. Prices

- (a) All prices quoted by Precision Pneumatics are exclusive of carriage and packing costs and exclusive of VAT, unless otherwise stated.
- (b) Where a Purchase Order is placed and accepted for Goods differing in size, quality, quantity or in any other way from the Goods specified in Precision Pneumatics’ quotation, an additional charge may be made.
- (c) Services, installation and commissioning are not included in the purchase price for the Goods.
- (d) Precision Pneumatics’ prices are subject to alteration on 30 days’ notice and, unless otherwise agreed in writing, Goods and Services will be sold at the prices applicable at the date of despatch of the Goods

6. Payment - Cancellation

- (a) Unless otherwise agreed in writing, prices quoted are strictly net and payment shall be made within 30 days From the date of invoice. Invoices will normally be issued on the date of delivery of the Goods or completion of the Services
Time of payment of the essence
- (b) In the event of any delay in payment Precision Pneumatics shall be entitled to charge interest on any outstanding balance at the rate of 15% per annum or part thereof. During such period of default and at any other time when Buyer shall be in breach of the terms of the Contract or Precision Pneumatics shall have reasonable grounds for doubting that payment will be made on the due date, Precision Pneumatics shall be entitled to withhold deliveries without prejudice to its right to payment for Goods and for work undertaken and expenses incurred in connection with undelivered Goods which shall become immediately due and payable on demand.
- (c) Precision Pneumatics may accept or refuse, at its sole discretion, a written request for cancellation by Buyer. Without prejudice to any other rights Precision Pneumatics may have upon cancellation, Buyer shall pay to Precision Pneumatics a compensation equivalent to (i)15% of the purchase price for standard Goods and (ii) 30% of the purchase price or the cost of materials and labour incurred until the cancellation date, whichever is the highest amount, for non-standard Goods. Such compensation which constitutes a genuine pre-estimate of costs and losses incurred, is due within thirty (30) days from issue of the corresponding invoice

7. Delivery

- (a) Unless otherwise agreed, the Goods shall be delivered EX WORKS (INCOTERMS 2010) and the place of delivery shall be Precision Pneumatics’ premises. Delivery is defined in the relevant incoterm.
- (b) Precision Pneumatics shall endeavour to supply the Goods and Services within the time stated in the Purchase Order, but shall not be liable for late delivery unless Precision Pneumatics agreed to pay liquidated damages in which case liquidated damages shall constitute Buyer’s sole remedy for late delivery.
- (c) Buyer shall take delivery of the Goods in accordance with the delivery date specified in the Contract or at the latest 5 days from Precision Pneumatics’ notification that the Goods are ready for delivery, whichever is the latest. Buyer will supply delivery Buyer with delivery instructions promptly on notification to Buyer that Goods are ready for shipment. Buyer’s obligation to take delivery of the Goods as provided in the Contract constitutes a material obligation of Buyer.
- (d) If Buyer fails to give Precision Pneumatics proper delivery or transportation instructions when required or to accept delivery of the Goods when tendered in accordance with the terms of the Contract, Buyer shall be liable for all storage and other costs incurred by Precision Pneumatics as the result of such failure which shall be immediately due and payable on demand, but such liability shall not affect Buyer’s obligation to purchase the Goods and the right of Precision Pneumatics to claim damages for breach of such obligation.
- (e) In the event that the Goods are delivered at a time and place agreed with Buyer but no representative of Buyer is present when the Goods are so delivered Precision Pneumatics reserves the right to deposit such Goods at the specified place and shall have no liability in respect of loss or damage resulting therefrom.
- (f) If Buyer fails to collect or take delivery of the Goods within 3 months of the delivery date, Precision Pneumatics shall be entitled, without prejudice to its other rights, to terminate all or part of the Contract and to dispose of the Goods, and to charge Buyer a compensation of (i) 15% of the purchase price for standard Goods and (ii) 30% of the purchase price or the cost of materials and labour incurred until the cancellation date, whichever is the highest amount for non-standard Goods,

to be paid by Buyer within 30 days of issue of the corresponding invoice. The parties agree that such sums payable to Precision Pneumatics under this clause are a genuine pre-estimate of the costs and losses which Precision Pneumatics would suffer from Buyer not taking delivery of the Goods.

8. Damage in Transit

- (a) Precision Pneumatics shall have no liability in respect of Goods lost or damaged in transit unless such loss or damage shall occur prior to delivery; and
 - (i) in the case of a whole consignment failing to arrive, Buyer gives notice in writing to Precision Pneumatics within 14 days of receipt of Precision Pneumatics' invoice or despatch note, or
 - (ii) in any other case, Buyer gives notice in writing to Precision Pneumatics within seven days of the receipt of the Goods or such longer period as may be stated in the Contract.
- (b) Subject to paragraph (a), Precision Pneumatics' liability in respect of Goods lost in transit shall be limited to replacing Such Goods and its liability in respect of Goods damaged in transit shall be determined in accordance with Clause 12.

9. Acceptance

- (a) Buyer shall not be entitled to reject the Goods or Services unless:
 - i within 14 days after delivery or completion or such longer period as may be agreed, Buyer shall have given notice, in writing, to Precision Pneumatics, that the Goods or Services are not in compliance with the Contract,
 - ii Buyer shall have provided Precision Pneumatics with such access to the Goods as it requires and Precision Pneumatics shall have failed to remedy the defect within 14 days after receipt of Buyer's notice or such longer period as may be stated in the Contract,
 - iii the defect materially affects the performance of the Goods, and (iv) the defect is covered by Precision Pneumatics' warranty in clause 11.
- (b) In the event Buyer rejects the Goods or Services, Precision Pneumatics shall have no liability to Buyer except for payment of any liquidated damages agreed in the Contract terms and the return of any payments made by Buyer to Precision Pneumatics in respect of the purchase of the Goods or Services.

10. Retention of Title and Risk

- (a) Title to the Goods shall remain in Precision Pneumatics until payment in full is made by Buyer for all sums due from it to Precision Pneumatics on any account whatsoever.
- (b) Paragraph (a) of this clause shall not prevent Buyer from embodying the Goods in any product so long as they remain identifiable or from selling the Goods or any product embodying the Goods but, in the event of such supply (to the extent of Buyer's indebtedness to Precision Pneumatics in respect of the Goods Buyer:
 - (i) shall hold the proceeds of supply or the right to receive the same on trust for Precision Pneumatics,
 - (ii) shall place the proceeds of supply in a separate account of Buyer in such a way as to be identifiable as in the beneficial ownership of Precision Pneumatics, and
 - (iii) at Precision Pneumatics' request, shall assign the right to receive the proceeds of supply to Precision Pneumatics.
- (c) The risk in the Goods shall pass to Buyer on delivery.

11. Warranty

- (a) Except as expressly warranted below, all warranties, conditions and other terms implied by statute or common law (save for the conditions implied as to title by Section 12 of the Supply of Goods Act 1979) are to the fullest extent permitted by law, excluded.
- (b) Subject to clauses 8 (a) and 9, Precision Pneumatics shall, at its option, repair, replace or credit Buyer with the whole or a due proportion of the purchase price of any Goods supplied to it by Precision Pneumatics in respect of which any defect shall arise under conditions of normal and proper use and maintenance (fair wear and tear, and consumables excepted) due to faulty materials or workmanship, provided that (i) the defect becomes apparent within duration of the warranty period (12 months from the date of commissioning or 18 months from the date of delivery, whichever is the earliest unless another warranty period has been agreed) (the duration of the warranty for spare parts is 6 months from the date of delivery), (ii) Buyer gives notice of the defect to Precision Pneumatics in writing within 14 days after the defect becomes apparent; (iii) the defect is not attributable to misuse, failure to comply with Precision Pneumatics' instructions regarding storage, operation or maintenance, damage caused by any factors beyond Precision Pneumatics' control, or fair wear and tear; (iv) the Goods have not been repaired or altered by anyone other than Precision Pneumatics or at Precision Pneumatics' direction; (v) in the case of equipment and related components, spares and parts not of Precision Pneumatics' own manufacture, unless otherwise required by law, Precision Pneumatics' responsibility shall be limited to passing on to Buyer the benefit of any guarantee or warranty given to Precision Pneumatics by the manufacturer of such Goods or part; (vi) the defect does not arise from Buyer's specification or instructions; (vii) Buyer provides Precision Pneumatics with such access to the Goods as it requires or, at Precision Pneumatics' request, returns the Goods to Precision Pneumatics for inspection; and (viii) Buyer has used genuine parts i.e. Precision Pneumatics branded parts fitted by a competent person.
- (c) Precision Pneumatics shall have no liability to Buyer for any information or advice given to Buyer in connection with the Goods, unless confirmed in writing.
- (d) Except as provided in clauses 8, 9 and 11, Precision Pneumatics shall have no liability to Buyer in respect of any defect in the Goods, and all conditions and warranties, whether express or implied, as to the quality of the Goods, their fitness for any particular purpose, or their design, manufacture, materials, components specification and performance are excluded.
- (e) Except as expressly warranted above, Services are provided "as is" and Buyer assumes the entire risk as to the results of the Services.

12. Limitation of Liability

- (a) Subject to clauses 8, 9 and 11, the following provisions set out the entire liability of Precision Pneumatics ((including any liability for the acts or omissions of its employees, agents, or sub-contractors) to Buyer in respect of: a) any breach of these Conditions; or (f) any representation, statement or tortious act or omission, including negligence, arising under or in connection with these Conditions.
- (b) Nothing in these Conditions excludes or limits the liability of Precision Pneumatics for: (i) death or personal injury caused by Precision Pneumatics' negligence or (ii) fraud or fraudulent misrepresentation or (iii) any other liability that cannot be excluded or limited by law.
- (c) Subject to paragraph (e) below, Precision Pneumatics shall be liable for physical damage to property to the extent that it results from breach of contract or Precision Pneumatics' negligence in connection with the performance of the Contract, subject to an overall limit of the amount received by Precision Pneumatics from Buyer under the Contract.
- (d) Subject to paragraph (e) below, Precision Pneumatics' liability under the Contract and for negligence arising out of the Contract shall be capped at the amount received under the contract.
- (e) Precision Pneumatics shall have no liability to Buyer for indirect or consequential losses including loss of profit; (whether direct or indirect), loss of revenue (whether direct or indirect), loss of business; (whether direct or indirect), loss of production (whether direct or indirect).
- (f) Buyer will indemnify and keep indemnified Precision Pneumatics from and against any costs, claims, demands, liabilities, damages or losses and all interest, penalties and legal and other professional costs and expenses arising out of or in connection with Buyer's use of Goods or Buyer supplying Goods to any party who is not a party to these Conditions and the Goods' subsequent use. This indemnity shall cover (but is not limited to) Precision Pneumatics' liability to third parties arising out of the use or supply of the Goods, except to the extent caused by Precision Pneumatics' negligence.

13. Returns

Returns of Goods not affected by defects will only be accepted by Precision Pneumatics from Buyer with the prior agreement Precision Pneumatics in writing. All items which are accepted as returns will be subject to a handling charge, and must be forwarded to Precision Pneumatics' head office in Knowsley Business Park at Buyer's expense.

14. Force Majeure

Notwithstanding the provisions of any other term of the Contract, a party shall not be regarded as in breach thereof to the extent that such party is prevented from or hindered in fulfilling its obligations by any circumstances outside its reasonable control (including strikes, lockouts, shortages of materials, delays in transportation or governmental regulations) provided that such party shall have given written notice to the other party of such circumstances within a reasonable time after learning of them. In the event of such delay, the date of shipment or performance shall, at the request of Precision Pneumatics, be deferred for a period equal to the time lost by reason of the delay and otherwise for a reasonable time. If such circumstances shall continue to prevent or hinder the performance of the Contract by such party for more than three months, then the other party may by written notice terminate the Contract with regard to the unperformed portion thereof.

15. Termination

- (a) If Buyer is subject to any act of bankruptcy or, being a company, has a receiver appointed or an administration order made against it or goes into liquidation or if a similar event occurs under applicable insolvency laws (except for the purpose of reconstruction or amalgamation) then all sums due to Precision Pneumatics under the Contract shall immediately become due and payable and Precision Pneumatics may, notwithstanding any previous waiver, terminate the Contract forthwith by written notice and Precision Pneumatics without prejudice to its other rights under these Conditions, shall be entitled to enter upon any land or premises where the Goods or any product embodying the Goods may be for the time being, to detach the Goods if so embodied and to recover possession of them.
- (b) Precision Pneumatics may terminate the Contract with immediate effect in the event of a failure by Buyer to comply with any material provision of the Contract if the failure continues for more than 14 days after Buyer has been given written notice to remedy the breach.
- (c) If Buyer fails to collect or take delivery of the Goods within 3 months of the Delivery Date, Precision Pneumatics shall be entitled, without prejudice to its other rights, to terminate all or part of the Contract and to dispose of the Goods, and to charge Buyer a compensation of 15% of the Purchase Price (standard goods) or 30% of the Purchase Price (non-standard goods), to be paid by Buyer within 30 days of issuance of the corresponding invoice. The parties agree that such sums payable to Precision Pneumatics under this clause are a genuine pre-estimate of the costs and losses which Precision Pneumatics would suffer from Buyer not taking delivery of the Goods.
- (d) Termination shall be without prejudice to any prior right of either party or any provisions (including but not limited to clauses 3, 12 and 16) which by nature shall survive termination.

16. Governing law and Jurisdiction

- (a) The Contract shall in all respects be governed by and construed in accordance with the law of England and Wales.
- (b) Buyer and Precision Pneumatics agree that the courts of England and Wales shall have the exclusive jurisdiction to settle any disputes, which may arise in connection with the Contract.
- (c) Precision Pneumatics shall have the option to bring suit before the courts of the domicile of Buyer when the claim is for or related to payments due by Buyer.

17. Miscellaneous

- (a) Buyer may neither assign nor transfer nor deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Precision Pneumatics.
- (b) Save as expressly provided, no term or provision of these Conditions shall be enforceable by a third party (being any person other than the parties and their permitted successors and assignees).
- (c) No waiver by either party of any breach of any of these Conditions by the other party shall be deemed to constitute a waiver of any other breach nor shall any delay or omission on the part of either party to exercise or avail itself of any right or remedy hereunder operate as a waiver thereof. A waiver given by a party hereunder shall be binding upon such party only if in writing and signed by such party.
- (d) In the event that any term or provision of the Contract is declared null and void or unenforceable by any court of competent jurisdiction, the remainder of the provisions of these Conditions shall remain in full force and effect to the fullest extent permitted by applicable law.
- (e) Buyer hereby acknowledges that relevant safety and training literature relating to the Goods will be supplied by Precision Pneumatics to Buyer free of charge and may be photocopied by Buyer as required. Buyer shall be fully responsible for the implementation of the contents of all safety and training literature provided by Precision Pneumatics. Buyer shall ensure persons who use, maintain or otherwise handle the Goods receive adequate safety and training literature.