



# FOWLERS

**FOWLERS OF BRISTOL (ENGINEERS) LTD.**  
Unit 3A, Severnside Trading Estate, St Andrews Road,  
Avonmouth, Bristol, BS11 9EB  
Tel: +44 (0)117 9828965 Fax: +44 (0)117 9062012  
www.fowlers-eng.com email: sales@fowlers-eng.com

## FOWLERS OF BRISTOL (ENGINEERS) LTD TERMS AND CONDITIONS OF SALE – MARCH 2019

### 1. INTERPRETATION

1.1 In these Conditions, the following words and phrases shall have the following meanings:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Customer:** the person, firm or company who requests Goods and/or Services from Fowlers of Bristol (Engineers) Ltd.

**Force Majeure Event:** an act, event, omission or accident beyond its reasonable control including but not limited to strikes, lock-outs or other industrial disputes, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

**Goods:** the goods (or any part of them) set out in the Customer Purchase Order/Order Acknowledgement.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world

**Order:** The Customer's order for the supply of Goods and/or Services, as set out the Customer's purchase order form or written order request.

**Order Acknowledgement:** the order acknowledgement confirming the details of the Contract.

**Services:** the services, supplied by Fowlers to the Customer as set out in the Order Confirmation.

**Specification:** any specification for the Goods, including any relevant plans or drawings, which is provided by the Customer.

**Fowlers:** Fowlers of Bristol (Engineers) Ltd registered in England and Wales with company number 00705126 whose registered office is at Unit 3A, Severnside Trading Estate, St.Andrews Road, Avonmouth, Bristol BS11 9YQ

1.2 In these Conditions: a reference to **writing** or **written** includes faxes and e-mails; the headings do not affect the interpretation of the Contract.

### 2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Fowlers issue an Order Acknowledgement at which point, and on which date the Contract shall come into existence.



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- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Fowlers which is not set out in the Contract.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 Any quotation given by Fowlers shall not constitute an offer and is only valid for a period of 90 Days from its date of issue unless otherwise specified in writing by Fowlers.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

### 3. GOODS

- 3.1 To the extent that the Goods are to be manufactured in accordance with the Specification supplied by the Customer, the Customer shall indemnify Fowlers against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Fowlers in connection with any claim made against Fowlers for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Fowlers use of the Specification. This clause 3.1 shall survive termination of the Contract.
- 3.2 Fowlers reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

### 4. DELIVERY OF GOODS

- 4.1 Fowlers shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of delivery, the type and quantity of the Goods and, if the Goods is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 Fowlers shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after Fowlers notifies the Customer that the Goods are ready.
- 4.3 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. If no date is specified, Fowlers shall endeavour to deliver in a reasonable time. Fowlers shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide Fowlers with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If the Customer fails to accept or take delivery of the Goods, then except where such failure or delay is caused by a Force Majeure Event or by Fowlers failure to comply with its obligations under the Contract in respect of the Goods:
- Risk in the Goods shall pass to the Customer; and
  - Fowlers shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).



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4.6 If 30 Business Days after Fowlers notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Fowlers may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.7 Fowlers may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## 5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

5.2 Title to the Goods shall not pass to the Customer until Fowlers receives payment in full (in cash or cleared funds) for all Goods and/or Services ordered by the Customer.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) Store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as Fowlers property;
- (b) Not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (c) Maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Fowlers behalf from the date of delivery;
- (d) Notify Fowlers immediately if it becomes subject to any of the events listed in clause 11.2.

5.4 If before title passes to the Customer, the Customer becomes subject to any of the events listed in clause 11.2 or Fowlers reasonably believes that any such event is about to happen, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Fowlers may have, Fowlers may at any time require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## 6. SUPPLY OF SERVICES

6.1 Fowlers shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Confirmation, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

6.2 Fowlers shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and Fowlers shall notify the Customer in any such event.

6.3 Fowlers warrants to the Customer that the Services will be provided using reasonable care and skill.



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## 7. CUSTOMER'S OBLIGATIONS

### 7.1 The Customer shall:

- (a) Ensure that the terms of the Order and the Specification are complete and accurate in all material respects;
- (b) Co-operate with Fowlers in all matters relating to the Services;
- (c) Provide Fowlers, its employees and subcontractors, with access to the Customer's premises as reasonably required by Fowlers to perform the Services;
- (d) Provide Fowlers with such information and materials as Fowlers may reasonably require, to supply the Services, and ensure that such information is accurate in all material respects.
- (e) Ensure that any perceived quantity discrepancies or visible damage to parts shall be reported to Fowlers within 14 days of receipt.

7.2 If Fowlers performance of any of its obligations in respect of the Services is prevented or delayed by the Customer due to its failure to comply with clause 7.1, Fowlers may arrange an alternative performance date for the Services (conditional on the Customer complying with clause 7.1) and the Customer shall reimburse Fowlers on written demand for any costs or losses sustained or incurred by Fowlers arising directly or indirectly from its failure to comply with clause 7.1.

7.3 Fowlers shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Fowlers failure or delay to perform any of its obligations as set out in this clause 7.2.

## 8. CHARGES AND PAYMENT

8.1 The price for Goods shall be the price set out in the Order Acknowledgement. The price of the Goods is the price of the Goods is exclusive of amounts in respect of:

- (a) Value added tax (VAT); and
- (b) The costs of delivery, which shall be set out on the Order Acknowledgements and invoiced to the Customer.

8.2 The Customer shall pay each invoice submitted by Fowlers within 30 days of the last date of the month during which the invoice is raised, unless agreed otherwise by Fowlers and specified on the Order Confirmation, and in full and in cleared funds to a bank account nominated in writing by Fowlers. Time of payment is of the essence.

If the Customer fails to make any payment due to Fowlers under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate prescribed in the Late Payment of Commercial Debts (interest) Act 1988 from time to time (currently at the rate of 8% over the Bank of England's dealing rate). Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8.3 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. Fowlers may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Fowlers to the Customer.





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## 9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Customer agrees that it is the owner, or licensee, of the Specification and it shall have sole responsibility for the Specification.
- 9.2 The Customer acknowledges that, in respect of any third party Intellectual Property Rights in the Specification, Fowlers use of any such Intellectual Property Rights is conditional on the Customer obtaining a written licence from the relevant licensor on such terms as will entitle the Customer to license such rights to Fowlers.

## 10. LIMITATION OF LIABILITY:

- 10.1 Nothing in this Contract shall limit or exclude Fowlers liability for:
- (a) Death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) Fraud or fraudulent misrepresentation;
  - (c) Breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
  - (d) Breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
  - (e) Defective products under the Consumer Protection Act 1987.
- 10.2 Subject to clause 10.1:
- (a) Fowlers shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract which fall within any of the following categories: special damage, even though Fowlers were aware of the circumstances in which such special damage could arise; loss of anticipated savings; loss of business opportunity; loss of or goodwill; loss of, or damage to, data; and
  - (b) Fowlers total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid for the Goods and/or Services.
  - (c) Fowlers shall not be liable for any perceived quantity discrepancies or damaged parts that have not been reported to Fowlers within 14 days of receipt at the customers premises.
- 10.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and 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 from the Contract.



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## 11. TERMINATION

- 11.1 If the Customer becomes subject to any of the events listed in clause 11.2, or Fowlers reasonably believes that the Customer is about to become subject to any of them, then, without limiting any other right or remedy available, Fowlers may cancel or suspend all further deliveries of Goods or performance of the Services without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 11.2 Fowlers may terminate the Contract immediately on giving written notice if the Customer:
- (a) becomes insolvent, bankrupt or is unable to pay its debts when they fall due; or
  - (b) fails to pay any amount due under the Contract on the due date for payment; or
  - (c) commits any material breach of any term of the Contract and (in the case of a breach capable of being remedied) shall have failed, within 14 Business Days after the receipt of the request in writing from Fowlers to remedy the breach.
- 11.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

## 12. FORCE MAJEURE

- 12.1 Fowlers shall not be liable to Customers for any breach of its obligations if such breach is due to a Force Majeure Event.
- 12.2 If a Force Majeure Event occurs, Fowlers will inform the Customer as soon as possible and take all reasonable steps to mitigate the effect of the Force Majeure Event.

## 13. ASSIGNMENT AND SUBCONTRACTING

- 13.1 The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Fowlers.
- 13.2 Fowlers may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.

## 14. NOTICES

- 14.1 Any notice required to be given pursuant to the Contract shall be in writing and be delivered by hand or sent by pre-paid first class post or recorded delivery post to the address of the party as notified by the other party from time to time.
- 14.2 A notice delivered by hand is deemed to have been received when delivered (or, if delivery is not in business hours, 9:00 am on the first Business Day following delivery), A correctly addressed notice sent by pre-paid first class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.



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## 15. VARIATION

15.1 Any variation to the Contract shall only be binding when agreed in writing and signed by Fowlers.

## 16. GOVERNING LAW AND JURISDICTION

16.1 The 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

LAST UPDATED: 12<sup>TH</sup> MARCH 2019