

# TERMS & CONDITIONS

## ADELCO SCREEN PROCESS LIMITED

These are the Terms and Conditions (“Terms”) for Adelco Screen Process Limited (“Adelco”), whose registered office is Highview, High Street, Bordon Hampshire GU35 0AX.

The Terms shall govern and apply to all agreements between Adelco and its client and shall be deemed to have been accepted by the Client on the entering into a Contract in accordance with these Terms.

### DEFINITIONS

- “Contract” means the confirmation and acceptance by Adelco of an Order from the Client to purchase Product as more particularly defined at clause 2;
- “Contract Documents” means any of: the Quotation, Order Confirmation, Pro forma Invoice, Invoice, these Terms, and any Warranty provided;
- “Contract Price” means the full price set out in the Quotation exclusive of VAT pursuant to clause 2 and as may be amended from time to time, in accordance with these Terms;
- “Client” means the person, firm, company or any other entity ordering Product from Adelco under these Terms and shall include a distributor of Adelco;
- “Delivery” means the arrival of the Product to the Client’s address, expressly excluding the offloading of the Product which is to be undertaken by the Client unless otherwise agreed in writing;
- “Delivery Date” means the estimated date of delivery set out in the Quotation specifying the proposed date of delivery of the Product;
- “Deposit” means such sum representing 30% of the Contract Price payable in accordance with clause 2 either by remittance directly to Adelco, the client entering into a suitable and agreed finance or lease agreement or a Letter of Credit;
- “Intellectual Property Rights” means copyright, patent, trademark, design rights, know-how, or any other right, whether registered or not, or capable of registration or not, existing anywhere throughout the world;
- “Interest rate:” means 4% above Barclays Bank UK plc base rate at the time;
- “Letter of Credit” means a letter in agreed format from an institution acceptable to Adelco and guaranteeing payment of the Deposit or Contract Price;
- “Order” means a written request from the Client for the purchase of Product to include inter alia Contract Price, delivery times and any other matter set out on the Quotation;
- “Product” means the Product to be supplied by Adelco to the Client as set out in the Order as maybe be added to or varied in accordance with these Terms;

- “Quotation” means an estimate of price, delivery times and specification of Product, together with any other matters provided to the Client.
- “Shipping” means the date on which the Product leaves its place of manufacture or any storage or other facility used by Adelco, on its way to be delivered to the premises of the Client.
- “Warranty” means the Warranty awarded by Adelco as provided to at clause 8 and also includes any warranty with respect to labour and services provided by any distributor to Adelco but always under the terms of clause 8;
- “Working Day” means any day other than a Saturday, Sunday or Bank Holiday or statutory holiday.

## **1 ACCEPTANCE OF TERMS**

- 1.1 By entering into a Contract (pursuant to clause 2.2), the Client is deemed to have accepted these Terms, and the Client expressly acknowledges that no other terms shall apply unless expressly agreed in writing by Adelco.
- 1.2 Adelco reserves the right to amend or vary these Terms at any time upon one month's written notice to the Client; such amended Terms to apply to future contracts only.

## **2 PROCEDURE: ORDERING PRODUCT AND PAYMENT TERMS**

- 2.1 Upon enquiry from a potential Client, Adelco shall negotiate terms with the client and, once agreed, will provide a Quotation setting out the required Product, Contract Price, proposed Delivery Date and any specific and separate terms, including all and any other charges, if any.
- 2.2 If the Client agrees with the terms stated in the Quotation, the Client shall submit an Order to Adelco, referring to the Quotation provided. Upon receipt of the Order, if the Order is in agreed terms, Adelco shall accept the Order in writing to the client, either by way of written Order Confirmation, providing a Pro forma Invoice, or Invoice at which point a Contract is created between the parties.
- 2.3 Payment of the Contract Price shall be paid in UK pounds sterling or as otherwise agreed, in the following way; each of the times indicated for payment being their “Due Date”:-
- 2.3.1 Unless otherwise expressly agreed in writing with the Client, all contracts within the United Kingdom shall be paid for as follows;
- 30% of the Contract Price by way of Deposit and payable on creation of the Contract;
  - the balance of 70% upon Delivery.
- 2.3.2 Unless otherwise expressly agreed in writing with the Client, all international, non-UK contracts shall be paid for as follows:-
- 30% of the Contract Price at the time the Contract is entered into;
  - 60% of the Contract Price prior to Shipping of the Product;
  - 10% of the Contract Price upon Delivery.
- 2.4 Notwithstanding any remedy open to Adelco pursuant to clause 3, interest at the Interest Rate shall be applied to any payment not made on its Due Date.

- 2.5 The Contract Price shall be exclusive of VAT and shall remain valid for 20 days following the provision of the Quotation. If no Order is made in that time, and therefore no Contract formed between the Parties, Adelco may revise the Contract Price for any future Contract.
- 2.6 Should the Client wish to change its Order, all changes requested must be put in writing. If any changes are agreed, Adelco will provide a further Quotation and a new Contract Price including all associated additional costs to be charged to the Client with respect to the changes to the Order.
- 2.7 The Client shall not be able to cancel any Order once Adelco has provided instructions for Shipping of Product. If the Client seeks to do this, Adelco may retain such part of the Deposit held as represents, in Adelco's sole reasonable discretion, the amount of Adelco's costs, expenses, losses or any other amount it is reasonable to claim as a result of such cancellation.

### **3 DEFAULT IN PAYMENT**

- 3.1 If a Client is in default of any payment, Adelco shall be entitled, at its sole discretion, to suspend any further delivery of Product until full payment has been made by the Client. In addition, upon default, and further at Adelco's sole discretion, Adelco can prevent the use of the machine by the Client by altering or withholding the necessary code until full payment is received.
- 3.2 In the event that Adelco suffers any additional costs for any re-Delivery, suspension of Delivery or any other costs associated with default in payment, all reasonable costs attributable to such non-payment shall be added to the Contract Price, together with any interest due.
- 3.3 Time shall be of the essence for the purpose of the various staged payments of the Contract Price under these Terms.

### **4 DELIVERY: TIMING AND COSTS**

- 4.1 Adelco will use all reasonable endeavours to ensure that the Product is delivered and completed within the proposed timings set out on the Quotation. Time shall not be of the essence in this regard and the Client accepts that dates or periods of time for Delivery of Product are estimates only. Adelco will accept no liability for any delay for whatever reason but including manufacturing or shipping delays outside of Adelco's control, and shall not be liable for any direct or consequential losses suffered by the Client as a result of any such delay.
- 4.2 The Client shall accept part Delivery of any Order in the event that more than one Product is ordered.
- 4.3 Adelco shall ensure delivery charges and any other associated costs are included as part of the Contract Price and set out within the Quotation. In the event freight costs increase or there are fluctuations in the exchange rates or other increased costs beyond Adelco's control, Adelco shall be entitled to add such increased costs to the Contract Price.
- 4.4 If the Client fails to provide suitable access to the premises to which Delivery is to be made, or if for any other reason outside Adelco's control, Delivery is delayed, then Adelco reserves the right to increase the Contract Price to cover any reasonable increased costs incurred.

## **5 CLIENTS' OBLIGATIONS**

- 5.1 The Client acknowledges the Contract Price is based upon Adelco having free and uninterrupted access to the Client's premises to enable the Product to be delivered to. Adelco reserves the right to increase the Contract Price to cover its costs if on any day of Delivery or installation of Product, this is not possible because of any failure by the Client.
- 5.2 In addition, the Contract Price assumes that the Client will ensure that all necessary supplies are in place for the installation of Product to take place including but not limited to supplies of gas, electricity, air/ pneumatic/flo ventilation. Adelco shall be entitled to add any reasonable additional costs in the event the Client fails to comply with the subclause.
- 5.3 It is the Client's responsibility to use and maintain the Product correctly and ensure it is suitable for the Client's use.
- 5.4 Notwithstanding the generality of Clause 5.3 above, in the event that any special conditions or specifications are required by the Client, these must be notified to Adelco in writing, prior to Adelco providing the Quotation so that Adelco can ensure that such conditions are reasonable and acceptable and can quote the appropriate Contract Price.
- 5.5 The Client recognises that it is responsible for the appropriate care and protection including full insurance of all Product upon Delivery to the Client's site or premises as more particularly provided in clause 7.

## **6 INSPECTION AND DEFECTIVE PRODUCT**

- 6.1 The Client must inspect all Product on the day of Delivery of the Product. In the event that the Client believes that any Product is defective or substandard in any way, the Client shall notify Adelco in writing within 2 Working Days of the Delivery Date. Such notice from the Client shall include details of the Order, invoice number, despatch number and sufficient detail, together with supporting photographic evidence, of the alleged damage to the Product. For the avoidance of doubt, Risk will have passed to the Client upon Delivery in accordance with clause 7 notwithstanding any allegation of damage.
- 6.2 If the Client fails to adhere to the process set out at clause 6.1 above, it shall be deemed to have accepted the Product and shall not be entitled to claim any damages for alleged defective Product.
- 6.3 If the Client can show evidence that the Product was damaged following Shipping and during transit, subject to clause 6.4, Adelco shall replace faulty parts or components at its own cost.
- 6.4 Upon inspection of any Product, should Adelco find the Product has not been damaged in transit, Adelco reserves the right to refuse to refund or replace such Product. The Client shall be required to collect all Product from Adelco.
- 6.5 Other than damage caused in transit, if Adelco receives appropriate notification and proof of damaged or defective Product and Adelco is satisfied that the Product is damaged or defective, it shall arrange for the repair, or the replacement of, the Product at Adelco's expense.
- 6.6 The Company reserves the right to require that all Product alleged to be damaged or defective be returned to the Adelco for inspection. Adelco's quality labels must remain

on the Product and all returned Product or parts must be returned together with the Order and Invoice in respect of that Product together with clear details and photographic evidence of the alleged defects. For the avoidance of doubt, Adelco will not provide off-site inspection of Product allegedly defective.

## **7 TITLE AND RISK**

- 7.1 Title to the Product shall remain with Adelco until full payment of the Contract Price has been received by Adelco.
- 7.2 Until title in the Product has passed to the Client in accordance with clause 7.1, the client shall hold the Product in a fiduciary capacity and as bailee for Adelco. The Client shall not be entitled to use the Product and shall keep the Product in suitable premises and conditions, and separate from all other goods and assets of the Client, and clearly marked to indicate that the Product remains in the ownership of Adelco.
- 7.3 Notwithstanding clause 7.2 above, Risk in the Product shall pass to the Client on Delivery.
- 7.4 Adelco shall be entitled to enter onto the Client's premises for the purpose of recovering any Product title to which remains with Adelco as a result of non-payment by the Client.

## **8 ADELCO'S WARRANTY AND LIMITATION OF ADELCO'S LIABILITY**

- 8.1 Adelco warrants that the Product shall have been manufactured with all reasonable care and skill (the "Warranty").
- 8.2 The Client cannot benefit from the Warranty or make any claim under the Warranty unless the Client has paid the full Contract Price and further cannot make any claim under the Warranty unless within 12 months of the date of Delivery.
- 8.3 The Warranty herein shall not cover or be applicable in any way should any damage or defect result from adaptations or modifications or adjustments of any sort by the Client. The Warranty will also not apply to any Product which has been mis-used in any way by the Client.
- 8.4 Adelco makes no representations or warranties that the Product is fit for any particular purpose, or has passed any particular test or criteria, unless expressly agreed in writing by Adelco. Adelco is only required to supply the Product in accordance with these Terms and the Warranty. Therefore to the maximum extent permitted by law, except as expressly stated in these Terms, all implied conditions, warranties and terms (whether express or implied by statute, common-law, custom or otherwise) including, but not limited to, those relating to the exercise of reasonable care and skill, fitness for purpose and durability and satisfactory quality are hereby excluded in relation to the Product delivered pursuant to these Terms.
- 8.5 The Client expressly acknowledges that it has not relied on any assurance or representation made by Adelco, or its Employees, agents, or other personnel or any description regarding the Product.
- 8.6 Other than for death or personal injury, Adelco's entire liability for any direct loss or damages arising either in contract or negligence shall be limited to the Contract Price. In no event shall Adelco be liable for any special, indirect, incidental or consequential damages for any loss of business, perspective business opportunities, profits or other

commercial economic loss even if Adelco has been advised of the possibility of such damages arising.

- 8.7 Adelco shall not be liable for any direct or indirect costs which may be incurred by the Client should delivery of the Product be delayed.
- 8.8 Adelco shall not be liable for any public liability claims from third parties against the Client which must be covered by the Client's own public liability insurance.
- 8.9 The Client shall at all times comply with all rules and instructions provided for the installation of Product. Adelco shall not be liable for any damage or loss caused by a failure of the Client to adhere to the terms of this sub-clause.
- 8.10 Adelco shall use their best endeavours to ensure the accuracy of any technical information set out in the literature that is provided with the Product. However, Adelco shall not be liable for any direct or indirect consequential loss or damage arising from any errors or omissions in such literature.

## **9 INTELLECTUAL PROPERTY RIGHTS**

- 9.1 The Client acknowledges that all Intellectual Property Rights pertaining to the Product belongs to Adelco. The Client expressly acknowledges that it has not obtained any licence or any other right to use or sublicense any trademark or other Intellectual Property Right as a result of the Contract or these Terms.

## **10 SEVERANCE**

- 10.1 If any of these Terms shall be determined to be invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, then such term or condition shall be severed and the remaining Terms and Conditions shall survive and remain in full force and effect and continue to be binding and enforceable.

## **11 GENERAL**

- 11.1 No waiver or forbearance by Adelco, whether explicit or implied, in enforcing any of its rights under the Contract shall be considered a permanent waiver of aid rights.

## **12 NO RIGHT OF SET-OFF**

- 12.1 The Client is not permitted to withhold payment of any amount due to Adelco on the ground of any asserted right of set-off, counterclaim or for any other reason whatsoever.

## **13 JURISDICTION**

- 13.1 These Terms and the Contract shall be governed by and construed in accordance with the Laws of England and Wales, and the parties hereby submit to the non-exclusive jurisdiction of the English Courts

## **14 THIRD PARTY RIGHTS**

- 14.1 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

## **15 NOTICES**

15.1 Notice under these Terms shall be given to either party in writing to the registered office of Adelco and the Client (if a company) or to such address as shall be notified by either party to the other in writing.

## **16 ASSIGNMENT**

16.1 Neither party is allowed assign its rights and obligations under these Terms without the written consent of the other party, such consent not to be unreasonably withheld.

## **17 ENTIRE AGREEMENT**

17.1 These Terms, together with the Contract and documents comprising the Contract, constitute the entire agreement between the parties relating to the purchase of Product.

## **18 FORCE MAJEURE**

18.1 Except for the obligation to make any payment due, up until the point of delay neither party will be liable for any failure or delay in its performance under these Terms in connection with a Contract due to any cause beyond its reasonable control, including but not limited to acts of war, acts of God, earthquake, flood, labour shortage or dispute. If Adelco is unable to provide the Product for a period of 30 consecutive days as a result of a continuing Force Majeure event, the Client may cancel the Order with no liability to make any further payment. For the avoidance of doubt, the Client shall remain liable to make full payment for all Product already provided or performed.