

Watly Engineering Terms of Business

Summary

This document sets out the contract terms that apply to our work with you, so it's an important legal document. It should be read (in full) alongside any quotation (or similar description of our scope of work) which we have shared with you.

This summary isn't part of the contract, so isn't legally binding, but is aimed at helping you to understand and navigate the more detailed terms below. We'd especially like to draw your attention to the following things:

- **Contract formation:** Clauses 2) and 3) set out how and when these contract terms come into play. You can't amend these terms with your own documents (things like purchase orders etc which try to apply different terms).
- **Quotation:** The Quotation (as defined below) sets out what we're doing for you and how much you're paying for that – it forms part of this contract.
- **Our key responsibilities:** Clauses 8) to 12) set out what we are and aren't responsible for when doing work for you.
- **Payment:** Clauses 13) to 15) deal with payment and our remedies if you pay us late.
- **Dependencies:** Clause 16) deals with the fact that you might need to do or provide certain things in order for us to provide the Deliverables to you; it also deals with what happens if you don't do or provide those things (including covering our reasonable additional costs and, if it goes on for too long, giving us a right to cancel your order and claim certain costs from you).
- **Operational issues:** Clause 17) deals with responsibilities if our people are working on-site for you, and clauses 18) to 20) deal with what happens if you give us anything to help us do our work for you (which could, for example, include documents, or physical items you've asked us to work on).
- **Intellectual property:** Whenever we work to – or create – specifications or designs, that often brings intellectual property rights (things like copyright, design rights or even patents) into play. Clauses 21) to 28) deal with those rights, including who owns and can use them.
- **Remedies and liability:** Clauses 29) and 30) deal with what happens if things go wrong (including how you can make a warranty claim, and how our liabilities to each other are limited).
- **Cancellation and termination:** Clauses 31) to 36) set out how this contract can be ended.

Contract formation and structure

- 1) The provisions of this document (the Terms of Business), together with any accompanying Quotation, make a contract between you and us which becomes binding as set out in clause 2) below.
- 2) That contract becomes binding on the earliest of the following events:

- a) your indication of acceptance, whether by email, signature, purchase order or any other means, of a Quotation during the stated validity period of that Quotation (or, if no validity period is stated, within 14 days of the date of issue of that Quotation);
 - b) your acceptance of any Deliverables; or
 - c) your payment of any invoice.
- 3) You expressly acknowledge and agree that any Quotation issued to you is expressly subject to (and incorporates) these Terms of Business. Any purchase order, order confirmation or other form of acceptance by you of a Quotation which tries to amend or replace these Terms of Business or the Quotation in question:
- a) will constitute valid acceptance of the contract; but
 - b) will not otherwise change or replace any of the provisions of the contract.
- 4) Any terms in a Quotation described as “Special Terms” (or something similar) apply to this contract and (to the extent there is any conflict) take priority over the other terms of this contract.
- 5) The clauses above mean that each separate Quotation has its own separate contract.

Clarity

- 6) In this contract, certain words and phrases start with upper-case letters or have a special meaning. The following meanings apply to those words and phrases:

Deliverables means what you are buying from us under this contract, as more fully described in the relevant Quotation.

Dependency means something (which might include Purchase Items) we are depending on you to do or provide so that we can provide the Deliverables to you, as expressly communicated to (and accepted by) you, including any requirements placed on you by a Quotation which you have accepted (and “**Dependencies**” is the plural version of this).

Intellectual Property Rights means patents, utility models, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up and trade dress, 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 confidential know-how and trade secrets) and all other intellectual property rights.

Some of those rights can be registered or unregistered, but this phrase covers both of those situations.

This phrase also includes all rights to apply for (and get) renewals and extensions of any of the rights listed and all rights to claim priority (a technical term about being able to claim that we got there first).

In addition, this phrase covers all similar or equivalent rights or forms of protection in any part of the world.

Liability Cap means the total amount paid and payable by you in respect of the Deliverables covered by this contract.

Purchaser Items	means any information, document or physical item which you provide to us to help us supply the Deliverables to you.
Quotation	means a quotation document (including emails) issued by an authorised representative of us, setting out the Deliverables which we are prepared to provide to you, together with the associated price and any applicable special terms.
Trigger Event	<p>means, in respect of either party, any of the following:</p> <ul style="list-style-type: none"> • the party in question is subject to a change of control (with “control” defined the same way as in section 1124 of the Corporation Tax Act 2010) and the other party has not approved that in advance; • the business of the party in question or any part of it is transferred as a going concern and the other party has not approved that in advance; • the party in question is subject to any steps to start any formal insolvency procedure; • the party in question is subject to any steps to start a solvent winding-up; or • any other event analogous to any of the above; • the party in question commits any offence under the Bribery Act 2010, the US Financial Corrupt Practices Act or any other applicable anti-bribery legislation; or • the party in question commits a material breach of this contract which is either: <ul style="list-style-type: none"> ○ not capable of being remedied; or ○ is capable of being remedied but is not remedied within a reasonable period specified by the other party.
Warranty Failure	<p>means, in respect of any Deliverables, that they fail to meet any of the requirements set out in clauses 12)a) to 12)e) below and this is not because of any of the following things:</p> <ul style="list-style-type: none"> • modifications to the Deliverables which were not carried out by us; • the way the Deliverables were installed (where installation was not carried out by us); • incorrect storage; • misuse or operator error; or • fair wear and tear.
Warranty Fix Period	means 15 business days.
we, us, our	or related expressions refer to Watly Engineering Limited.

you, your or related expressions refer to the customer named on a Quotation.

- 7) Any words following “including”, “includes”, “for example”, “in particular” or any similar expression are just illustrative and do not change the meaning of the wider wording they are used in.

Our key responsibilities

- 8) We will supply the Deliverables to you in the quantities and at the place(s) detailed in the Quotation. Places might not be detailed if they are not relevant.
- 9) Unless the Quotation specifically says otherwise, any timings for supply of the Deliverables (whether set out in the Quotation or communicated in some other way) are just estimates, which we will try (in legal terms, use reasonable endeavours) to meet. If the Quotation does specifically say that we are committing to any timings, then we will supply the Deliverables in accordance with those timings.
- 10) If the Quotation says that the Deliverables must be accompanied by any certificates of conformity, materials certificates, reports, quality documentation or any other documents, reports or certifications, then those things also form part of the Deliverables.
- 11) It is your responsibility to make sure that what you buy from us is the right solution for your needs. Unless the Quotation specifically says otherwise, we do not promise (in legal terms, warrant) that the Deliverables will be suitable for any particular purpose, even if you have told us about that purpose. (This clause is only about suitability– please see the next clause for our responsibilities about quality.)
- 12) This clause replaces any terms about the quality or fitness for purpose of the Deliverables which might otherwise be implied into this contract by the law. It is our responsibility to ensure that the Deliverables are:
- a) of a satisfactory quality (with what counts as “satisfactory” here being decided in accordance with the relevant law);
 - b) worked on by suitably qualified or experienced people;
 - c) free from material defects in manufacture (“material” here, and in d) and e) below, means “not minor”);
 - d) to the extent that we are responsible for design as part of the Deliverables, free from material defects in design;
 - e) to the extent that we are responsible for choosing and sourcing the materials used, free from material defects in materials; and
 - f) produced in accordance with agreed design documentation, including engineering drawings, piping and instrumentation diagrams and technical schedules.

Payment

- 13) In return for us supplying the Deliverables as described above, we will invoice you and you will pay us in accordance with the Quotation and the clauses below.
- 14) You must pay any valid invoices within 21 days of the date of the invoice (or within any different period stated on the Quotation).
- 15) If you pay us later then:

- a) we will immediately be entitled to impose a late payment administration fee of £50;
- b) if payment is still not received within 3 working days of us notifying you that you are late to pay, you will also pay us interest on the late amount at an annual rate equal to the rate applied by the Late Payment of Commercial Debts (Interest) Act 1998, for each day the payment is late (both before and after any judgement concerning that debt); and
- c) we are entitled to suspend work on the Deliverables until payment is received (and any timings for supply of the Deliverables will be extended by the duration of that suspension).

Operational issues

- 16) You must properly provide or satisfy the requirements of any Dependencies. Where you do not:
 - a) we are not responsible for any failure or delay in providing the Deliverables to the extent that this is caused by your failure to properly provide or satisfy the requirements of any Dependency;
 - b) you must, if invoiced by us, reimburse (within 7 days) our reasonable additional costs arising directly from your failure to properly provide or satisfy the requirements of any Dependency; and
 - c) if you are still failing to properly provide or satisfy the requirements of any Dependency and that continues for more than one month after we have told you that this is the case, we may cancel your order for the affected Deliverables (to the extent they are still outstanding at that time) in accordance with clause 33) below.
- 17) Where our supply of the Deliverables to you involves our people attending your premises (or other premises which you have asked us to work at):
 - a) we are responsible for making sure our people comply with any reasonable instructions about on-site rules, procedures or behaviours; and
 - b) you are responsible for ensuring a safe and suitable working environment.
- 18) If you provide any Purchaser Items to us, we do not at any time become the owner of those and we must not do anything which is inconsistent with you being the owner of them. In particular, we must:
 - a) only use any Purchaser Items to help us fulfil your contract with you;
 - b) as far as reasonably possible, keep any Purchaser Items separate from our own or anyone else's information, documents and physical items;
 - c) as far as reasonably possible, clearly mark any Purchaser Items as belonging to you (if you have not already done this); and
 - d) for as long as they are in our possession, look after any Purchaser Items at least as well as we look after our own information, documents and physical items.
- 19) We must also immediately return or release any Purchaser Items to you if we ask for them, even if you owe us money or you are in dispute with us, but if this means that we are no longer able to supply the Deliverables to you, that will be treated as a cancellation by you in accordance with clause 31) below.
- 20) We must also, on reasonable notice, give you (or anyone you have told us is acting for you) access to our premises or any other premises where any Purchaser Items are being kept, to the extent

necessary to enable you to monitor our compliance with or enforce any of the requirements at clauses 18) and 19) above.

Intellectual property rights

- 21) Except as set out in the following clauses, neither you nor we grant each other any rights over any Intellectual Property Rights.
- 22) To the extent that we are working to your designs, specifications or instructions when providing the Deliverables:
 - a) you continue to own any Intellectual Property Rights in those things, but you grant us (and any sub-contractors we may use) the right to use those Intellectual Property Rights, at no charge, only for the purpose of providing the Deliverables to you;
 - b) you promise (in legal terms, you warrant) that you have the necessary rights to use (and let us use) those designs, specifications or instructions; and
 - c) those designs, specifications or (if they are written down) instructions might also be Purchaser Items, in which case clauses 18) and 19) above will also apply to them.
- 23) If we work together with you on any design or other development work for the Deliverables and it is not possible to clearly identify which of you or us created any new Intellectual Property Rights which are generated as a result, those new Intellectual Property Rights will be treated in accordance with clauses 24) and 25) below.
- 24) If the work we do only for you generates any new Intellectual Property Rights, you will own those once we have been paid in full for the Deliverables in question (and this clause automatically gives you ownership of those new Intellectual Property Rights on these terms).
- 25) Unless you and we have expressly agreed otherwise, we (and any sub-contractors we may use) will be entitled to freely use or refer to those new Intellectual Property Rights for other work, but only where this would not breach our confidentiality obligations to you.
- 26) In the case of all other Intellectual Property Rights relating to, used in or arising from the work we do for you in respect of the Deliverables, we grant you the right to use (and to grant your customer(s) and corporate group members the right to use) any such Intellectual Property Rights, to the extent you or they need those rights to carry on your (or their) ordinary business or make use of the Deliverables.

That right is non-exclusive, worldwide and goes on forever, and does not cost you any extra (but does not exist until you have paid us in full for the Deliverables).

- 27) This clause only applies to the extent that we are responsible for the design of the Deliverables. If anyone else claims that your proper use of those Deliverables infringes their rights, we will reimburse:
 - a) your reasonable costs arising from those claims; and
 - b) any costs and damages awarded against you in any such infringement claims, or in any settlement agreement which we have agreed to,

but, in each case, only if you promptly tell us about any claim (or threatened claim) covered by this clause, give us full control of the defence of (or other response to) that claim or threatened claim, and (at our reasonable expense) give us any reasonable help we may ask for in responding to that claim or threatened claim.

28) Where you make available to us any Intellectual Property Rights or information so that we can provide the Deliverables to you, and someone else claims that our proper use of those Intellectual Property Rights or that information infringes their rights, you will reimburse:

- a) our reasonable costs arising from those claims; and
- b) any costs and damages awarded against us in any such infringement claims, or in any settlement agreement which you have agreed to,

but, in each case, only if we promptly tell you about any claim (or threatened claim) covered by this clause, give you full control of the defence of (or other response to) that claim or threatened claim, and (at your reasonable expense) give you any reasonable help you may ask for in responding to that claim or threatened claim.

Remedies – warranty and liability

29) Where, in the 12 months after they are provided to you (or repaired, replaced or reperformed as described below), any Deliverables are (or you believe they are) subject to a Warranty Failure, your remedies and the steps to follow are as follows:

a) You must promptly tell us about any alleged Warranty Failure, using any contact details we give you for this purpose, and provide us with enough detail (including, where relevant, photos, videos or other evidence) to enable us to assess:

- whether or not the issue is, in fact, a Warranty Failure; and
- whether or not a repair is likely to be feasible.

b) We might then choose to investigate further to assess the way forward. If so, you will give us (or our representative) full access to the affected Deliverables.

c) Within 5 business days of you telling us about the Warranty Failure, we will tell you:

- whether or not we agree the issue is a Warranty Failure; and
- if we do agree, whether we intend to repair or replace (or, in the case of any services, re-perform) the affected Deliverables.

d) Where we repair, replace or reperform any Deliverables due to a Warranty Failure, we will try (in legal terms, use reasonable endeavours) to do so within the Warranty Fix Period.

e) If we have not repaired, replaced or reperformed any Deliverables as described in d) above by the end of the Warranty Fix Period, you may (subject to the limitation of liability described in clause 30) below) claim from us your actual losses arising (after the end of the Warranty Fix Period) directly from not having the repaired, replaced or reperformed Deliverables in question, until the Deliverables are repaired, replaced or reperformed, but only to the extent that those losses are proven and reasonable.

f) This clause 29) sets out your only remedies in respect of any Warranty Failure – no other remedies (including any remedies which the law would otherwise imply into this contract) will apply.

30) This contract does not exclude any liability which, by law, cannot be excluded or limited and does not limit our liability to you under clause 27) above or your liability to us under clause 28) above. Otherwise, the total liability which you or we may owe to each other under or in respect of this contract, for any reason and on any basis, is limited to the Liability Cap.

Cancellation and termination

- 31) Instead of terminating the contract in accordance with clause 35) below, you may cancel your order for any outstanding Deliverables or any part of them, but the full agreed price for any cancelled Deliverables then becomes immediately due, and is payable in accordance with clauses 13) to 15) above.
- 32) Any cancellation under clause 31) must be expressly communicated to us and does not take effect until it is.
- 33) If we are entitled to cancel your order for any outstanding, affected Deliverables in accordance with clause 16)c) above (because of your ongoing failure to properly provide or satisfy the requirements of any Dependencies), we may cancel your order for those Deliverables by writing to you (email to an address specified by you for this purpose is acceptable). You will then immediately become liable to pay us:
 - a) our actual, non-recoverable and non-cancellable costs incurred or committed to in providing those Deliverables, up to the date of cancellation (but excluding any costs you have reimbursed to us under clause 16)b) above); plus
 - b) 20% of the total price for those cancelled Deliverables, up to a maximum total amount of the total price for those cancelled Deliverables. This sum represents our losses (including our opportunity cost) arising from needing to cancel an order which we can no longer process because you are not doing what you should do – we cannot claim any more from you for those losses.
- 34) You may terminate this contract immediately by writing to us (email to an address specified by us for this purpose is acceptable) if we are subject to a Trigger Event.
- 35) We may terminate this contract immediately by writing to you (email to an address specified by you for this purpose is acceptable) if you are subject to a Trigger Event.
- 36) Where either party terminates as set out in clause 34) or 35), the Trigger Event is, for clarity, a breach of contract by the non-terminating party.
- 37) Any clauses which, expressly or by necessary implication, are intended to survive termination will continue to apply after any termination of this contract.

Legal matters

- 38) Neither we nor you will do (or allow any of our employees, agents or contractors to do) anything which places the other in breach of the Bribery Act 2010 or any other applicable law.
- 39) We will not commit (and will take reasonable steps to ensure that nobody in our supply chain commits) any offence under the Modern Slavery Act 2015.
- 40) Neither you nor we will assign or otherwise transfer this contract without the consent of the other. We can sub-contract our obligations under this contract, but if we do then we are still fully responsible for fulfilling our obligations.
- 41) If any part of this contract is found to be unenforceable as a matter of law, all other parts of this contract are unaffected and will remain in force.
- 42) English law applies to this contract, its subject matter and formation, and the English Courts have exclusive jurisdiction over any disputes arising about those things.