



**AKE Ltd**  
**Standard Terms & Conditions of Sale**

**1. INTERPRETATION**

1.1. In these conditions;

'Client' means the person who accepts a quotation from the Company or its AGENT for the provision of the Services and/or the sale of the Goods or whose order for the Goods is accepted by the Company.

'Services' means the Services described in the contract or any other services subsequently supplied to the Client by the Company.

'Agent' means GAC Solutions Limited trading as GAC Protective Solutions, Powered by AKE or GAC Protective Solutions.

'Goods' means the goods (including any instalment of the goods or any parts for them), which the Company is to supply in accordance with these Conditions.

'Company' means ANDREW KAIN ENTERPRISES LIMITED registered in England, Registration No. 2558662 and having its registered address at Saint Owen's Chambers, 22 St. Owen Street, Hereford HR1 2PL, England, UK.

'Conditions' means the standard terms and conditions of business set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Client and the Company.

'Contract' means the contract for provision of Services and purchase and sale of the Goods.

'Writing' includes telex, cable, e-mail, facsimile transmission and comparable means of communication.

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

**2. BASIS OF THE SALE**

2.1 These Conditions shall apply to all quotations and contract for the sale of Goods or supply of Services by the Company to the Client to the exclusion of all other terms and conditions, including any terms or conditions which the Client may purport to apply under any purchase order, confirmation of order or any other document.

2.2 The Company shall sell and the Client shall purchase the Services and/or the Goods in accordance with any written quotation of the Company, which is accepted by the Client, or any written order of the Client which is accepted by the Company, subject in either case to the provisions of Clause 2.1 above.

2.3 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Client and the Company.

2.4 The Company's employees or agents are not authorised to make any representations concerning the Services and the Goods unless confirmed by the Company in Writing. In entering into the Contract the Client acknowledges that it does not rely on, and waives any claim for breach of, any such representations, which are not so confirmed.

2.5 Any advice or recommendation given by the Company or its employees or agents to the Client or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Client's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.



## GAC Protective Solutions

Powered by AKE

2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

### 3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Client shall be deemed to be accepted by the company, unless and until confirmed in Writing by the Company's authorised representative.

3.2 The Client shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Client, and for giving the Company any necessary information relating to the Services and the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.3 The quantity, quality and description of and any specification for the goods shall be those set out in the Company's quotation (if accepted by the Client) or the Client's order (if accepted by the Company).

3.4 The Company reserves the right to make any changes in the specification of the Services and the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Services and the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.

3.5 No order which has been accepted by the Company may be cancelled by the Client, except with the agreement in Writing of the Company and on terms that the Client shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

### 4. PRICE OF THE SERVICES AND THE GOODS

4.1 The price of the Goods and Services are based upon cost of labour and other factors current at the date of this contract.

4.2 The price of the goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom the Company's published export price list shall apply. All prices quoted are valid for thirty (30) days only or until earlier acceptance by the Client, after which time they may be altered by the Company, without giving notice to the Client. Having regard to the nature of the Services, the Client acknowledges that unavoidable variations to the quoted price may occur in real time and the Client agrees to pay all reasonable and proper additional charges so arising.

4.3 The Company reserves the right by giving notice to the Client at any time before delivery, to increase the price of the Services or the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Services or the Goods which is requested by the Client, or any delay caused by any instructions of the Client or failure of the Client to give the Company adequate information or instructions.

4.4 Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in writing between the Client and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the goods otherwise than at the Company's premises, the Client shall be liable to pay the Company's charges for transport, packaging and insurance.

4.5 The price is exclusive of any applicable valued added tax, which the Client shall be additionally liable to pay to the Company.



## 5. TERMS OF PAYMENT

- 5.1. Unless otherwise stated all charges are quoted and payable in USD. Unless otherwise agreed in Writing between the Client and the Company, payment shall be made to the Company prior to delivery of the Goods or Services on the basis of the quotation delivered by the Company or (where no formal quotation has been issued) on the basis of a pro forma invoice to be delivered by the Company to the Client and no staff will be mobilised or Goods delivered until such time as payment has been received in cleared funds in the Company's nominated bank account. Any additional Goods and/or Services requested by the Client shall similarly be paid for in advance and the provisions of Clause 5.6 shall apply in relation thereto. Upon completion of the Contract, any overpayment shall be reimbursed within fifteen (15) days of completion of the Contract.
- 5.2. For the purpose of calculating rates of exchange and interest, payment shall be deemed to have been received by the Company when the same is irrevocably and unconditionally credited to the Company's bank account. Any costs of clearing or discounting cheques, bank giro payments or any other negotiable instruments shall be payable by the Client.
- 5.3. The Company will not be liable to pay interest on any payment made by the Client before the same becomes due but without prejudice to its rights to claim damages the Company shall be entitled (without any prior notification) to charge interest at the rate of eight per cent (8%) above The Royal Bank of Scotland plc Base Rate for the time being in force on any sums which remain unpaid after the same shall become due.
- 5.4. The Company may, in any of the following circumstances rescind the Contract and claim damages for any loss incurred. The circumstances referred to above are as follows:
- (i) If any sum is due and payable by the Client to the Company, but is unpaid for a period of fourteen (14) days beyond the date for payment specified in the Contract;
  - (ii) If the Client fails to provide any letter of credit, bill of exchange or other security, required by the Contract provided that in such event the aforesaid rights of termination or suspension shall apply only in regard to the particular Contract in respect of which the Client shall have so failed;
  - (iii) If the Client shall fail to accept any Services provided by the Company under any Contract between him and the Company otherwise than in accordance with the Client's contractual rights;
  - (iv) If the Client enters into any insolvency procedure or becomes bankrupt, or being a body corporate shall have passed a resolution for voluntary winding up, except where solely for the purpose of a solvent amalgamation or reconstruction, or shall have a receiver appointed over any part of its assets, or being an individual or partnership shall have suspended payment of his or their debts in whole or in part, or shall have proposed or entered into any composition or arrangement with his or their creditors, or have had a Receiving Order in Bankruptcy made against him or them;
  - (v) If in the opinion of the Company the credit rating of the Client is reduced.
- 5.5. The Client shall not be entitled to withhold payment of any amount payable under the Contract to the Company because of any disputed claim of the Client in respect of any alleged breach of Contract, nor shall the Client be entitled to set off against any amount payable under the Contract to the Company any monies which are not then presently payable by the Company or for which the Company disputes liability.
- 5.6. If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- (i) Cancel the contract or suspend any further services or deliveries to the Client;
  - (ii) Appropriate any payment made by the Client to such of the services or Goods (or the services or goods supplied under any contract between the Client and the company) as the Company may think fit (notwithstanding any purported appropriation by the Client); and



- (iii) Charge the Client interest (both before and after any Judgement) on the amount unpaid, at the rate of eight per cent (8%) per annum above The Royal Bank of Scotland plc Bank Base rate from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## 6. PERFORMANCE

- 6.1 Should performance of the Services be prevented or hindered directly or indirectly by fire, the elements, war, civil commotion, strikes or lockouts, industrial dispute, fuel break down or partial failure of plant or machinery, late receipt of necessary information from the Client, any act or omission of the Client, acts, order or regulations of government or any department thereof, Acts of Parliament, EC directives or regulations, delay on the part of any independent sub-contractor or company or any other cause whatsoever beyond the control of the Company, then the obligation of the Company to perform the Services shall forthwith be suspended until such circumstances have ceased and the Client will forfeit any sum paid in advance, but shall not be liable to make any further payment in respect of the period of such suspension.

The Company shall furthermore have the right in such circumstances as aforesaid to withdraw from the Contract, or any part thereof, without being liable for any direct or indirect loss caused thereby and notwithstanding that a previous suspension shall have been agreed. This Clause shall take effect notwithstanding any guaranteed date for the provision of the Services and the Company shall not be liable for any agreed compensation in respect of the suspension or non-performance.

- 6.2 The Company reserves the right at any time to withhold or withdraw the provision of the Services if in the absolute discretion of the Company the Services entail or might entail, in the opinion of the Company, a breach of the law, an unacceptable level of risk or injury to the Company's employees, agents or other representatives, or which are or might in the opinion of the Company be unethical.
- 6.3 Unless otherwise agreed in writing the Services shall be provided at the locations specified in the contract.
- 6.4 In the event of the hijack of a vessel during the subsistence of any contract:
  - (i) the Company reserves the exclusive right to undertake kidnap and ransom negotiations on behalf of the Client in order to secure the release of both its own and the Client's personnel;
  - (ii) the Company shall be entitled to charge and the Client shall continue to pay for the services of all relevant personnel

The Client acknowledges that the Company's personnel are not expected to use lethal force and that accordingly, the provisions of this Clause 6.4 are reasonable.

## 7. RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the goods shall pass to the Client:
  - (i) In the case of Goods to be delivered at the Company's premises, at the time when the Client notifies the Company that the Goods are available for collection; or
  - (ii) In the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery, or if the Client wrongfully fails to take delivery of the goods, the time when the Company has tendered delivery of the Goods.
- 7.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Client until the Company has received in cash or cleared funds payment in full of the price of the Goods, and all other goods agreed to be sold by the Company to the Client for which payment is then due.



7.3 Until such time as the property in the Goods passes to the Client, the Client shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separate from those of the Client and third parties and properly stored, protected and insured and identified as the Company's property.

Until that time, the Client shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any monies or property of the Client and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

7.4 Until such time as the property in the Goods passes to the Client (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company and, if the Client fails to do so forthwith, to enter upon any premises of the Client or any third party where the goods are stored and repossess the goods.

7.5 The Client shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Company, but if the Client does so, all monies owing by the Client to the Company shall without prejudice to any other right or remedy of the Company) forthwith become due and payable.

## 8. LIMITATIONS ON LIABILITY

8.1 The Client expressly holds itself out as making the Contract in the course of a business.

8.2 The Client acknowledges that the Services supplied by the Company involve, by their nature, a high degree of risk. The Company does not warrant or guarantee the accuracy of any information data or reports provided by it to the Client and does not warrant or guarantee the successful outcome of any Services to be provided to the Client by virtue of the Contract.

As a consequence of the provisions of condition 8.2, the Company shall not be under any liability whatsoever to the Client, including without prejudice to the generality of the foregoing liability for negligence or breach of any condition warranty or term contained in the Contract or implied by law or for breach of statutory duty subject only to the provisions of condition 9.9.

8.3 In the event that any liability on the part of the Company shall arise (whether under the express or implied terms of this Agreement or at common law or statute or in any other way) to the Client for any loss or damage of whatever nature arising out of or connected with the provision or purported provision of or failure in the provision of the Services or any act or omission of any employee, agent, contractor, sub-contractor or other representative of the Company, the maximum liability of the Company shall be limited to the sum for which the Company shall be covered by insurance in such circumstances.

The Company undertakes to maintain such insurance as may be reasonable and normal in the business carried on by the Company and details of the cover maintained by the Company are available from the Company on demand. The Client acknowledges that he has entered into the Contract with full knowledge of this provision and agrees that it is fair and reasonable that the Company should so limit its liability.

8.4 Any dispute as to the provision of the Services or any other matter arising out of the Contract shall be referred in accordance with the provisions of the Arbitration Acts of England & Wales to a single arbitrator to be agreed between the Company and the Client or in default of agreement to be nominated by the President for the time being of the Law Society of England & Wales.

## 9. EXCLUSIONS

The following terms shall be treated as separate and severable and enforceable accordingly:-

9.1. Subject as provided in these conditions, any conditions warranty or statement as to the quality of the Services whether express or implied by statute custom of the trade or otherwise, is hereby excluded, unless expressed in writing by the Company in the Contract.



- 9.2. The Company shall not be under any tortious liability to the Client ,whether arising from the negligence of the Company its servants employees contractors sub-contractors or otherwise, in respect of the Services.
- 9.3. The Company shall not be under any tortious liability to the Client in respect of any services rendered or advice or representations given or made or other acts whatsoever of the Company antecedent to forming part of or subsequent to the Contract whether arising from negligence of the Company its servants employees contractors sub- contractors or otherwise.
- 9.4. Subject as provided in these conditions, the Company shall not be under any contractual liability in respect of any Services rendered or advice or representations given or made or any other acts whatsoever of the Company antecedent to forming part of or subsequent to the Contract.
- 9.5. The Company shall not be under any liability for consequential or financial loss or for any loss (whether direct or indirect) of profits, business or anticipated savings suffered by the Client arising from the negligence of the Company its servants employees contractors sub-contractors or otherwise.
- 9.6. The Company shall not be under any liability for any consequential or financial loss or for any loss (whether direct or indirect) of profits business or anticipated savings suffered by the Client arising from any contractual obligation whether express or implied) of the Company.
- 9.7. The Company shall not be under any liability of consequential or financial loss or for any loss (whether direct or indirect) of profits, business or anticipated savings suffered by or arising out of any breach by the Company of any statutory duty.
- 9.8. The Company shall not be under any liability for consequential or financial loss or for any loss (whether direct or indirect) of profits business or anticipated savings suffered by the Client whatsoever.
- 9.9. Nothing in these Conditions shall purport to exclude or restrict any liability which the Company is precluded from excluding or restricting (as the case may be) by the Unfair Contract Terms Act 1977.
- 9.10. The Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- (i) Act of God, explosion, flood, tempest fire or accident;
  - (ii) War or threat of war, sabotage, insurrection, civil disturbance or requisition;
  - (iii) Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority
  - (iv) Import or export regulations or embargoes;
  - (v) Strikes, lock-outs or other industrial actions or trade disputes whether involving employees of the Company or of a third party;
  - (vi) Difficulties in obtaining raw materials, labour, fuel, parts or machinery power failure or breakdown in machinery.

**10. PROVISIONS OF INFORMATION AND CO-OPERATION BY THE CLIENT**

- 10.1 The client agrees that it will provide and will procure, as far as it reasonably can, that it and all other persons will provide at such times as shall reasonably be required by the Company, all such information and co-operation as the Company may reasonably require to enable it to perform the Services.



**11. SOLICITING OF EMPLOYEES**

- 11.1. The Client undertakes that it will not during the subsistence of the Contract or for a period of one (1) year after the termination thereof (for whatever reason), either on its own account or for any other person firm or company, solicit the services of or endeavour to entice away from the Company, any director employee or consultant of the Company (whether or not such person would commit any breach of his contract of employment or engagement by reason of leaving the service of the Company), nor shall the Client knowingly employ or aid or assist in or procure the employment by any other person firm or company of any such person.
- 11.2. The restrictions contained in the preceding paragraph shall also apply to any company promoted by or controlled by any such director employee or consultant of the Company.

**12. CONFIDENTIALITY**

- 12.1 All information and data passed to or from the Client from or to the Company, including any report prepared in connection with the services or information or data gained during the execution of duty shall, at all times, be secret and confidential for the sole use of the Client and Company and shall not be released by the Client or employee of the Client, nor by the Company, or any employees of the Company to any third party, without prior written approval of both the Client and the Company

**13. ATTENDANCE AT COURT**

- 13.1 It is hereby agreed that the Services do not include the provision of the Company's employees or agents for attendance at Court or before any other body authority or tribunal whether to give evidence or otherwise. In the event that the Client requests the Company (and the Company agrees) or the Company is obliged by process of law to provide or procure employees or agents for such purpose, the Company shall be entitled to invoice the Client at the charges specified in the contract.

**14. INSOLVENCY OF CLIENT**

- 14.1. This Clause applies if:
- (i) The Client make any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
  - (ii) An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Client;
  - (iii) The Client ceases, or threatens to cease, to carry on business;
  - (iv) The Client reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly.
- 14.2. If this Clause applies, then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Client, and if the services and/or the goods have been delivered, but not paid for, the price shall become immediately due and payable, notwithstanding any previous agreement or arrangement to the contrary.

**15. GENERAL**

- 15.1. Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.



- 15.2. No waiver by the Company of any breach of the Contract by the Company shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 15.3. If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provisions in question, shall not be affected thereby.

The Contract shall be governed by the Laws of England & Wales.