

Terms and Conditions of Contract

- Definitions:** In this Contract, including these Terms and Conditions of Contract, the following words will have the following meanings: "**Apogee**" shall mean Apogee Engineering Analysis Solutions Ltd, "**Client**" shall mean the company/person accepting this quotation and "**Parties**" shall mean Apogee and the Client. "**Contract**" shall mean any contract or order issued by the Client. "**Proposal**" shall mean the technical proposal for a programme of work ("**Work**") as detailed specifically and in any supporting documents referred to therein. "**Price**" shall mean the amount specified in the Proposal or such other amount agreed by the Parties. "**Deliverable(s)**" shall mean those deliverables as specified in the Proposal. "**Intellectual Property Rights (IPR)**" shall mean patents, applications for patents and patentable know-how, trade marks or trading names (whether or not registered or registrable), designs (registered or registrable and including applications for registered designs), copyright (including rights in computer software and any sui generis rights), rights in inventions, the right to claim damages for past infringements of the same and all rights having equivalent or similar effect wherever situated. "**Background IP**" shall mean all technical know-how and information known to either of the Parties, together with all IPR owned by, or licensed to the Parties at the start date of the Work which is not Foreground IP. "**Foreground IP**" shall mean all information, know-how, results, designs, inventions and other matter capable of being the subject of IPR which is conceived, first reduced to practice or writing or developed by Apogee during the Work and in whole or in substantial part for the generation of the Deliverables.
- Incorporation:** The Terms and Conditions of Contract shall together with the Proposal constitute the terms of the Contract between Apogee and the Client together with any amendments or variations agreed in writing between the Parties. No variation or amendments to these Terms and Conditions of Contract shall be valid unless agreed to in writing by the Parties.
- Validity:** Any order or proposal raised is valid for one month from date of issue and no Contract received by Apogee will be considered binding unless explicitly accepted.
- Payment:** The Client shall supply free of charge all pertinent data and information and give such assistance as shall be required by Apogee for the carrying out of the Work. On completion of the Work, Apogee shall submit an invoice for the Work, upon which the Client will pay the full Price for the Work as set out in the Proposal. Where the Work is delayed through no fault of Apogee for more than 3 months then Apogee shall be entitled to submit an invoice for all work done up to that date and such invoice shall be payable within 30 days of receipt. The Price shall be exclusive of all duties and taxes, VAT and any export and/or import duties, all of which shall be paid by the Client. Any changes in duties and taxes due to changes in legislation, statute or local regulations will be the responsibility of the Client. Apogee will make all reasonable efforts to achieve the objectives of the Work within the Price, but, as the Client acknowledges, due to the nature of the work being carried out, it is not always possible to accurately anticipate the results, the level of activity or the resource required. Apogee will keep the Client informed on progress but reserves the right to stop when the value of the Work exceeds the Price. For any Contract exceeding £5,000, or for Work with a duration exceeding one month, a deposit equal to 30% of the Price is required and will be invoiced on the Client's acceptance of the Proposal. Payment terms are strictly 30 days net and payment shall be in £ Sterling. Apogee reserves the right to refuse credit and may require such payment methods as it deems appropriate. Apogee reserves the right to charge interest at the rate of 4% per annum above the Natwest Bank Plc unsecured lending rate on the day payment becomes due on any sums outstanding for a period in excess of 30 days.
- Delivery:** Any time or date specified for delivery is an estimate only and is not guaranteed, and any delays in delivery shall not entitle the Client to terminate the Contract. Apogee may suspend the performance of the Contract in the case of non-payment of any payments due. Delivery of goods is ex Apogee premises, but at the request and expense of the Client Apogee will arrange for carriage of any goods, and insurance thereof, during transit. Any goods stored by Apogee will be at the Client's risk and may be subject to a storage charge. Work on any Contract may be wholly or partly suspended and the time of such suspension added to the original Contract in the event of any stoppage, delay or interruption of the Work beyond the control of Apogee.
- Ownership of Deliverables and IP:** The Deliverables will be owned by the Client. Apogee will pass, free of charge, such Foreground IP intrinsic to the Deliverables and necessary for effecting the Client's ownership in the Deliverables. Any existing Background IP which belongs to Apogee and is used in the Work will remain the property of Apogee and Apogee will grant a non-exclusive licence to such Background IP on fair and reasonable terms where Background IP is necessary for use of the Deliverables. Any work and all IPR in such work undertaken by employees or consultants of Apogee solely in the course of their duties as employees or consultants of Apogee, including research, will belong to Apogee. Notwithstanding delivery and passing of risk of any Deliverables or Foreground IP, title in the same will not pass to the Client until full payment of the Price for the Work has been received by Apogee from the Client, and the Client will not have the right to use, dispose of or in any way deal with such Deliverables or Foreground IP until such time as payment has been made and title in the same passed to the Client. Apogee reserves the right to make use of the results, or any goods or property obtained for the said Contract, to offset any or all sums due from the Client for any reason.
- Equipment, Materials and Substances:** The Client will provide Apogee with all such information and materials as are necessary for Apogee to carry out the Work and the Client warrants that all information provided by it or on its behalf to Apogee will be accurate. The Client further warrants that it will give Apogee written notice of any hazards, known or suspected by the Client, which might potentially arise in the use of such materials. Before supplying any materials or substances to Apogee for the purposes of the Work the Client shall inform Apogee of any special legislation, regulations or statutory restrictions that apply to the same. All computer models, computer software or experimental equipment used by Apogee during the course of the Work shall remain the property of Apogee unless otherwise agreed between the Parties in writing or supplied by the Client for the purposes of Apogee undertaking the Work. Although all reasonable precautions will be taken, any equipment supplied to Apogee by the Client will be held at the risk of the Client, and Apogee will not be liable for any loss, damage, destruction or disclosure of the same. The Client acknowledges that any materials or substances supplied by it to Apogee may be altered, damaged, rendered useless and/or destroyed as a result of Apogee undertaking the Work and Apogee shall therefore not be liable for any loss, damage or destruction of the same. After completion of the Work Apogee shall be entitled to destroy or dispose of any materials or substance supplied by the Client without further reference to the Client unless otherwise agreed in writing prior to commencement of the Work.
- Warranties, Liabilities and Indemnities:** Apogee will be responsible for ensuring the Deliverables meet the specifications included in the Proposal and will carry out the Work with the due care and skill commensurate with Work of this nature and quality standards set out in the Proposal but Apogee does not warrant that the Deliverables are fit for any particular purpose and shall not be liable for any loss or damage caused by failure in the performance of the Deliverables. In no circumstances shall Apogee be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever, and whatever the cause thereof, (i) for any increase in costs or expenses, (ii) for any loss of profit, business, contracts, revenues or anticipated savings, or (iii) for any special, indirect or consequential damage of any nature whatsoever, or for the Client's use of, or inability to use, the Deliverables resulting from the performance of any Contract. In any event, and notwithstanding anything contained herein, Apogee's liability in contract, tort (including negligence or breach of statutory duty) or otherwise arising by reason of or in connection with Contract (except in relation to death or personal injury, or any other matter where it would be illegal for Apogee to exclude its liability) by the negligence of Apogee or its employees whilst acting in the course of their employment shall be limited to the Price or £250,000, whichever is the lower. The Client will indemnify Apogee against all damages, penalties, costs and expenses to which Apogee may become liable as a result of work done in accordance with the Client's instructions which involves the infringement of any IPR, or any claim for such infringement. So far as Apogee is aware, no work produced by them will infringe any IPR but no warranty, expressed or implied, is given against the existence of such. The Client agrees to indemnify, keep indemnified and hold harmless Apogee from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgments which Apogee incurs or suffers as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance by the Client of the terms of the Contract.
- Confidentiality:** Any drawings, models, samples, or other matter submitted by Apogee to the Client with the Proposal are confidential and must not be copied or transmitted to any third party or used for any purpose other than carrying out the Work. The drawings, models, samples and other matter and any copies thereof shall remain the property of Apogee and the Client must return promptly the same together with any tangible copies (including any electronic or digital copies) to Apogee upon Apogee's written request. Any information relating to the Client's operations shall be regarded as confidential and will not, without the prior written consent of the Client, be used (except in connection with the Work) communicated or disclosed by Apogee, its employees, subcontractors or consultants. This restriction does not apply to information which: is or at the time of communication or disclosure was already in the public domain when it was provided by the Client; subsequently enters the public domain through no fault of Apogee; is received from a third party who has the right to provide it to the receiving party without imposing obligations of confidentiality; or is required to be disclosed by law, by an order of any court of competent jurisdiction or governmental authority. Details of and Foreground IP in the Deliverables will not be used, communicated, disclosed or published by Apogee except by mutual consent of the Parties.
- Termination:** The Client may terminate the Contract at any time by giving Apogee five working days notice in writing, subject to the payment of all costs incurred and committed up to the time of termination. Apogee may by written notice terminate the Contract immediately if the Client is in material breach of the Contract. Failure by the Client to make any payments due is a material breach of the terms of the Contract which is not capable of remedy. Notwithstanding other rights that may exist in law of either Party to terminate or treat as terminated this Contract, either Party may terminate this Contract forthwith by written notice given to the other Party if the other Party is either (i) a company, and the company passes a resolution or the court makes an order that it should be wound up or that an administrator be appointed, or makes a composition or an arrangement with its creditors, or if a receiver or manager or administrator on behalf of a creditor is appointed, or if circumstances arise which entitle the court or a creditor to appoint a receiver, manager or administrator or which entitle the court to make a winding up order; or (ii) is an individual or a partnership which at any time becomes bankrupt, or has a receiving order made against him or her or makes any composition or arrangement with or for the benefit of his or her creditors, or purports to do so.
- Use of Information:** The Client shall not, without the written permission of Apogee, use or reproduce Apogee's reports and correspondence in full or in part in any advertising copy, sales or promotion literature, or for any other publicity purpose, and shall not mention or imply the name of Apogee. Furthermore, the Client shall not, without the written permission of Apogee, use any information from Apogee as evidence in disputes, litigation or other legal action.
- Saving of Rights:** The failure of Apogee at any time to enforce any of these terms and conditions or to exercise any right hereunder shall not constitute a waiver of the same nor shall it affect Apogee's right thereafter to enforce the same. If any provision of these terms and conditions proves to be illegal or unenforceable the remaining provisions shall continue in full force and effect.
- Disputes:** The Parties shall use their best efforts to negotiate in good faith and settle amicably any dispute that may arise out of or relate to the Contract or a breach thereof. If any such dispute cannot be settled amicably through ordinary negotiations by appropriate representatives, the Parties may agree to refer the dispute to a single arbitrator.
- Force Majeure:** Apogee will not be liable to the Client for any failure or delay or for the consequences of any failure or delay in performance of the Contract, if it is due to any event beyond the reasonable control and contemplation of Apogee, including, without limitation, acts of God, war, industrial disputes, protests, fire, tempest, explosion, an act of terrorism and national emergencies, and in such circumstances Apogee will be entitled to a reasonable extension of time for completing the Work.
- Governing Law:** This agreement shall be governed by the Laws of England and the Parties agree to submit to the exclusive jurisdiction of the English Courts, save where the Parties agree to resolve any dispute by arbitration, mediation or other similar means.