

CREDIT ACCOUNT APPLICATION FORM

Please print off this form and complete in *block capitals*. You can scan and email the completed form to accounts@gibbonsgroup.co.uk or post it to Gibbons Engineering Group, F.A.O. Accounts, Woodrolfe Road, Tollesbury, Essex CM9 8RY.

Company Information

Full Company Title:

Invoice Address:	Delivery Address (If different):
Post Code	Post Code

SOLE TRADER/PARTNERSHIP/LIMITED COMPANY (Please delete as applicable)

Type of Business (eg. Builder): No. of Employees:

Names of Partners/Directors:

VAT Number: Year company founded:

Registration number if Limited Company:

Parent or Associate Companies:

Contact Details

Tel No:

Purchasing Contact:: Purchasing Email:.....

Accounts Contact:: Accounts Email:

Trade References

Trade Reference 1	Trade Reference 2
Full Company Name: Address: Post Code Telephone Number:	Full Company Name: Address: Post Code Telephone Number:

Agreement of Credit Account Terms and Conditions of Sale

Notwithstanding anything to the contrary, these Terms and Conditions contain the only terms upon which Gibbons Engineering Group Limited will provide Goods via a 30 day end of month credit account and shall not be varied unless expressly agreed in writing, signed by a Director of the company.

All accounts are subject to status and are granted subject to approval and all new customers must pay the first invoice on pro-forma. By applying for an account you authorise us to complete the necessary credit and/or trade reference checks.

Full terms and conditions can be found and read within the Conditions of Sale which are available online at www.gibbonsgroup.co.uk or below.

If you would like Gibbons Engineering Group Ltd to contact you with information and promotions relating your purchase including other relevant material, please tick this box

THIS SECTION TO BE SIGNED BY A DIRECTOR OR PARTNER

AUTHORISED TO SIGN ON BEHALF OF THE COMPANY

I/We confirm acceptance of the Credit Account Terms and Conditions of Sale.

Signed:.....Position: (Director/Partner).....

Date:

Approximate value of monthly credit requested:

£

The Purchaser's attention is particularly drawn to the provisions of clause 12.

1. Definitions

- 1.1 "**Purchaser**" means the other party to the Contract.
1.2 "**Supplier**" means GIBBONS ENGINEERING GROUP LTD.
1.3 "**Business Day**" a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
1.4 "**Contract**" the contract between the Supplier and the Purchaser for the supply of Products and/or Services in accordance with these conditions.
1.5 "**Delivery Location**" has the meaning in clause 3.2.
1.6 "**Force Majeure Event**" has the meaning in clause 16.
1.6 "**Order**" means the Purchaser's order for the supply of Products and/or Services, as set out in the Purchaser's written acceptance of the Supplier's quotation.
1.7 "**Product**" shall include services to be provided by the supplier in relation to the Product.
1.8 "**Services**" the services supplied by the Supplier to the Purchaser in connection with the Product or Products previously purchased from the Supplier or its agents.

2. Basis of Contract

- 2.1 The Order constitutes an offer by the Purchaser to purchase Products and/or Services in accordance with these conditions.
2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence ("**Commencement Date**").
2.3 The Contract constitutes the entire agreement between the parties. The Purchaser acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract or confirmed in writing by a Director of the Supplier.
2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Products or illustrations or descriptions of the Services contained in the Supplier's catalogues, brochures or website content are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them. They shall not form part of the Contract or have any contractual force.
2.5 These conditions apply to the Contract to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
2.7 All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.

3. Delivery and Risk

- 3.1 Time for delivery shall not be of the essence of the contract and the Supplier shall not be liable for any losses, costs, damages or expenses incurred by the Purchaser or any other person or Company arising directly or indirectly out of any estimated delivery time. Further, the Supplier shall not be liable for any delay in delivery of the Products that is caused by a Force Majeure Event or the Purchaser's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Products.

3.2 The Supplier shall deliver the Products to the location set out in the Order or such other location as the parties may agree, or make the Products available for collection from the Supplier's premises ("**Delivery Location**") at any time after the Supplier notifies the Purchaser that the Products are ready.

3.3 Where Products are made available for collection the Purchaser shall arrange collection of the Products within 3 Business Days of the Supplier notifying the Purchaser that the Products are ready.

3.4 Delivery of the Products shall be completed on the Products' arrival at the Delivery Location when this is not the Supplier's premises, or the completion of loading of the Products at the Delivery Location where this is the Supplier's premises.

3.5 Products shall be at the Purchaser's risk from delivery to the Purchaser or to any carrier or agent acting on the Purchaser's behalf.

3.6 The Supplier may deliver the Products 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 Purchaser to cancel any other instalment.

4. Loss or Damage in Transit

4.1 Where the Supplier arranges delivery, the Purchaser shall inspect the Products immediately upon receipt as the Supplier will accept no liability for loss or damage in transit unless notice is given to the Supplier within 3 days of receipt of the Products by the Purchaser and unless a complete statement of claim is received by the Supplier within seven (7) days of receipt of Products by the Purchaser.

5. Discrepancies

- 5.1 Discrepancies to an Order must be advised to the Supplier, in writing, within 7 days of the date on the delivery note.
5.2 The Supplier must be given the opportunity to inspect and recount or re-weigh the Products.

6. Products Returned

- 6.1 Any Products returned and accepted by the Supplier as defective or not in accordance with the Order shall be replaced but the Supplier shall not be liable for any claim for labour or other expenditure arising from the Products being returned or replaced.
6.2 If the Supplier agrees to the return of unused Products, which were ordered in error or are no longer required, the Supplier reserves the right to make a handling and restocking charge and the cost of return shall be at the Purchaser's expense.

7. Pricing and VAT

- 7.1 Unless agreed separately in writing by the Supplier the price of the Products shall be the price ruling at date of despatch.
7.2 All prices are exclusive of VAT and charges for packing, postage and carriage (plus VAT) which shall be paid in addition.
7.3 All contracts of sale made by the supplier will be made in Sterling (GBP).

8. Payment

8.1 Except as otherwise agreed in writing by the Supplier payment shall be made not later than the end of the month following the month shown by the date of the invoice for the Products.

8.2 In all cases where payment is not made by the due date the Supplier reserves the right to charge interest, at the rate of 1% a month or part thereof, on all sums overdue for payment, the amount of interest being payable in full on demand.

8.3 In the event of non-payment the Supplier also reserves the right in such cases to:

8.3.1 suspend all deliveries of all Products to the Purchaser under this and/or any other contract, and/or cancel all or any other contract with the Purchaser; and.

8.3.2 notwithstanding any statement to the contrary in any invoice or confirmation of sale note or other document from the Supplier demand payment of the full price under this or any other contract at any time.

8.4 Payment in currencies other than Sterling (GBP) shall only be accepted if previously confirmed in writing signed by the Supplier and provided the value following exchange matches the Sterling (GBP) value and all charges for exchange are paid by the Purchaser.

8.5 Where payment at time of order is required, payment terms are immediate.

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

9. Retention of Title

9.1 Until payment in full is received by the Supplier for all Products whatever supplied at any time by the Supplier to the Purchaser:

9.1.1 Property in the Products shall remain with the Supplier and the Purchaser shall hold the Products as bailee on the Supplier's behalf;

9.1.2 The Purchaser shall be at liberty to sell the Products in the ordinary course of business on the basis that all proceeds of sale of such Products are the Supplier's property for which the Purchaser shall account on demand; and

9.1.3 Notwithstanding that property in the Products has not yet passed, the Purchaser may incorporate the Products in or together with any product manufactured or assembled by the Purchaser in the ordinary course of its business. If the Purchaser sells any such product before property in the incorporated Products has passed, it shall do so as the Supplier's agent but the Purchaser's liability to account as agent for the proceeds of such a sale shall be limited to the Supplier's invoice value of Products so incorporated. If, before property in the Products passes any of the Products are incorporated in or together with any products manufactured or assembled by the Purchaser, the Purchaser shall maintain records sufficient to enable such Products to be identified, measured or otherwise quantified.

9.2 The powers of the Purchaser referred to in clause 9.1 above shall be determined:

9.2.1 by written notice to the Purchaser if any payment for any Products whatever remains unpaid 14 days after becoming due to the Supplier; or

9.2.2 automatically if a receiver is appointed over any assets or undertaking of the Purchaser or a winding-up order is made against the Purchaser or the Purchaser goes into voluntary liquidation or calls a meeting or makes any composition or arrangement with its creditors or commits any act of bankruptcy;

9.3 Upon determination of the powers of the Purchaser referred to in clause 9.1 above the Purchaser shall place the

Products at the Supplier's disposal and the Supplier shall be entitled to enter upon the premises of the Purchaser and remove any Products including any Products which may have been incorporated into other products or affixed to the property.

10. Warranties & Liabilities

10.1 PRODUCTS ARE SOLD & TESTED AS CONFORMING TO BRITISH STANDARD SPECIFICATION IN ACCORDANCE WITH ISO STANDARDS 9001, 18001 & 14001 OR AS FIT FOR ANY PARTICULAR PURPOSE UNLESS THE SUPPLIER EXPRESSLY STATES OTHERWISE IN WRITING.

10.2 The Supplier warrants that on delivery and for a period of 12 months from the date of delivery (unless otherwise stated in writing) the Products will remain free from defects in material & workmanship.

10.3 The Supplier warrants that mechanical repairs to electric motors, gearboxes & pumps will remain free from defects in material & workmanship for a period of 3 months from the date of repair.

10.4 Except as provided in this clause 10, the Supplier shall have no liability to the Purchaser in respect of the Products' failure to comply with the warranties set out in clauses 10.1, 10.2 and 10.3.

10.5 Subject to clause 10.5, if:

10.5.1 the Purchaser gives notice in writing during the warranty period within a reasonable time of discovery that some or all of the Products do not comply with the warranties set out in clauses 10.1, 10.2 and 10.3;

10.5.2 the Supplier is given a reasonable opportunity of examining such Products and validating such claim; and

10.5.3 the Purchaser (if asked to do so by the Supplier) returns such Products to the Supplier's place of business at the Purchaser's cost, or pays the Supplier's reasonable expenses of travelling to and from the location of the Products and, where necessary, pays the Supplier's reasonable accommodation and subsistence expenses and ensures the Supplier has suitable direct access to the Products and facilities (such as power and safety equipment) to carry out the required repair or replacement and pays the costs for any take-down/build-up/re-build of;

the Supplier shall, at its option, repair or replace the defective Products, or refund the price of the defective Products (or part) in full (or proportionate part of the price).

10.6 The Supplier shall not be liable for the Products' failure to comply with the warranties in clauses 10.1, 10.2 or 10.3 if:

10.6.1 the Purchaser makes any further use of such Products after giving a notice in accordance with clause 5.2;

10.6.2 the defect arises because the Purchaser failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;

10.6.3 the defect arises as a result of the Supplier following any drawing, design or Products specification supplied by the Purchaser;

10.6.4 the Purchaser alters or repairs such Products without the written consent of the Supplier;

10.6.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or

10.6.6 the Products differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

10.7 All defective Products or parts replaced by us will become our property.

10.8 The terms of these conditions shall apply to any repaired or replacement Products supplied by the Supplier under clause 10.5.

11. Supply of Services

11.1 The Supplier shall provide the Services to the Purchaser identified in the Order.

11.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

11.3 The Supplier 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 the Supplier shall notify the Purchaser in any such event.

11.4 The Supplier warrants to the Purchaser that the Services will be provided using reasonable care and skill.

12. Limitation of Liability: THE PURCHASER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

12.1 Nothing in these conditions shall limit or exclude the Supplier's liability for:

12.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

12.1.2 fraud or fraudulent misrepresentation;

12.1.3 breach of the terms implied by section 2 of the Supply of Products and Services Act 1982 (title and quiet possession);

12.1.4 breach of the terms implied by section 12 of the Sale of Products Act 1979 (title and quiet possession); or

12.1.5 defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1:

12.2.1 the Supplier shall under no circumstances whatever be liable to the Purchaser, 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 any Contract; and

12.2.2 the Supplier's total liability to the Purchaser in respect of all other losses arising under or in connection with any Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed £5,000,000.

12.3 The terms implied by sections 13 to 15 of the Sale of Products Act 1979 and the terms implied by sections 3 to 5 of the Supply of Products and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.4 This clause 12 shall survive termination of any Contract.

13. Variation to Contract

13.1 Except as set out in these conditions, no variation of the Contract or these conditions, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

13.2 The Supplier always aims to provide a fixed price to complete a project. In the event of a variation occurring, the Supplier will issue the Purchaser with a Heads Up Notice, advising what it has found, necessary/recommended corrective action and, if there are additional costs associated with this, what they are or are likely to be.

13.3 The Supplier will aim to mitigate any additional costs wherever possible, however should there be an unknown element which is out of the Supplier's control, or outside of the scope of works required, the Supplier will advise the additional cost to rectify for the Purchaser's consideration, and obtain its approval to proceed prior to completing the works.

14. Cancellations

14.1 No Order which has been accepted by the Purchaser may be cancelled by it except with the Supplier's prior written agreement and on terms that the Purchaser shall indemnify

the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour, under-recovery of overheads and materials used), damages, charges and expenses incurred by it as a result of cancellation.

15. Export Terms

15.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms® 2010 shall have the same meaning in these conditions, but if there is any conflict between the provisions of Incoterms® 2010 and these conditions, these conditions shall take precedence.

15.2 Where the Products are supplied for export from the UK, the provisions of this clause 15 shall, subject to any special terms agreed in writing between the Purchaser and the Supplier, apply notwithstanding any other provision of these conditions.

15.3 The Purchaser shall be responsible for complying with any legislation or regulations governing the import of the Products into the country of destination and for any payment of any duties on the Products.

16. Force Majeure

16.1 Neither party shall be liable for any failure or delay in performing its obligations under any contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

17. Legal

17.1 Any 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 the law of England and Wales.

17.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with any Contract or its subject matter or formation (including non-contractual disputes or claims)..

17.3 If any part of these terms and conditions that is not fundamental is found to be illegal or unenforceable, such findings will not affect the validity or enforceability of the remainder of these terms and conditions.

17.4 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under any Contract and may subcontract or delegate in any manner any or all of its obligations under any Contract to any third party.

17.5 The Purchaser shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under any Contract.

