

MGS Technical Plastics Ltd Conditions of Sale

1. DEFINITIONS:

The following definitions and rules of interpretation apply in these Conditions:

“Agreed Purposes” means the performance of a Contract;

“Business Day” a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business;

“Business Hours” the period from 8.00 am to 5.00 pm on Monday to Thursday and 8.00am to 14.30pm on Friday;

“Conditions” means these Conditions of Sale as set out below and amended from time to time;

“Contract” means any agreement for the purchase from the Supplier of Goods and/or Services by the Customer to which these Conditions relate;

“Customer” means the person, firm, company or authority who purchase the Goods or Tooling from the Supplier;

“Customer Default” means any of the events listed in Condition 12;

“Controller”, “processor”, “data subject”, “personal data”, “personal data breach”, “processing” and “appropriate technical and organisational measures” as set out in the Data Protection Legislation;

“Data Discloser” a party that discloses Shared Personal Data to the other party;

“Data Protection Legislation” all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications);

“Delivery Location” has the meaning given to it in Condition 5;

“Equipment” any ancillary equipment related to the Tooling or the manufacture of Goods such as jigs and fixtures;

“Goods” means the goods set out or referred to in the Quotation requested by the Customer to be supplied subject to these Conditions;

“Force Majeure Event” has the meaning given to it in Condition 16;

“Intellectual Property Rights” patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Master Sample”, “Sample” and “Sampling” have the meaning given to them in Condition 3.3;

“Materials” means products or substances needed or used in the manufacturing process;

“Order” means the Customer’s written acceptance of the Supplier's Quotation;

“party” means a party to the Contract and together these are the **“parties”**;

“Permitted Recipients” the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with a Contract;

“Quotation” has the meaning given to it in Condition 3.1;

“Supplier” means MGS Technical Plastics Ltd (company number 05641792);

“Services” the services supplied by the Supplier to the Customer as described in the Quotation or in the Specification;

“Shared Personal Data” the personal data to be shared between the parties under Condition 24 of these Conditions. being , the names addresses and phone numbers of the Contract parties;

“Specification” means the specification of the Goods, Services or Tooling, including technical description, drawings and other documentation provided in writing to the Customer by the Supplier or, if agreed, the Master Sample;

“Tooling” means any injection mould tooling, die, pattern, jig, fixture and associated equipment used in the manufacturing of Goods; and

“UK GDPR” has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

2. EXISTENCE OF CONTRACT

- 2.1. These Conditions shall apply to and be incorporated in all contracts for the sale of Goods and/or Services by the Supplier to the Customer to the exclusion of all other terms and conditions which the Customer may purport to apply under any purchase order or similar document or which could be implied by trade, custom or course of dealing.
- 2.2. These Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.3. Any variation to these Conditions (including any special terms agreed between the parties) shall be inapplicable unless agreed in writing by the Supplier.
- 2.4. No particulars, statements or descriptions, whether contained in any advertising matter, catalogue, brochure, samples, drawings or price lists or otherwise provided by the Supplier concerning the Goods or Services, nor any oral representations by any employee, agent or representative of the Supplier shall form part of any Contract or these Conditions or be treated as a representation on the part of the Supplier.
- 2.5. The terms and conditions that apply to the Contract are set out in the following:
 - 2.5.1. the Quotation; and
 - 2.5.2. the Conditions.

- 2.6. If there is any conflict or ambiguity between the terms of the documents listed in Condition 2.5, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

3. ORDERS, QUOTATIONS AND PRICING:

- 3.1. In order for the Supplier to provide a quotation for the Customer the Customer enquiry must include the Customer's volume and specification requirements. Where the Supplier is able to meet the Customer's requirements and wishes to progress to an order, the Supplier shall issue a quotation ("**Quotation**"). If the Customer wishes to proceed with the purchase of the Goods and/or Services it shall issue an Order to the Supplier referencing the Quotation. The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.
- 3.2. 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.
- 3.3. The Customer accepts that a Goods or Tooling sample ("**Sample**") may be required for approval before an Order can be manufactured and which once agreed for the Goods will be the "**Master Sample**" and act as the Specification for the Contract. If a specific Order for production of a Sample ("**Sampling**") has not been issued to the Supplier from the Customer, the Supplier shall have the right to charge reasonable fees for Sampling of Goods and / or Tooling, to include any other associated fees or charges and to charge reasonable fees for any delays in Sample approvals from the Customer, where an Order is waiting for immediate manufacture, and losses are incurred by the Supplier as a result of a delay in Sample approval from the Customer.
- 3.4. All Materials required to fulfil any Quotation or Order are purchased on the basis of a minimum order quantity 'MOQ' ordered by the Supplier from its suppliers. Therefore the Customer accepts that the Goods prices quoted are based on Materials ordered in such quantities. The Customer shall accept excess Materials may be held in stock by the Supplier or its suppliers and the Customer accepts full responsibility and liability for any such Materials.
- 3.5. If the purchased quantities of any item fall significantly below the quantities projected at time of Quotation, then the Supplier reserves the right to supply amended pricing to reflect the difference in piece cost.
- 3.6. The price quoted in the Supplier's Quotation is for the minimum stipulated quantities only, usually full pallet and full box quantities and must not be taken to apply to an Order for lower quantities. If the Customer places an Order of differing prices or quantities, it will be advised either by the Supplier (i) that the Order is not accepted and will be classed as void until a revised quotation has been submitted and the Order is amended to match or (ii) the Order is accepted and any price difference is fully chargeable by the Supplier.
- 3.7. Unless otherwise expressly stated, the price quoted in the Supplier's Quotation is based upon costs of manufacture at the date of quotation and is subject to confirmation on acceptance of the Order from the Supplier in writing.
- 3.8. The purchase price quoted or specified in the Order is exclusive of VAT and any other applicable duties, levies or charges.
- 3.9. The Supplier reserves the right to charge for any special packaging or other requirements of the Customer.

- 3.10. The Supplier is entitled to adjust the price of the Goods or Tooling at any time due to changes in currency exchange rates, raw materials prices, taxes, energy prices, public charges or inflation, occurring after the Supplier's confirmation of the Order.
- 3.11. The Supplier shall be entitled to increase the price of the Goods or Tooling at any time due to loss or additional cost incurred for any reason attributable to the Customer including, but not limited to, incorrect, incomplete or amended Specification, manufacturing data or instructions.
- 3.12. No Order accepted for Goods or Tooling may be cancelled without payment in full relating to such costs associated with the Order, including any Services provided and Materials purchased, including any Materials in excess of those required to fulfil Orders from the Customer, where those Materials are specifically purchased by the Supplier in minimum order quantities 'MOQ's' (as set out in Condition 3.4) and required for the Customer's Goods or Tooling.

4. TERMINATION:

- 4.1. The Supplier at its option may cancel the Contract or suspend performance immediately by serving written notice to the Customer in the event of a Customer Default or in the event that:
 - 4.1.1. a petition is presented, order made, meeting convened, resolution passed or any step is taken by any person (including the Supplier) with a view to the winding up (whether solvent or insolvent) of the Customer, or the Customer ceases or threatens to cease to carry on all or material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Supplier before that step is taken; or
 - 4.1.2. the Customer stops or suspends or threatens to suspend all or material part of its debts, or is unable to pay its debts, or is deemed unable to do so under section 123 of the Insolvency Act 1986; or
 - 4.1.3. a petition for an administration order is presented or an application for an administration order is made, or an administrator is appointed or notice of intention to appoint an administrator is given, or any other step is taken by any person with a view to the administration of the Customer under the Insolvency Act 1986 including the passing of any resolution by the Director or shareholders of the Customer approving the presentation of such petition, the making of any such application or appointment of the giving of any such notice; or
 - 4.1.4. if a step or action is taken in another jurisdiction, in connection with any analogous procedure to those set out in Conditions 4.1.1 to 4.1.3 in the relevant jurisdiction; or
 - 4.1.5. it is illegal under the laws of any applicable jurisdiction for the Supplier to supply the Goods to the Customer.
- 4.2. Where the Supplier manufactures and supplies Goods to the Customer, either on an ongoing and regular basis working from historical usage, usage forecasts, Kanban, call offs, consignment stock or stock agreements sometimes in the absence of receiving regular Orders ("**Automatic Ordering**"), or working to regular Orders, then if at any point the Customer:
 - 4.2.1. requires a reduction in the number or frequency of Goods required;
 - 4.2.2. no longer requires manufacture of particular Goods or Tooling; or
 - 4.2.3. wishes to terminate the supply arrangement for any Goods or Tooling,

the Customer shall be required to provide at least sixty (60) days written notice to the Supplier of such reduction or cessation, or termination of its formal or informal arrangement with the Supplier. For the avoidance of doubt, in such an event, the Customer shall be required to pay the Supplier for all Services provided, Goods and Tooling on Order, Goods and Tooling in stock or in the process of manufacturing and Materials that the Supplier or its suppliers have in stock or on order as of the date of the written notice.

5. DELIVERY:

- 5.1. Unless otherwise agreed in writing by the Supplier, delivery of the Order shall take place at the Customer's place of business ("**Delivery Location**"), and be deemed to be delivered on the earlier of;
 - 5.1.1. unloading of the Goods at the Delivery Location on the date for delivery as stated in the Order; or
 - 5.1.2. the Supplier putting the Order into storage pursuant to Condition 5.4. While the Supplier will use its reasonable endeavours to ensure that the date for delivery stated in the Order is adhered to, time of delivery shall not be of the essence, and the Supplier shall be under no liability whatsoever in respect of any loss, damage or expense (including loss of profits and liability to third parties) arising from delay or failure in delivery. However, the Supplier shall use its reasonable endeavours to notify the Customer as soon as reasonably possible if delivery is going to be delayed (and provide an estimate, where possible, of when the Order will be delivered), or if the Supplier is unable to deliver at all.
- 5.2. The Customer accepts that deliveries are made with efficiency in mind and that it is accepted goods will be delivered in full box quantities or / and full pallet quantities, as close to the Order quantity as possible. If the Supplier delivers to the Customer a quantity of Goods of up to 10% more or less than the quantity on the Order, the Supplier will deem the Order as complete. The Customer shall not be entitled to object to or reject the Goods, by reason of the surplus or shortfall, and shall pay or be re-funded for such Goods at the pro-rata rate.
- 5.3. Any surplus Materials remaining (either after an Order is completed or before any transfer of Tooling) must also be purchased by the Customer and shall become the responsibility of the Customer, regardless of value or quantity, upon or anytime either after the Order being delivered or upon the cancellation of the Contract or request of a transfer of Tooling away from the Supplier as outlined in Condition 13.
- 5.4. If for any reason the Customer fails to accept delivery of an Order on the date for delivery stated in the Order, or as agreed with the Supplier, the Supplier shall store the Order until delivery takes place, and charge the Customer for all related costs and expenses (including insurance). For the avoidance of doubt, storage, or the arrangement for such storage, shall constitute delivery, the risk in the Goods will pass at that time to the Customer, and the Supplier shall be entitled to invoice the Customer in full for the Order and any associated costs.
- 5.5. The Supplier reserves the right to deliver the Order in instalments. Each separate instalment shall be invoiced and paid for in accordance with the Contract. Each instalment shall be a separate Contract, and no cancellation of any one Contract relating to any instalment shall entitle the Customer to cancel any other instalment. No default of failure by the Supplier in respect of one or more instalments shall entitle the Customer to treat the Contract as repudiated or to damages.

6. QUALITY OF THE GOODS:

- 6.1. The Supplier warrants that on delivery, the Goods shall:
 - 6.1.1. conform in all material respects with their description and any applicable Specification; and
 - 6.1.2. be free from material defects in design, material and workmanship,
- 6.2. The Customer shall be deemed to have accepted the Goods and that the Goods comply with the Contract and the warranty in Condition 6.1 unless in the case of a defect in the quality or state of the Goods which defect:
 - 6.2.1. was apparent upon reasonable inspection of the Goods (or would have been had an inspection been carried out) the Customer gives the Supplier notice specifying

such defect or non-compliance within seven (7) days after receiving the Goods and in any event prior to use or resale. The Customer's failure to inspect will constitute a waiver of any such non-conformity or defect; and

- 6.2.2. was not apparent upon inspection or reasonable testing of the Goods (or would not have been had an inspection been carried out) the Customer gives the Supplier notice specifying such defect or non-compliance within 6 months after receiving the Goods and within seven (7) days after the Customer received, or reasonably should have received, knowledge of the defect.
- 6.3. Subject to Condition 4, if any of the Goods or Services do not conform with the warranty in Condition 6.1 and :
 - 6.3.1. the Customer gives notice in writing to the Supplier following inspection in accordance with Condition 6.2 or within a reasonable time of discovery if the defect was not apparent from inspection that some or all of the Goods do not comply with the warranty set out in Condition 6.1 following the Suppliers non-conformance and returns procedures (available upon request);
 - 6.3.2. the Supplier is given a reasonable opportunity of examining such Goods; and
 - 6.3.3. the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 6.4. The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in Condition 6.1 if:
 - 6.4.1. the Customer makes any further use of such Goods after giving a notice in accordance with Condition 6.3;
 - 6.4.2. the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 6.4.3. the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;
 - 6.4.4. the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 6.4.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 6.4.6. the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.5. The liability of the Supplier will be satisfied by repairing or replacing the defective Goods or refunding the Customer the price of the defective Goods and this shall be the Customer's sole remedy. Except as provided in this Condition 6, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Condition 6.1. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract
- 6.6. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 6.7. No Goods delivered in accordance with the Contract will be accepted by the Supplier for return by the Customer under this Condition 6, unless a Goods Returns Number has been issued from the Supplier, and on terms to be determined at the absolute discretion of the Supplier.
- 6.8. Such returned Goods must be returned to the Supplier carriage-paid at the Supplier's instruction only and must:

- 6.8.1. be securely packed in their original shipping cartons; and
- 6.8.2. provide clearly the Customer's name and address; and
- 6.8.3. provide clearly the number of boxes / packages being returned; and
- 6.8.4. provide that each box / package contains clear indication of the list of contents.

6.9. The transit risk in all Goods returned to the Supplier, other than collection by the Supplier's representative, shall at all times be the Customer's.

6.10. If at the Customer's request, the Supplier collects the Goods to be returned in accordance with these Conditions, the Customer accepts such a collection will be chargeable by the Supplier unless the Goods are determined to be defective.

6.11. Goods returned without the prior approval of the Supplier (without a Returns Number) may, at the Supplier's absolute discretion, be rejected for delivery or returned to the Customer or retained at the Customer's cost without prejudice to any rights or remedies the Supplier may have.

6.12. If, upon inspection by the Supplier, any Goods returned by the Customer are found not to be in contravention of the Contract or Specification by the Supplier, the Customer will not have right to reject and may be charged reasonable inspection, re-stocking, administration, shipping or any other costs associated with such a return of the Goods.

6.13. The Supplier shall not be liable for defects arising out of Materials provided by the Customer or a design stipulated or specified by the Customer or for any advice or recommendations (including, without limitation, as to the selection of Materials) given to the Customer in connection with the Goods or Tooling.

7. **TITLE AND RISK:**

7.1. The risk in the Goods shall pass to the Customer on completion of delivery.

7.2. Title to the Goods shall not pass to the Customer until the earlier of:

- 7.2.1. the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- 7.2.2. the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in Condition 7.4.

7.3. Until title to the Goods has passed to the Customer, the Customer shall:

- 7.3.1. store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
- 7.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;
- 7.3.4. notify the Supplier immediately if it becomes subject to any of the events listed Condition 4.1; and
- 7.3.5. give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - 7.3.5.1. the Goods; and
 - 7.3.5.2. the ongoing financial position of the Customer.

7.4. Subject to Condition 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

- 7.4.1. it does so as principal and not as the Supplier's agent; and
- 7.4.2. title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

- 7.5. At any time before title to the Goods passes to the Customer, the Supplier may:
 - 7.5.1. by notice in writing, terminate the Customer's right under Condition 7.4 to resell the Goods or use them in the ordinary course of its business; and
 - 7.5.2. require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

8. SUPPLY OF SERVICES:

- 8.1. The Supplier shall supply the Services to the Customer in accordance with the relevant Specification in all material respects.
- 8.2. The Supplier shall use reasonable endeavours to meet any performance dates for the Services specified in the Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 8.3. The Supplier reserves the right to amend the Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 8.4. The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill

9. STOCK:

If the Supplier agrees in writing to hold any Goods or Materials on behalf of the Customer, it may do so for a maximum of twelve (12) weeks, whereupon the Goods or Materials will, if not invoiced earlier, then be invoiced in full to the Customer, requiring immediate payment and delivered or collected within seven (7) days, at which point, if not delivered or collected, the Supplier may dispose of such Goods or Materials or charge appropriate storage fees and interest. All Goods held by the Supplier during such storage shall be at the risk of the Customer.

10. LIMITATION OF LIABILITY

- 10.1. Subject to Condition 6.3, the provisions of this Condition set out the entire liability of the Supplier (including any liability for the acts or omissions of its employees, agents or subcontractors to the Customer in respect of:
 - 10.1.1. any breach of the Contract, and
 - 10.1.2. any representation, statement or tortuous act or omission including negligence arising under or in connection with the Contract or these Conditions.
- 10.2. Subject to Condition 10.6 the Supplier shall not be liable to the Customer by reason of any representation or implied warranty, condition or other term or any duty of common law, or under the express terms of these Conditions or otherwise, for any loss of profit (whether direct or indirect loss), loss of revenue, loss of anticipated savings, loss of goodwill, loss of data or any type of special, indirect or consequential loss or damage (including business interruption), howsoever arising, or whether occasioned by the negligence of the Supplier, its employees, agents or subcontractors howsoever caused.

- 10.3. Except to the extent such exclusion is prevented by law:
- 10.3.1. the Supplier makes no warranty that the Goods or the Tooling will be of satisfactory quality or fit for any particular purpose whether or not such purpose has been made known to the Supplier; and
 - 10.3.2. the Supplier makes no warranty whatsoever with respect to Goods manufactured by or Services provided by third party suppliers and warranties with respect to such Goods or Services are limited to those which are offered by such suppliers and are transferable to the Customer.
- 10.4. The Supplier's total aggregate liability under the Contract (whether in respect of breach of contract, breach of statutory duty, misrepresentation, tort (including negligence) or otherwise) shall not exceed the value of the Order.
- 10.5. The limitations, restrictions and exclusions of liability contained in these standard Conditions shall apply regardless of the negligence or breach of statutory duty of the Supplier.
- 10.6. Nothing in the Contract or these Conditions shall restrict or exclude the Supplier's liability
- 10.6.1. under Part 1 of the Consumer Protection Act 1987;
 - 10.6.2. in respect of fraudulent misrepresentation;
 - 10.6.3. for death or personal injury caused by the Supplier's negligence or the negligence of its employees or subcontractors;
 - 10.6.4. arising under section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982; or
 - 10.6.5. any other liability which may not be lawfully excluded or limited.
- 10.7. Each of the exclusions or limitations of liability in this Condition shall be construed as a separate and independent exclusion. If any exclusion is found by a court or competent authority of any jurisdiction to be void or unenforceable:
- 10.7.1. the parties shall negotiate in good faith to replace such void or unenforceable exclusion with a valid exclusion which, as far as possible, has the same legal and commercial effect as that which it has replaced; and
 - 10.7.2. the legality, validity and enforceability of the remainder of these Conditions is that jurisdiction shall not be affected.

11. PAYMENT:

- 11.1. Where the Supplier agrees in its sole discretion to supply the Goods or Services on credit, the Goods or Services shall, unless otherwise agreed by the Supplier, be paid for not later than thirty (30) days from the date of invoice ('**Due Date**'). The Supplier reserves the right to close the account or withhold further credit terms, supplies of Goods, Tooling or Services if a Customer fails to settle the invoice no later than five (5) days after the Due Date, without prejudice to any existing rights the Supplier may have in respect of any such unpaid invoice.
- 11.2. Time shall be of the essence of the Contract for the purpose of this Condition 11 only.
- 11.3. If payment is due in milestones, such milestones shall be set out in the Additional Terms.
- 11.4. Where Goods are delivered in lots or batches, each lot or batch shall be invoiced separately.
- 11.5. Payment for all Equipment, jigs, fixtures and ancillaries is on a pro-forma basis.
- 11.6. Payment of an Order for other Tooling (unless otherwise agreed in writing) shall be as set out in the Supplier's quotation document or if not set out then as follows:
- 11.6.1. one third of the Order value payable upfront;

- 11.6.2. one third of the Order value payable on completion of the manufacture of the Tooling; and
- 11.6.3. one third payable on approval of the resulting Goods (or within twenty one (21) days of initial Goods Samples being provided), in each case unless otherwise agreed in writing by the Supplier. If the Customer fails to notify the Supplier in writing of non compliance of submitted Sample specification within twenty one (21) days it will be assumed the Goods or Tooling comply and as such the Order is complete.
- 11.7. The Supplier reserves the right to claim statutory interest on any overdue amounts on any outstanding Customer account under the Late Payments of Commercial Debts (Interest) Act 1998 and all applicable subordinate legislation as amended from time to time.
- 11.8. The Customer will reimburse the Supplier for all costs and expenses (including legal and administration costs) incurred in the collection of any overdue amount.
- 11.9. The Customer shall not be entitled to withhold payment of any invoice after it's Due Date and shall make all payments due under the Contract without any deduction, whether by way of set off, counterclaim, discount, abatement or otherwise or for any other reason whatsoever.
- 11.10. The Supplier shall be entitled to set off against any monies it is owed by the Customer for the Supply of Goods or Tooling any monies which the Supplier owes the Customer.
- 11.11. The Supplier will carry out regular credit worthiness checks against the Customer and the Supplier reserves the right to amend or withdraw credit / payment terms for any Customer or Order at any time without notice.
- 11.12. If in the opinion of the Supplier the credit worthiness of the Customer deteriorates before delivery of the Goods, the Supplier may require full or partial payment of the Price prior to delivery of the Goods or the provision of security for payment by the Customer in a form acceptable to the Supplier. The Supplier will notify the Customer of this requirement.

12. DEFAULT BY THE CUSTOMER:

- 12.1. In the event of any of the following:
 - 12.1.1. the Customer fails to pay any amount due to the Supplier in accordance with these Conditions;
 - 12.1.2. the Customer commits a material breach of these Conditions or the Contract. For the avoidance of doubt, and without limitation, any breach of Condition 11, 13 or 24 will be considered a material breach;
 - 12.1.3. if any distress or execution shall be levied upon any Customer's Goods or Tooling;
 - 12.1.4. if any event as outlined in Condition 4.1 arises, or the Customer takes any step or action in connection with any such insolvency procedure,

then all sums outstanding to the Supplier whether or not such sums have become due for payment shall immediately become payable and the Supplier may at its absolute discretion and without prejudice to any other rights which it may have:

- 12.1.5. suspend or cancel all future deliveries of Goods, Tooling or Materials to the Customer under any Contract and / or terminate such Contracts without further notice and liability upon its part; and / or
- 12.1.6. appropriate any payment made by the Customer for such goods, Tooling or Materials (whether or not supplied under any contract with the Customer) as the company in its sole discretion thinks fit; and/or
- 12.1.7. retain any Customer Tooling or other goods that the Supplier has in its possession; and or

12.1.8. claim interest in accordance with Condition 11,

in each case until the Customer pays the Supplier all sums that it owes on any basis to the Supplier.

13. CUSTOMER OBLIGATIONS

13.1. The Customer shall:

- 13.1.1. ensure that the terms of the Order and any information it provides in the Specification(s) are complete and accurate;
- 13.1.2. co-operate with the Supplier in all matters relating to the Services;
- 13.1.3. provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Services;
- 13.1.4. provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 13.1.5. prepare the Customer's premises for the supply of the Services (if applicable);
- 13.1.6. obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 13.1.7. comply with all applicable laws, including health and safety laws;
- 13.1.8. keep all materials, equipment, documents and other property of the Supplier (**Supplier Materials**) at the Customer's premises in safe custody at its own risk, maintain the Supplier Materials in good condition until returned to the Supplier, and not dispose of or use the Supplier Materials other than in accordance with the Supplier's written instructions or authorisation;
- 13.1.9. comply with any additional obligations as set out in the Specification(s); and
- 13.1.10. ensure that any Tooling provided to the Supplier is fit for purpose and in good working order.

13.2. If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Failure**):

- 13.2.1. without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Failure, and to rely on the Customer Failure to relieve it from the performance of any of its obligations in each case to the extent the Customer Failure prevents or delays the Supplier's performance of any of its obligations;
- 13.2.2. the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this Condition 13.2; and
- 13.2.3. the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Failure.

14. TOOLING & EQUIPMENT:

14.1. The Customer shall bear the cost of any modifications in Tooling agreed after the date of the Order and the additional cost shall be paid immediately after such agreement between parties.

14.2. The Supplier shall maintain the Customer's Tooling and Equipment in reasonable working condition (subject to reasonable wear and tear, and design life of the Tooling or Equipment) at the Customer's expense. The Supplier is not obliged to refurbish or replace worn out Tooling or Equipment and the Supplier is not obliged to produce Goods from Tooling or Equipment that

requires repair, refurbishment or replacement. The Supplier's decision that Tooling or Equipment requires repair, refurbishment or replacement is binding on the Customer.

- 14.3. The Customer shall at all times bear the risk for Customer owned Tooling and Equipment and must maintain an insurance policy to the extent and in the amount deemed necessary.
- 14.4. In accordance with normal trade practice, Tooling and Equipment will be stored at the Supplier's expense for 6 months for possible use with further Contracts, but the Supplier gives no guarantee concerning the condition or useful life of any Tooling or such equipment beyond the period of the original Contract. The Supplier reserves the right to charge reasonable storage fees for any Tooling, Materials or Equipment, if left unused for a period of 12 months or more.
- 14.5. The Supplier shall have the right to invoice storage costs for any Tooling or Equipment unused for a period of 12 months or more at the end of each month of additional storage, but shall give the Customer not less than 1 months' notice in writing of the Supplier's intentions and notify the Customer of any outstanding amounts due relating to such Tooling or Equipment.
- 14.6. The Customer shall be entitled to request the return or transfer of its Tooling and Equipment used or stored by the Supplier for any purpose provided that it has given at least sixty (60) days written notice to the Supplier, and has paid all amounts due and outstanding in full (with cleared funds) to the Supplier.
- 14.7. If the Customer wishes to transfer any Tooling and Equipment away from the Supplier, the Supplier will be entitled, upon receiving appropriate notice as outlined in Condition 14.6, to charge reasonable sums for any work required in respect of such a transfer.
- 14.8. Any outstanding sums payable pursuant to these Conditions, or any other sums which are or which become due to the Supplier from the Customer on any account, no Tooling or Equipment (whether manufactured by the Supplier or supplied by the Customer) or Materials or Goods shall be returned to the Customer, and the Supplier shall have a general lien over any such Tooling, Equipment, Materials and Goods in its possession. If payment is not made as set out in these Conditions by the Customer within twenty eight (28) days after the Supplier first exercised the lien in writing, then the Supplier shall have the right to dispose of the whole or part of such Tooling, Equipment, Materials and Goods to cover any monetary amounts outstanding without further notice.

15. SPECIFICATION, DRAWINGS, DESIGN AND INTELLECTUAL PROPERTY:

- 15.1. Where drawings, measurements, manufacturing data and / or other details, including part numbers (the "**Specification**") are supplied by the Customer with their Order, they are assumed to be correct. The Supplier accepts no responsibility for the inaccuracy of the Goods as a result of its reliance on the Specification. The Customer shall indemnify the Supplier against all costs, expenses and claims arising as a result of any product defects caused by the use of the Specification, and any alleged infringement of any patent or intellectual property.
- 15.2. Where a Specification exists it is the express responsibility of the Customer to ensure that the Specification is kept up to date that the correct issue of data or drawing is being used by the Supplier and any Goods or Tooling manufactured or Materials purchased under the wrong Specification shall be the responsibility of the Customer and any liability for such Goods, Tooling or Materials will pass to the Customer.
- 15.3. The Customer shall be responsible for approving a Sample of the Goods produced and the Supplier reserves the right to delay manufacturing of any Goods or Tooling until such Sample approvals are received.

- 15.4. Sample Goods, either provided by the Customer or the Supplier, on their own are classed as a guide and not classed as the Specification and the Supplier shall not be liable for any Goods which it subsequently manufactures for the Customer on the basis of any approved Sample without a Specification.
- 15.5. All Intellectual Property Rights in the process and methods of working which have been developed or acquired by the Supplier, and are relating to, or in respect of, or for the manufacture of, the Goods and / or Tooling, including any improvements to the Goods, Equipment and / or Tooling developed in whole or in part by the Supplier (the "**Processes**"), together with all technical information, manufacturing data, know-how, manufacturing techniques, engineering data, chemical formulae, specifications of Materials and other information, developed in whole or in part by the Supplier, relating to or in respect of the Processes, shall be the sole property of the Supplier, and there shall be no licence of such rights unless expressly agreed in writing by the Supplier.
- 15.6. All artwork, photographic negatives, printing plates, silk screens etc. produced for the manufacture of the Goods under the Contract will belong to the Supplier unless paid for by the Customer in full cleared funds.
- 15.7. In the event of the Customer transferring of a Contract and / or any Tooling away from the Supplier as outlined in Condition 14.6, the Supplier reserves the right to retain such Intellectual Property Rights as outlined in Condition 15.5 and is authorised to charge for any development costs associated with the Customer's Goods, Tooling or Equipment.
- 15.8. No right or licence is granted under the Contract to the Customer under any patent, trade mark, copyright, registered design or other Intellectual Property Right, except the licence to use or re-sell the Goods.
- 16. FORCE MAJEURE:**
- 16.1. The Supplier shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly.
- 16.2. The Supplier shall not be liable for any loss or damage arising directly or indirectly through or in consequence of such Force Majeure Event.
- 16.3. Either party may terminate an affected Contract if an event of Force Majeure Event continues for a period of six (6) months or more by giving not less than 30 days' written notice to the other party.
- 17. ASSIGNMENT**
- The Customer may not assign, subcontract or in any way dispose of its rights and obligations under the Contract without the prior written permission of the Supplier.
- 18. SUBCONTRACTING**
- The Supplier shall be entitled to carry out its obligations arising pursuant to the Contract through any agents or subcontractors appointed by it or in its absolute discretion for that purpose.

19. NOTICES

- 19.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 19.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - 19.1.2. sent by email to the addresses set out in the Order.
- 19.2. Any notice shall be deemed to have been received:
- 19.2.1. if delivered by hand, at the time the notice is left at the proper address;
 - 19.2.2. if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
 - 19.2.3. if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 19.3. This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

20. ENTIRE AGREEMENT

- 20.1. The Contract constitutes the entire agreement between the parties relating to its subject matter.
- 20.2. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

21. THIRD PARTY RIGHTS

A person who is not a party to the Contract has no right under the Contract (Rights of Third parties) Act 1999 to enforce any term of the Contract or these Conditions.

22. PROVISIONS RELATING TO THESE CONDITIONS

- 22.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this Condition **Error! Bookmark not defined.**22.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.
- 22.2. No waiver or forbearance by the Supplier, whether express or implied in enforcing any of its rights hereunder shall prejudice its right to do so in the future.
- 22.3. Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party

23. LAW AND JURISDICTION

These Conditions and all Contracts shall be governed by and construed in accordance with English law and subject to the non-exclusive jurisdiction of the English Courts.

24. DATA PROTECTION

- 24.1. This Condition sets out the framework for the sharing of personal data between the parties as controllers. Each party acknowledges that one party (referred to in this Condition as the Data Discloser) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes and each party shall comply with all the obligations imposed on a controller under the Data Protection Legislation.
- 24.2. Each party shall:
- 24.2.1. ensure that it has all necessary notices and consents and lawful bases in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - 24.2.2. give full information to any data subject whose personal data may be processed under this agreement of the nature of such processing.;
 - 24.2.3. process the Shared Personal Data only for the Agreed Purposes;
 - 24.2.4. not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - 24.2.5. ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
 - 24.2.6. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
 - 24.2.7. not transfer any personal data received from the Data Discloser outside the UK unless the transferor ensures that (i) the transfer is to a country approved under the applicable Data Protection Legislation as providing adequate protection; or (ii) there are appropriate safeguards or binding corporate rules in place pursuant to the applicable Data Protection Legislation; or (iii) the transferor otherwise complies with its obligations under the applicable Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; or (iv) one of the derogations for specific situations in the applicable Data Protection Legislation applies to the transfer.
- 24.3. Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation.