

## WHS PLASTICS LIMITED

### STANDARD TERMS AND CONDITIONS OF SALE (GOODS AND SERVICES)

#### 1 DEFINITIONS

1.1 In these Conditions, the following words shall have the following meanings:

**"Applicable Laws"** means all laws, rules, regulations and guidance which are in force from time to time, are applicable to the Parties and are relevant to these Terms and Conditions;

**"Business Day"** means any day (other than a Saturday or Sunday) on which clearing banks are open for business in the City of London for the transaction of normal banking business.

**"Company"** means WHS Plastics Limited incorporated in England and Wales under Company Number 00689319 with its registered office at Water Orton Lane, Minworth, Sutton Coldfield, West Midlands, B76 9BG;

**"Confidential Information"** means information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to a Party's business, operations, customers, finances, transactions, methods or activities which: (i) the Party has marked as confidential or proprietary; (ii) the Party has advised orally or in writing of its confidential nature; or (iii) due to its character or nature, a reasonable person in a like position and under like circumstances would treat as confidential;

**"Contract"** means a contract between the Company and the Customer for the sale and purchase of Goods and/or Services ordered under a Purchase Order subject to these Terms and Conditions;

**"Customer"** means the individual, firm, company or other party with whom the Company contracts, as detailed in the Contract.

**"Delivery Address"** means the delivery address agreed in writing by the Company;

**"Dies"** means tool, mould, jib or die;

**"Force Majeure Event"** means any event affecting the performance of any provision of the Contract arising from or attributable to any circumstance beyond the reasonable control of a party including, but not limited to: abnormal weather conditions, fire, explosion, earthquake, subsidence, structural damage, inability to obtain supplies, breakdown of plant or machinery, default of suppliers or sub-contractors, failure or shortage of power supplies, traffic, road accident,

delay of a third party carrier, war, military operations, riot, crowd disorder, pandemic or such other health emergency, strike or other industrial action, terrorist action, any legislation, regulation, ruling or omissions (including failure to grant any necessary permissions) of any relevant government, court or authority;

**"Goods"** means the goods, including Dies (and including any instalment of the goods or any parts for them and any samples) which the Company shall supply in accordance with these Terms and Conditions;

**"Group"** means the Company and any subsidiary or holding company from time to time of the Company, and any subsidiary from time to time of a holding company of the Company.

**"Intellectual Property Rights"** means any patents, trade marks, registered designs (and any applications for any of the foregoing), copyright (including rights in software), semi-conductor topography rights, database right, service marks, registered design, unregistered design rights, rights in and to trade names, business names, domain names, product names and logos, Know-How any other intellectual or industrial property rights in each and every part of the world together with all applications, renewals, revisals and extensions;

**"Know-How"** means all proprietary or technical information including that comprised in or derived from formulae, designs, specifications, drawings, components, lists, manuals, instructions, algorithms, computer code or catalogues in whatever form;

**"Party"** and **"Parties"** means the Company or the Customer or both the Company and the Customer (as is applicable);

**"Price"** means in relation to Goods, the price of the Goods on the date of despatch (or the date of completion in relation to Dies) and in relation to Services, the price of the Services as notified by the Company;

**"Purchase Order"** means the Customer's written or oral purchase order;

**"Services"** means the services detailed in the Purchase Order as accepted by the Company pursuant to Clause 2.4;

**"Specification"** means the specification of the Goods and/or Services agreed in writing by the parties from time to time; and

“**Terms and Conditions**” means these terms and conditions.

- 1.2 Any reference in these Terms and Conditions to:
- (a) A statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time;
  - (b) A clause is to a clause in these Terms and Conditions; and
  - (c) A person includes an individual, a firm, a corporation, an unincorporated association, a partnership and joint venture.

1.3 If the Company has signed a bespoke written agreement with the Customer which covers the same subject matter as these Terms and Conditions, the terms of the bespoke agreement shall take precedence over these Terms and Conditions in the event of any conflict, as long as the bespoke agreement has been signed by both Parties.

## **2 BASIS OF SALE**

2.1 Unless otherwise agreed in writing, any quotation is valid only for a period of 28 days from its date of issue, provided that the Company has not previously withdrawn it by written or oral notice to the Customer, and shall be subject to the availability of the Goods and/or other resources available to perform the Services.

2.2 Each Purchase Order constitutes a separate offer by the Customer to purchase the Goods and/or Services subject to these Terms and Conditions. Each Purchase Order shall contain details of:

- (a) The Goods and/or Services required;
- (b) The Specification;
- (c) Where appropriate, the Delivery Address (or confirmation that the Customer will collect the Goods from the Company);
- (d) The quantity of Goods and/or Services required; and
- (e) The date on which the Customer would like the Goods to be delivered (or the Dies to be completed) and/or the Services to be performed (such date not being binding on

the Company and being subject to Clause 6.1).

2.3 The Purchase Order shall be deemed to be accepted on the occurrence of the earlier of:

- (a) The issue by the Company of a written acknowledgement of the Purchase Order;
- (b) Notification by the Company that the Goods are ready for collection or that the Services can be performed;
- (c) Delivery of the Goods and/or commencement of performance of the Services (or any part of the Goods/Services); and

and not before and such occurrence shall create a Contract.

2.4 Subject to Clause 1.3 above, these Terms and Conditions shall apply to the Contract to the exclusion of all other terms and conditions, including, but without limitation any terms and conditions of the Customer.

2.5 In the event of any queries, inaccuracies, typographical, clerical or other error or omission in any sales literature, quotation, price list or acknowledgement of Purchase Order, the Company shall contact the Customer and such document shall be subject to correction without any liability on the part of the Company.

2.6 Any Purchase Order which has been accepted by the Company pursuant to Clause 2.4 may only be cancelled, postponed or varied by the Customer with the prior written consent of the Company and on terms that the Customer will indemnify the Company in full against all costs and expenses incurred or arising (directly or indirectly) by the Company as a result of such cancellation, postponement or variation.

## **3 INFORMATION AND SAMPLES**

3.1 The Customer shall be responsible for ensuring the accuracy of the terms of any Purchase Order (including any application Specification) submitted by the Customer and for giving the Company any necessary information (including where relevant, samples) relating to the Goods and/or the Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

3.2 If Goods are to be manufactured or any processes are to be applied to the Goods by the Company in accordance with the Specification submitted by the Customer or using tooling or goods supplied by the Customer, then the suitability and accuracy of that Specification, tooling, or goods will be the Customer's responsibility. Where samples are or are to be supplied by the Company, no work will be undertaken by the Company with regard to the bulk of the Customer's order unless and until the Customer has notified the Company that the samples are in all respects satisfactory and the Customer will be deemed to have so notified the Company if there is no express rejection of such samples within 30 days of delivery to the Customer.

#### 4 BLANKET ORDERS

4.1 The following provisions shall apply where the Company supplies the Goods under a blanket Purchase Order received from the Customer:

- (a) If the blanket order is a scheduled Purchase Order where the maximum quantity of Goods required and the approximate dates on which the requirements will be called off are specified, the whole Purchase Order will be treated as a single Contract;
- (b) If the blanket order is a non-scheduled Purchase Order where:
  - (i) The maximum quantity of Goods required is not specified; or
  - (ii) The maximum quantity of Goods specified is, in the opinion of the Company, an unrealistic estimate of the Goods which are likely to be required by the Customer; or
  - (iii) Where the call off dates for the Goods are not specified;

then each call off will be deemed to be a separate Contract.

4.2 Without prejudice to the generality of any of these Terms and Conditions, the Company shall not be liable to the Customer if at the time of any call off by the Customer the Company is unable for any reason whatsoever to supply the Goods in accordance with the requirements of the Customer.

#### 5 SPECIFICATIONS, WARRANTIES AND REPRESENTATIONS

5.1 The Company warrants that the Goods and/or Services sold to the Customer shall comply with the Specification (unless otherwise agreed by the Parties in writing).

5.2 Any suggestion or representation concerning any possible use of the Goods and/or Services made by the Company in any sales or marketing literature or in any response to a specific enquiry is given in good faith, but it is entirely for the Customer (and its customers) to satisfy themselves fully as to the suitability of the Goods and/or Services for any particular purpose. No suggestion or representation relating to such possible use shall form part of the Contract.

5.3 Clauses 5.3, 5.4 and 5.5 apply to all Goods manufactured by the Company, other than Dies. The Customer shall inspect the Goods and if within a period of three (3) days from the date of delivery of the Goods (and/or performance of the Services) any of the delivered Goods (and/or performed Services) are shown to the reasonable satisfaction of the Company not to comply with the Specification, including due to defects in materials, workmanship or composition (other than a composition specified by the Customer) the Company at its option will:

- (a) Replace, free of charge, such Goods and/or Services conditional upon the return by the Customer of the allegedly faulty Goods, carriage paid, within seven (7) days of the date of delivery of the Goods;
- (b) Refund the price of the Goods and/or Services; or
- (c) Agree a reduced fee for such Goods and/or Services.

5.4 The Company's obligation under clause 5.3 will not apply where:

- (a) The Price has not been paid by the date of the complaint from the Customer;
- (b) The Goods have been altered or varied in any way whatsoever, or have been subject to misuse;

- (c) The Goods have been combined incorrectly with other products or combined with incompatible products;
- (d) Any instructions as to storage or use of the Goods have not been complied with in all respects; or
- (e) The Customer has failed in accordance with Clause 6.4 to notify the Company where the defect should be apparent on reasonable inspection, or within two (2) Business Days of the same coming to the knowledge of the Customer where the defect is not one which should be apparent on reasonable inspection, and in any event no later than seven (7) days from the date of delivery.

5.5 Any replacement Goods issued by the Company will also be subject to the terms of Clauses 5.3 and 5.4, from the date of delivery of the replacement Goods.

5.6 Except as otherwise provided in these Terms and Conditions, all warranties, conditions, and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979 and s.2 Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

## 6 DELIVERY

6.1 The Company will use reasonable endeavours to deliver the Goods and/or Services in each of the Customer's Purchase Orders it has accepted by the agreed delivery date, but the timing of delivery of the Goods and/or the performance of the Services will not be of the essence in the Contract. Dies are excluded from this Clause 6 and shall be governed by Clause 18 below.

6.2 If the Company is unable for any reason to fulfil any delivery of the Goods and/or performance of the Services by the agreed date, the Company will not be in breach of the Contract, and will have no liability to the Customer, howsoever caused (including but without limitation negligence) as a result of any delay or failure in delivery or performance.

6.3 Delivery of the Goods shall be deemed to be made on the earliest occurrence of:

- (a) Collection of the Goods by the Customer from the Company;
- (b) Delivery of the Goods by the Company to the Customer at the Delivery Address; or
- (c) Delivery of the Goods by the Company to a third-party carrier engaged by the Customer.

6.4 The Customer shall, within three (3) Business Days of the delivery of the Goods and/or performance of the Services, notify the Company in writing of any defect by reason of which the Customer alleges that the Goods delivered and/or Services performed are not in accordance with the Specification and which should be apparent on reasonable inspection (including without limitation any shortage or damage in transit).

6.5 If the Customer fails to give notice under Clause 6.4 then, except in respect of any defect that is not one which should be apparent on reasonable inspection, the Goods and/or Services shall be deemed conclusively to be in all respects in accordance with the Specification and accepted by the Customer.

6.6 The Customer shall prepare the area for delivery of the Goods and/or performance of the Services with free access to such place and with free access to any services or facilities that may be required by the Company to facilitate delivery and/or performance. Prior to the delivery of the Goods and/or commencement of performance of the Services, the Company may request and the Customer shall grant access to such place for an inspection. If, following such inspection such place is not suitable for the delivery of the Goods and/or performance of the Services in the opinion of the Company, the Customer shall do all such acts and things as the Company may request to ensure such place becomes suitable and the Company shall be without any liability towards the Customer for non-delivery of the Goods and/or performance of the Services until such place is in the opinion of the Company suitable for delivery of the Goods and/or performance of the Services.

6.7 The Company reserves the right to deliver the Goods and/or perform the Services in instalments and to invoice in instalments and in such event each instalment of Goods shall be treated as a separate Contract. Further instalments may be withheld until the Goods and/or Services comprised in earlier instalments have been paid for in full.

6.8 If the Customer refuses or fails to take delivery of any of the Goods at the time stated for delivery (otherwise than by reason of any Force Majeure Event or by reason of the Company's fault) then, without prejudice to any other right or remedy available to the Company, the Company will be entitled to:

- (a) Store the Goods until actual delivery and charge the Customer for the cost of storage, transport, any related insurance and a handling fee; and/or
- (b) Sell the Goods at the best prices obtainable in all the circumstances, after deducting all storage, insurance, transport and selling expenses and invoice the Customer for the difference between the sum obtained by the Company and the Price and the Customer shall pay such sum immediately.

6.9 Unless otherwise agreed by the Parties in writing, the Company may deliver to the Customer an excess or deficiency of up to 10% of the Quantity Required and the Customer shall pay for the actual weight delivered.

6.10 Loading and unloading shall be undertaken by the Customer at its risk whether delivery takes place at the Company's premises or elsewhere.

## **7 DESCRIPTION**

7.1 The Company reserves the right to make any changes in the Specification which are required to conform with any Applicable Laws or which do not materially affect the characteristics of the Goods.

7.2 The Customer warrants and acknowledges that:

- (a) It has not relied on any representation made by the Company, its employees or agents or upon any descriptive and technical specifications, drawings, catalogues, illustrations or particulars (including without limitation as to weight and dimensions) and the Company shall have no liability in relation to any such representations;
- (b) The Goods are suitable for the purpose or purposes intended (whether by the Customer or by any third party); and

(c) The Goods will (whether by the Customer or by any third party) be properly used or dealt with (including without limitation in any machining or processing) and in a manner and for purposes for which they are suitable.

## **8 PACKAGES**

8.1 Where the Customer has the option to return packaging and does so, the Customer must return it empty in good order and condition (consigned "carriage paid" unless otherwise agreed by the Company) from the point of delivery to the location requested by the Company and must advise the Company on the date of despatch.

8.2 Where packages are stated to be the Company's property, they shall remain the property of the Company at all times and the Customer will return them as per Clause 8.1 above.

8.3 Any packages not returned in good order and condition within a reasonable period shall be paid for by the Customer at the Company's standard rate unless failure to return is due to any cause for which the Company accepts responsibility under these Terms and Conditions.

## **9 LIMITATION OF LIABILITY**

9.1 The Company does not attempt to exclude any liability:

- (a) For breach of the Company's obligations under s.12 of the Sale of Goods Act 1979 or s.2 of the Supply of Goods and Services Act 1982;
- (b) For personal injury or death resulting from the Company's negligence;
- (c) Under s.2(3) of the Consumer Protection Act 1987; or
- (d) Any matter for which it would be illegal for the Company to exclude or attempt to exclude its liability.

9.2 Unless otherwise agreed by the Parties in writing, and subject to Clause 9.1 above, the Company shall not be liable to the Buyer for any:

- (a) loss of profit or anticipated profit;
- (b) loss of business or contract;

- (c) loss of anticipated savings;
- (d) loss of or corruption of data;
- (e) loss of production;
- (f) loss or depletion of goodwill;
- (g) product recall;
- (h) losses relating to the procurement of any substitute goods or services;
- (i) for any special, indirect or consequential loss or damage, or
- (j) otherwise for any costs, expenses or other claims for consequential compensation (howsoever caused) including, but without limitation, any which arise out of or in connection with any act, omission or inaction of any third party haulier in connection with the delivery of the Goods save to the extent that the Company will pass on any sums recovered by the Company for and on behalf of the Customer from such third party haulier (if any), but the Company shall be under no obligation to commence any proceedings against such third party haulier to recover any sums for the Customer and, subject to Clause 9.1, the Company's total aggregate liability under the Contract shall be limited to the Price the Company has received under the Contract.

9.3 The Company's total liability to the Customer in respect of all other losses arising under or in connection with these Terms and Conditions, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall in no circumstances exceed the total Price paid for the Goods in the twelve months preceding the relevant claim.

## 10 QUOTES

Any price quote given by the Company (whether a fixed or an estimated price) is based upon costs current as at the date of the quotation. Where the Company quotes an estimated price for the Goods the actual Price to be charged to the Customer shall be based on costs current as at the date of invoice. Where the Company quotes a fixed price for the Goods, if the costs incurred by the Company in discharging its obligations under the Contract vary

by more than 3% (including without limitation due to currency fluctuations) between the date of such quotation and the date of invoice, then the amount for which the Customer is invoiced shall be increased or reduced by such percentage accordingly.

## 11 PRICES AND PAYMENT

11.1 The Price is exclusive of all taxes and duties including, but without limitation, value added tax, which, if applicable, shall be payable by the Customer in addition to:

- (a) Any increased costs incurred as a consequence of the application of any Applicable Laws resulting in increased costs in delivery; and
- (b) Any additional cost of delivery notified by the Company to the Customer for delivery of the Goods on any day which is not a Business Day.

11.2 The Company may invoice the Customer for the Price at any time. The Customer shall pay the Price (including value added tax or any other applicable tax or duty) by the date specified in the acknowledgement of the Purchase Order, or if no date is stipulated or no acknowledgement of Purchase Order is issued, by the last day of the month following the month on the date of the invoice. Payment shall be made via Direct Debit, BACS or CHAPS.

11.3 The Company may invoice the Customer for partial delivery of the Goods.

11.4 Time for payment will be of the essence. In the event, that the sum payable under the Contract is not paid when due, then without prejudice to the Company's other rights under these Terms and Conditions, the Company reserves the right to stop supplying Goods under any other contract that the Customer may have with a Group Company.

11.5 If any sum payable under the Contract is not paid when due then without prejudice to the Company's other rights under these Terms and Conditions, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at 4% per annum over HSBC Bank Plc base rate from time to time and the Company will be entitled to suspend all future deliveries of the Goods and/or performance of the Services until the outstanding amount has been received.

- 11.6 No payment will be deemed to have been received until the Company has received the Price in full in cleared funds.
- 11.7 Notwithstanding any other provision of these Terms and Conditions, all sums outstanding under the Contract will become due immediately on termination or expiry of the Contract.
- 11.8 All amounts due from the Customer under this Contract or any other contract with a Group Company shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 11.9 The Company shall be entitled to set off and retain any and all sums due to the Customer against any contingent or actual liabilities of the Customer to the Company under this Contract or any contract the Customer has with a Group Company.
- 11.10 The Company reserves the right to increase the Price if any extra cost is incurred by the Company after quoting the Price as a result of the inaccuracy or incompleteness of any instructions issued by the Customer, or as a result of any failure to supply any information, drawings or specification required to enable the Company to proceed with the Contract.

**12 RISK AND PROPERTY**

- 12.1 This Clause 12 applies to all Goods other than Dies which are governed by Clause 19 below. Risk of damage to or loss of the Goods shall pass to the Customer:
  - (a) In the case of Goods to be collected from the premises of the Company, at the time when the Company notifies the Customer that the Goods are available for collection from the agreed collection point;
  - (b) In the case of Goods to be delivered to the Delivery Address by the Company, when the Goods are delivered to the Delivery Address; or
  - (c) In the case of Goods delivered to a third-party carrier engaged by the Customer, at the time of the Company handing the Goods to such third party carrier.
- 12.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms and Conditions, ownership of the Goods shall not

pass to the Customer until the Company has received in cash or cleared funds payment in full of all outstanding amounts under any contract between the Company and the Customer.

- 12.3 Until ownership of the Goods has passed to the Customer pursuant to Clause 12.2, the Customer will:
  - (a) Hold the Goods on a fiduciary basis as trustee of the Company;
  - (b) Keep the Goods free from any charge, lien or other encumbrance;
  - (c) Store the Goods separately from other goods in such a way as they are readily identifiable as the property of the Company and not destroy, deface or obscure any identifying mark on the Goods or their packaging;
  - (d) Maintain the Goods in a satisfactory condition; and
  - (e) Insure the Goods for the Price in full on behalf of the Company.

12.4 Notwithstanding the provisions of Clause 12.3, the Customer may resell and use the Goods before ownership has passed to it only if any such sale or use will be affected in the ordinary course of the Customer's business and where the Customer will deal as principal. The Company shall, by reason of the relationship between the Customer (as trustee) and of the Company (as beneficiary) be and remain legally entitled to the proceeds of sale and the Customer shall pay such proceeds of sale into a separate account or, otherwise, shall ensure that all of the proceeds of the sale are kept by or on behalf of the Customer in a separate and identifiable form and not paid into an overdrawn bank account. Upon receipt of the proceeds of sale, the Customer shall discharge its debt to the Company and shall not use or deal with the proceeds of sale in any way whatsoever until such debt has been discharged.

12.5 Until ownership in the Goods has passed pursuant to Clause 12.2, the Company may recover the Goods at any time, and the Customer grants to the Company, its agents, employees, and sub-contractors an irrecoverable licence at any time to enter any premises where the Goods are or may be stored. In the case of the Goods being stored on premises owned by a third party the Customer shall procure such a right for the Company.

12.6 The Customer's right to possession of the Goods shall cease on the occurrence of any of the events set out in Clause 12 of these Terms and Conditions. In such circumstances, the Company may upon notice enter any premises occupied by the Customer where the Goods are stored and repossess the Goods and the Customer shall procure a right for the Company to enter any premises not occupied or owned by the Customer.

### 13 FORCE MAJEURE

13.1 If either Party is prevented or delayed in the performance of any of its obligations (other than the obligations set out in Clause 11 by a Force Majeure Event then the Party so prevented or delayed will be excused from the performance of its obligations from the date of the occurrence of such Force Majeure Event for as long as such Force Majeure Event continues and shall not be deemed to be in breach of these Terms and Conditions or the Contract or otherwise liable to the other Party in any manner whatsoever.

13.2 On the occurrence of any Force Majeure Event, the Parties shall enter into bona fide discussions with a view to alleviating its effects and the Party prevented from performance by it shall use reasonable diligence to remove the cause of the Force Majeure Event (if capable of removal) and to enable its obligations hereunder to be performed. If any Force Majeure Event prevails for a continuous period in excess of 1 month, the Party not affected by the Force Majeure Event may give notice to terminate the Contract forthwith provided that the Parties have not previously agreed a course of action to deal with such Force Majeure Event. If such agreed course of action fails, the Party not affected by the Force Majeure may give 1 months' notice to terminate the Contract forthwith provided the Force Majeure Event has already prevailed for a period of 1 month.

13.3 If at any time the Company claims the existence of a Force Majeure Event in respect of its obligations under these Terms and Conditions or the Contract with regard to the supply of the Goods and/or Services, the Customer shall be entitled to obtain from any other person such quantity of the Goods and/or Services as the Company is unable to supply.

### 14 TERMINATION OF THE CONTRACT

14.1 The Company shall be entitled to terminate the Contract immediately upon the occurrence of any of the following:

- (a) The Customer being in breach of any term of these Terms and Conditions;
- (b) The Customer (being an individual or firm) becomes bankrupt or goes into sequestration, or (being a partnership) is wound up by the court or becomes bankrupt or goes into partnership administration or sequestration, or (being a body corporate) is wound up by the court or is voluntarily wound up by reason of its inability to pay its debts or an administrator or receiver is appointed of any part or all of its income or assets and in any case if the Customer enters into any informal or voluntary arrangement (whether or not in accordance with the Insolvency Act 1986) with or for the benefit of the general body of creditors of the individual, the partnership or the body corporate;
- (c) The Customer suffers the equivalent of any similar or analogous event in (b) (above) in any jurisdiction;
- (d) A separate entity acquires Control of the Customer, or the Customer is merged with a separate entity. "Control" for the purposes of these Terms and Conditions and the Contract shall mean where an entity has 50% or more of the shares or stocks in the Customer or is able to direct the Customer's affairs and/or control the composition of the Customer's board of directors or equivalent body; or
- (e) The Customer shall refuse to provide any security for credit provided.

14.2 Without prejudice to any of its other rights or remedies, the Company shall have the right to terminate the Contract without any liability to the Customer if, in the reasonable opinion of the Company after an inspection into the Customer's financial or trade status or in light of any report considered by the Company, the Company at its absolute sole discretion deems that the Customer may not be able to pay the Price.

## 15 CONFIDENTIALITY

- 15.1 Both Parties undertake to each other not at any time to use or disclose any Confidential Information relating to the other Party other than for the purposes expressly envisaged by these Terms and Conditions without the express prior written consent of the other Party. Each Party may disclose Confidential Information to its employees who reasonably require to have same and who are bound by confidentiality provisions.
- 15.2 The provisions contained in clause 15.1 shall not apply:
- (a) to any information which is in or enters the public domain other than as a result of a breach of these Terms and Conditions;
  - (b) where the receiving Party receives the information from a third party which is not under any obligation of confidence to the Company;
  - (c) where the information has been developed by that Party independently of the disclosure; and
  - (d) to any information which is required to be disclosed, and only to the extent that is required to be disclosed, by the courts, regulatory authority, or process of law.
- 15.3 Each Party will give the other Party notice of any unauthorised misuse, disclosure, theft or other loss of the other Party's Confidential Information immediately upon becoming aware of the same.

## 16 ANTI-BRIBERY AND ANTI-CORRUPTION

- 16.1 Both Parties shall:
- (a) comply with all Applicable Laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**")
  - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and
  - (c) have and shall maintain in place throughout the term of these Terms and

Conditions its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate.

## 17 OWNERSHIP OF INTELLECTUAL PROPERTY

- 17.1 Unless otherwise agreed by the Parties in writing, the ownership of all Intellectual Property Rights relating to the Goods (other than Dies) and/or the Services shall (unless vested in a third party) at all times be vested in and belong to the Company. The Company shall be responsible for the registration and other protection of such Intellectual Property Rights in the Goods and/or Services as the Company deems fit.
- 17.2 The Customer shall not use the Company's name, logo or any other identification marks for the purpose of advertising or publicity without the prior written consent of the Company.
- 17.3 If the Goods have been manufactured to the specification or design of the Customer, the Customer shall indemnify the Company and keep the Company indemnified from and against any and all losses, liabilities, costs, claims, demands, expenses and fees (including, but without limitation, legal and other professional fees), actions, proceedings, judgments awarded and damages suffered or incurred arising out of or in connection with any infringement of any Intellectual Property Rights of any third party where such liability arises as a consequence of the specification or a modification of the specification supplied by the Customer.
- 17.4 If any claim is made against the Customer that Goods infringe or that their use or resale infringes the Intellectual Property Rights of any third party the Customer shall immediately notify the Company in writing and the Company shall deal with the claim as it deems fit. For the avoidance of doubt, the Company shall not be obliged to take any action and/or proceedings in relation such a claim, however:-
- (a) The Company shall be given full control of any proceedings or negotiations which it decides to undertake in connection with any such claim;

- (b) The Customer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;
- (c) The Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld); and
- (d) The Customer shall do nothing, which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement.

## **18 TOOLING**

- 18.1 Any Dies provided entirely or partly at the Company's expense shall (unless otherwise agreed by the Parties in writing) be and remain the Company's property and in its possession at all times, even when the Customer has been debited with the part cost. Where the cost of Dies is paid for in full by the Customer the Dies are the property of the Customer.
- 18.2 The Customer shall have the option, subject to it complying with all of its obligations under any contracts with the Company, of purchasing outright any Dies paid for partly by the Customer at an additional charge to be agreed between the parties if for any reason the Company is unable or unwilling to continue to supply mouldings from the said Dies.
- 18.3 The Company shall have the right to destroy Dies which have not been used for a period of two years on giving the Customer three (3) months' notice in writing.
- 18.4 Where Dies have not been paid for (in whole or in part) by the Customer, the Company reserves the right to utilise or dispose of such Dies in any manner the Company may deem expedient upon termination or expiry of a Contract.
- 18.5 In the event that Dies are paid for either wholly or partly by the Customer ("Customer Dies"), the Customer shall bear the risk of and the costs relating to any loss of or damage to the Dies, even whilst they are in the Company's possession, except that the Company agrees to take responsibility for basic maintenance of the Dies whilst they are in the Company's possession and subject to Clause 9 above, for any damage to the Die caused by the Company's negligence. The

Customer agrees to maintain insurance in respect of Customer Dies in accordance with Clause 12.3(e) above.

- 18.6 In the event that a Customer Die in the Company's possession is damaged or faulty other than due to the Company's negligence, the Company will estimate the cost of repair (if repair is possible) and provide a detailed analysis, a timing plan and a quote for the repair work to be undertaken either by the Company or a third party. No such repair work will be carried out without the prior approval of the Customer. The Customer shall bear all costs of such repair work. If, in the opinion of the Company, the Die is not viable for repair, it will notify the Customer of this, and it shall be the responsibility of the Customer to provide a replacement Die. The Company shall be under no further liability to use the Die and it shall not be liable for any losses, costs or expenses incurred by the Customer as a result. The Customer agrees to indemnify the Company in full against any and all costs and expenses incurred by the Company as a result of any loss of or damage to a Customer Die (other than that caused by the Company's negligence).

- 18.7 If the Customer orders less of the Goods to be produced using the Dies than is specified in the Company's quotation or fails to take delivery of such full quantity within the period stated in the quotation the Company shall be entitled to charge to the Customer the whole or a proportionate part of the cost of making the Dies as the Company thinks fit taking into account any part cost already paid by the Customer.

- 18.8 When a Die is made correct to the Customer's drawing or sample, the Customer shall pay in full the cost of any subsequent alteration made at his request.

## **19 RECOVERY OF TOOLING FROM THE COMPANY**

- 19.1 In the event that Dies or other plant, equipment or machinery ("Tooling") belonging to the Customer are kept on the Company's premises to enable the Company to use the Tooling to manufacture goods for the Customer or any third party (or for any other purpose) and the Customer wishes to recover the Tooling for any reason from the Company's premises at any time, the Customer shall:-

- (a) Not be entitled to remove the Tooling from the Company's possession until and unless all amounts outstanding from the Customer to the Company under any

contract have been paid in full. The Company shall have a lien over the Tooling until such amounts are paid in full;

- (b) Subject to Clause 19.1(a) above, arrange to collect the Tooling from the Company's premises at a time which is convenient to and agreed in writing by the Company, giving the Company not less than seven (7) days notice;
- (c) Bear all costs and expenses involved in the removal of and transportation of the Tooling from the Company's premises to the Customer's desired location,;
- (d) Assume all risk of damage to or loss of the Tooling from the date on which the Company notifies the Customer that the Tooling is available for collection and indemnify the Company in full against any costs, expenses, claims, or liabilities incurred by the Company as a result of any loss of or damage to the Tooling on or after that date.

## **20 PRODUCT SAFETY**

- 20.1 The Customer shall forward to its customers any information relating to the Goods supplied to it or referred to by the Company, including without limitation relating to the safety of the Goods.
- 20.2 If the Company notifies the Customer that it wishes to recall or replace any Goods on grounds of safety (or on any other grounds), then the Customer shall follow the reasonable instructions and processes of the Company relating to the recall or replacement of any such Goods.

## **21 EXPORT TERMS**

- 21.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this Clause 22 shall (subject to any special terms agreed in writing between the Company and the Customer) apply notwithstanding any other provision of these Terms and Conditions.
- 21.2 Unless otherwise agreed in writing between the Company and the Customer, the Company shall be under no obligation to give notice under section 32 (3) of the Sale of Goods Act 1979.
- 21.3 The Customer shall be responsible for arranging for testing and inspection of the Goods at the

Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on testing or inspection, and which is made after shipment, or in respect of any damage during transit.

- 21.4 Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Customer in favour of the Company and confirmed by a bank in England acceptable to the Company or, if the Company has agreed in writing on or before acceptance of the Customer's order to waive this requirement, by acceptance by the Customer and delivery to the Company of a bill of exchange drawn to the Customer payable 60 days after sight to the order of the Company at such branch of Lloyds Bank plc in England as may be specified in the bill of exchange.

## **22 RELATIONSHIP OF THE PARTIES**

Nothing in these Terms and Conditions shall be construed as creating a partnership between the Parties for any purpose and neither Party shall have the power or authority to bind the other Party or impose any obligations on it for the benefit of any third party.

## **23 AMENDMENTS AND VARIATIONS**

No variation or amendments to the Contract or to these Terms and Conditions shall be binding unless agreed in writing by a director or an authorised representative of the Company.

## **24 WAIVERS**

No delay in exercising or failure to exercise any of the rights of either Party arising from or in connection with the Contract or these Terms and Conditions shall operate as a waiver or release of that right. Any such waiver or release must be specifically granted in writing signed by the Party granting it.

## **25 ASSIGNMENT**

- 25.1 The Company shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Contract or these Terms and Conditions through any other Group company and any act or omission of any such company shall for the purposes of the Contract be deemed to be an act or omission of the Company.
- 25.2 The Company shall be entitled to carry out its obligations under the Contract through any agents

or sub-contractors appointed by it in its absolute discretion for that purpose.

25.3 The Company may assign, sub-contract, sub-license or otherwise dispose of any of its rights arising from the Contract or these Terms and Conditions without the prior written consent of the Customer, but the Customer may not assign, sub-contract, sub-license or otherwise dispose of any of its rights arising from the Contract or these Terms and Conditions without the prior written consent of the Company.

## **26 SEVERABILITY**

If any term, clause, condition or part of these Terms and Conditions is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from these Terms and Conditions and shall be ineffective without, as far as is possible, modifying any other provision or part of these Terms and Conditions and this shall not affect any other provisions of the Contract which shall remain in full force and effect.

## **27 DISPUTE RESOLUTION**

27.1 The Parties shall use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to these Terms and Conditions or the Contract or any breach thereof. If any such dispute cannot be settled amicably through ordinary negotiation between appropriate representatives of the Parties, the dispute shall be dealt with using the escalation procedure set out in this Clause 27.

27.2 The dispute shall be referred by either Party to the chief executives of each of the Parties and they or their nominees shall meet in good faith in order to try and resolve the dispute. If the dispute or difference is not resolved as a result of such meeting either Party may (at such meeting or within 14 calendar days of its conclusion or after the expiry of 28 days following the date of referral to the chief executives), refer the dispute or difference to a mediator to be appointed by agreement between the Parties. If the Parties fail to make such appointment within 7 days of the referral to the chief executives, either Party may ask CEDR to appoint a mediator.

27.3 If either Party refuses at any time to participate in the mediation procedure set out in Clause 27.1 and in any event if the dispute is not resolved within 30

days of the appointment of the mediator then either Party may commence proceedings in accordance with Clause 32.

## **28 ENTIRE AGREEMENT**

28.1 These Terms and Conditions and the acknowledgement of Purchase Orders represent the entire agreement between the Parties relating to the sale and purchase of Goods and/or Services and supersede all previous agreements, arrangements and understandings between the Parties relating to the sale and purchase of the Goods and/or Services.

28.2 Each Party acknowledges that in entering into the Contract it places no reliance on any representation, warranty or other statement relating to the subject matter of the Contract, other than as expressly set out in these Terms and Conditions and any acknowledgement of the applicable Purchase Order.

28.3 Neither Party shall have any liability or remedy in respect of any representation, warranty or other statement being false, inaccurate and/or incomplete unless it was made fraudulently or is contained in these Terms and Conditions. Nothing in these Terms and Conditions shall exclude or limit the liability of either Party for a fraudulent misrepresentation.

## **29 NOTICES**

29.1 Notices under these Terms and Conditions may be served by personal delivery, by first class post or by facsimile.

29.2 Notices shall be deemed to be served:-

- (a) On delivery when delivered personally;
- (b) On receipt of a printout confirming due transmission when transmitted by facsimile to the facsimile number notified by the other Party; or
- (c) 2 days after mailing if sent by mail, provided the postage is properly paid and such notice is correctly addressed to the respective Party at its registered office, or such other address as shall have been notified to the other Party in writing.

**30      CONTRACTS (RIGHTS OF THIRD PARTIES) ACT  
1999**

An entity which is not expressly a Party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall be expressly excluded from the Contract.

**31      GOVERNING LAW**

These Terms and Conditions and the Contract shall be governed by English law and subject to the provisions of Clause 27 the Parties hereby agree to submit to the exclusive jurisdiction of the English Courts.