

TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

- (a) In these terms and conditions the following expressions shall where the context admits have the following meanings.
“Company” the Company whose name appears on the front of the Invoice/Acknowledgement of Order
“Contract” the contract for the purchase and sale of the Goods
“Buyer” the person who accepts a quotation of the Company for the sale of the Goods or whose Order for the Goods is accepted by the Company
“Goods” the goods ordered by the Buyer [as more particularly specified on the invoice (s) issued by the Company in respect of the Order]
“Order” the order placed by the Buyer whether orally or in writing for the supply of the Goods
“Set Up Charges” the cost of cleaning and preparation of the paint, chemical feed tube for injection into tools to form the Goods.
“Terms and Conditions” the standard terms and conditions of sale set out herein and (unless the context otherwise requires) including any special terms and conditions incorporated in accordance with the provisions of Clause 2(b) below
- (b) Any reference in the Terms and Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time
- (c) Clause headings are for ease of reference only and do not affect the interpretation or construction of the Terms and Conditions

2. INCORPORATION OF CONDITIONS AND FORMATION OF CONTRACT

- (a) All contracts for the sale and purchase of Goods made between the Company and the Buyer shall be deemed to incorporate the Terms and Conditions which shall prevail over and take the place of any other terms and conditions stipulated, incorporated or referred to or contained in any document of

or communication from the Buyer in the course of negotiation and shall be the entire Contract relating to the Goods

- (b) No other agreement, representation or promise of any kind shall form part of, alter, vary, supersede or operate as a waiver of the Terms and Conditions or any of them unless expressly made or accepted by a Director of the Company in writing
- (c) Contract on the Terms and Conditions shall be made when the Company sends its written acceptance (in the form of an acknowledgement of Order) to the Buyer

3. PRICES

Unless otherwise expressly stated in writing by the Company quotations are given and orders are accepted by the Company on the basis that:-

- (a) Except as herein provided all prices are exclusive of Value Added Tax and Value Added Tax will accordingly be charged (where appropriate) at the rate prevailing at the time of despatch of the Goods
- (b) When an Order is received for the Goods and the total price for the Goods in the Order is below the minimum order level as notified to the Buyer then the following charges will be added to the price for the Goods
- (i) a cost of delivery of Goods to the Buyer
- (ii) the Set Up Charges
- (c) Quotations do not constitute an offer to sell, the Contract being formed pursuant to Clause 2(c) above and in any event after contract the Company shall be entitled without prior notice to adjust the stated price to take account of:-
- (i) any cost to the Company including reasonable storage charges resulting from delay by the Buyer in giving the Company sufficient information to enable it to supply the Goods contracted for or resulting from any alteration made at the request of the Buyer in the specification of the Goods to be supplied or in the place to which they are to be delivered or shipped

- (ii) any increase in the cost to the Company of producing or delivering the Goods which occurs due to causes beyond the Company's control between the date of the contract and the date when delivery is complete including but without limitation increases in wages, materials, production or other costs or fluctuation in currency exchange rates, taxes, or duties
 - (iii) any extra cost to the Company resulting from the Goods being carried at the request of the Buyer by methods more rapid or expensive than normal goods rail and/or road transport and/or where applicable, cargo ships
- (d) THE COMPANY'S PRICES ARE BASED ON THE TERMS AND CONDITIONS AND REFLECT THE LIMITATION UPON THE COMPANY'S LIABILITY WHICH THEY CONTAIN

4. DELIVERY

- (a) The place for delivery is as agreed in writing between the Company and the Buyer
- (b) Every effort is made to deliver the Goods as soon as ready. However despatch or delivery dates are business estimates only and in no case is delivery on or by a fixed date a term of the Contract. Late delivery shall not entitle the Buyer to terminate the Contract or refuse to take delivery of the Goods or withhold payment of any part of the price of the Goods and the Company accepts no liability for any loss or damage whatsoever and howsoever caused resulting from any delays in delivery in any circumstances
- (c) Where the Goods are ready for delivery and delivery by the Company is postponed either at the request of the Buyer or where the Buyer is unable to take delivery of the Goods then the Buyer shall make payment for those Goods as if the Goods were delivered and invoiced on the date of such request and the Company may store the Goods at its own premises or elsewhere at the Buyer's sole risk and all storage, insurance and transport

- (d) charges and costs and expenses relating to such storage shall be paid by the Buyer
- (d) Delivery may be made by instalments and any failure or defect in one delivery will not vitiate the Contract as to the remaining deliveries
- (e) The Buyer must examine the Goods at the time of delivery and the Goods must be signed for only by authorised personnel of the Buyer
 - (i) Any claim for damage upon delivery or short delivery or loss must be noted against the authorised signature and must also be notified in writing to the Company within 2 days of receipt of the Goods by the Buyer its warehouseman, bailee or agent and to the carrier (where relevant) within the carrier's specified time limit
 - (ii) Any damaged Goods (including packaging material) must be retained by the Buyer until inspected by the Company or its representative
- (g) In the case of non-delivery claims will not be entertained unless notified in writing to the carrier (where relevant) and to the Company respectively within 14 days of the invoice date
- (h) For the avoidance of doubt the Company shall be under no liability whatsoever for any loss or damage or deterioration to the Goods whatsoever and howsoever caused at any time after risk has passed to the Buyer pursuant to Clause 6 be law

5. PAYMENT

- (a) Unless otherwise expressly stated, the price is due and payable no later than 30 days from the end of the month of invoice ("the Due Date")
- (b) The drawing and delivering by the Buyer or the acceptance by the Company of cheques or bills of Exchange does not amount to payment for the Goods unless and until such cheques or Bills of Exchange are honoured on presentation
- (d) Any default in payment of an invoice or an instalment payable on an invoice on or by the Due Date shall render the entire balance

- outstanding on all invoices from the Company to the Buyer immediately payable in full without further demand being made notwithstanding any contrary provisions as to terms of payment in any one or all invoices
- (e) If full payment is not made by the Due Date:-
- (1) the Company shall be entitled to charge and receive interest on the unpaid balance at the rate of 3% above bank base rate for the time being
 - (2) the Company may suspend any further deliveries under the Contract (and outstanding deliveries under any other Contract between the Company and the Buyer) until payment is made or (without prejudice to any of its other rights) the Company may cancel the Contract in relation to such further deliveries and recover the Goods at the Buyer's expense
- (f) If the Buyer delays or requests delay in fulfilment of the Contract by the Company for whatever reason or in any way defaults in its obligations to the Company or the Company has any reason to believe the Goods are in jeopardy or that the Buyer is unable to pay for the Goods then without prejudice to any other rights the Company will be entitled (as it deems appropriate in the circumstances) to claim interest as above and damages with interest thereon and/or recover the Goods at the Buyer's expense and/or terminate the Contract and/or forthwith sue for and receive payment in respect of the Goods already supplied in accordance with the Contract and any other outstanding contracts
- (g) Unless the Company in its absolute discretion shall have agreed in writing to any specific appropriation by the Buyer, the Company shall have the right to appropriate any payment made by the Buyer towards the satisfaction of any invoice outstanding from time to time as the Company in its absolute discretion thinks fit
- (h) The Buyer shall have no right to withhold or delay payments due to the Company under any contract by reason of complaints in

respect of this or any other contract with the Company

- (i) Cancellation of an Order for whatever cause can be made only with the Company's consent and on payment of all costs incurred
- No time or indulgence granted by the Company shall prejudice its rights or remedies

6. RISK IN THE GOODS

Unless otherwise stated in writing the risk in the Goods shall immediately pass to the Buyer: -

- 6.1 In the case of Goods to be delivered by the Company or its agent to the Buyer's premises or to premises designated by the Buyer to the Company, at the time the Goods have been unloaded at the said premises
- 6.2 In the case of Goods to be collected by the Buyer, upon delivery of the Goods into the custody care or control of the Buyer or its warehousemen bailees or agents or to the carriers engaged by the Buyer and the Buyer thereafter shall be responsible for all claims, actions and losses arising out of or in any way associated with the Goods

7. TOOLING

- 7.1 Where a customer provides its own tooling for the purpose of fulfilment of contract or production of Goods then such tooling shall be held by the Company entirely at the risk of the Buyer
- 7.2 the Company shall have a lien on tools in respect of any outstanding debt from the Buyer and shall have a right of disposal of any such tooling if the Buyer fails to discharge any account by the due date.
- 7.3 If any of the events contemplated in clause 14 shall occur and the Buyer shall be indebted to the Company in respect of any sums of money whether the due date has occurred in respect of such sums or not then all right and title in any tools held by the Company shall pass to the Company to enable the Company to defray all or part of any indebtedness from the Buyer as the case may be.

8. PASSING OF TITLE

- 8.1 Notwithstanding risk in the Goods passing in accordance with Clause 6 hereof title in the Goods shall not pass to the Buyer until payment in full is received by the Company (together with any interest payable in respect thereof) for the Goods and no other amounts then being outstanding from the Buyer to the Company in respect of other goods supplied to the Buyer by the Company
- 8.2 Before title has passed to the Buyer under the terms of sub-clause 7(1) and without prejudice to any of its other rights, the Company shall have the right to recover or resell the Goods or any of them and by its servants or agents may enter upon the Buyer's premises for that purpose
- 8.3 Until payment due under all contracts between the Buyer and the Company has been made in full
- 8.3.1 the Buyer shall hold as bailee for the Company the Goods and the Buyer shall store or keep the Goods in such a way as clearly to indicate that property remains in the Company and shall not remove, obscure or delete any identifying marks placed on the Goods by the Company
- 8.3.2 in the event of the sale of the Goods by the Buyer the Buyer shall hold the proceeds of the such sale on trust for the Company in a separate bank account opened by the Buyer for this purpose
- 8.3.3 the Company shall be entitled to trace all such proceeds of sale or hire charges received by the Buyer through any bank or other account maintained by the Buyer
- 8.3.4 in the event of sale of the Goods by the Buyer in the ordinary course of its business the Buyer shall assign its rights to recover the selling price from the third parties concerned to the Company if required to do so in writing by the Company
- 8.4 As the insurable risk in the Goods shall pass to the Buyer as soon as the Goods are delivered to it or its order and pending disposal the Buyer shall keep the goods

insured in the amount of the price at which the Goods are sold to the Buyer against all insurable risks

- 8.5 If Goods are destroyed by an insured risk prior to the same being paid for by the Buyer, the Buyer shall receive the proceeds of any such insurance as trustee for the Company
- 8.6 Immediately prior to the happening of any of the termination events specified in Clause 13 below payment of the purchase price for the Goods shall be deemed to have become due despite any credit period allowed by the Company in Clause 5(a) above or otherwise and the Buyer shall cease to have any right to use resell or otherwise dispose of the Goods

9. GUARANTEE

- (a) Subject to the remainder of this Clause the Company will remedy free from charge any defect in materials and/or workmanship in the Goods or (at its option) replace the Goods or credit the purchase price for any Goods which are found to be defective provided that: -
- (i) the Buyer complies with the provisions of sub-clauses (e) and (f) of Clause 4 above
- (ii) notice of any defect in the Goods is given to the Company immediately the Buyer becomes aware of the same and in any event within 7 days of the date of receipt of the Goods by the Buyer
- (iii) repairs to the Goods (if any) have been carried out by the Company or persons duly approved by the Company
- (iv) defective Goods are promptly returned by the Buyer to the address designated by the Company in original clean packing
- (v) the Company or its representative shall first have had the opportunity to inspect the Goods and is satisfied that the defect existed at the time of delivery to the Buyer or arose in the course of normal and proper usage [and that maintenance and operation has been as recommended in any operating manuals and instructions

provided with the Goods and has not arisen by reason of misuse neglect or accident after the passing of risk to the Buyer]

- (b) If any of the Goods returned pursuant to sub-clause (a) above prove not to be defective the Company reserves its rights to charge the Buyer for all costs and expenses incurred in testing or inspecting the Goods and returning the same to the Buyer
- (c) Unless otherwise agreed in writing with the Company if only some of the Goods are defective the Buyer shall accept the remainder of the Goods and be liable to pay the purchase price for the Goods reduced pro rata

10. LIMITATIONS OF LIABILITY

- (a) The Buyer's attention is specifically drawn to Clause 3(d) above
- (b) The Company does not exclude or restrict its liability for: -
 - (i) death or personal injury to the extent it results from the negligence of the Company its employees or agents or sub-contractors
 - (ii) (subject to a limit of liability in respect of anyone incident to the purchase price of the Goods comprised in the Contract relevant to the Goods under which a claim arises) direct physical damage to tangible property of the Buyer to the extent it results from negligence
 - (iii) death or personal injury or damage to other property (as defined in the Consumer Protection Act 1987) which may arise from or which are consequent upon any defect in the Goods pursuant to a claim under the Consumer Protection Act 1987
- (c) Subject to sub-paragraph (a) of this Clause, subject also to Clause 8 above and to sub-paragraph (c) (i) of this Clause below and to sub-paragraph (d) of this Clause below dealing with consumer sales and to the extent that any applicable statutory provisions shall not make it unlawful so to do, the obligations undertaken by the Company under the Terms and Conditions constitute the sole liability of

the Company in respect of defects in the Goods and accordingly.

- (i) save as herein provided all other conditions warranties statements representations as to description merchantability quality fitness or performance of the Goods expressed and implied by statute or common law and without limitation to the foregoing the implied terms conditions and warranties of the Sale of Goods Act 1979 ("the 1979 Act") or any re-enactment or statutory modifications thereof are excluded with the same effect as if the same were severally expressly set out and excluded Provided always that the Buyer is entitled in all cases to the Buyer's statutory rights under Section 12 of the 1979 Act
- (ii) the Company shall be under no liability in contract or in tort (including without limitation for negligence) for any loss damage death or injury arising directly or indirectly from any defect or in failure of the Goods to fulfil the Buyer's functions or caused directly or indirectly by or resulting from the Goods or their use by the Buyer or any third party
- (iii) in no circumstances shall the Company be liable for any direct, indirect or consequential loss or loss of use of profits or contracts suffered by the Buyer or any third party arising out of or in connection with the subject matter herein
- (iv) the exclusions set out above apply whether or not the purpose for which the Goods are purchased has been made known to the Company or samples have been supplied to the Company Accordingly the Buyer is responsible to ensure that the Goods purchased meet the Buyer's requirement and are fit for the Buyer's purpose
- (d) Notwithstanding the exclusions contained in this Clause 9 the Buyer is entitled: -

- (i) in all cases to the Buyer's statutory rights under Section 12 of the 1979 Act and Section 2 of the Supply of Goods and Services Act 1982 ("the 1982 Act");
- (ii) (where the transaction recorded by this Agreement is with a consumer and constitutes a consumer transaction as defined in the Consumer Transaction (Restrictions on Statements) Order 1976 ("the 1976 Order"), (as amended) or the Buyer is dealing as a consumer as defined by the Unfair Contract Terms Act 1977 ("the 1977 Act"), to the Buyer's statutory rights and in particular those referred to in Section 5(2) of the 1977 Act (namely Section 13, 14 and 15 of the 1979 Act and Sections 3, 4 and 5 of the 1982 Act) it is expressly recorded that where the transaction is of a nature set out in sub-paragraph (c) (ii) above the contents of sub-paragraph (c) of this Clause 9 does not and will not affect the Buyer's statutory rights referred to in the 1976 Order or otherwise

11. TRADEMARKS ETC.

- 11.1 The Company gives no warranty or indemnity in respect of any action or alleged infringement of patents, trademarks trade names registered designs design copyright or any other industrial property right relating to the Goods
- 11.2 Where the Company supplies or produces tools, designs, moulds, dies, jigs, proofs and samples copyright remains the Company's property

12. INDEMNITIES AND UNDERTAKINGS

- (a) To the extent permissible under law the Buyer will indemnify the Company against all liability for damages penalties claims costs and expenses to which the Company may become liable in respect of:-
 - (i) claims by any third party arising directly or indirectly out of the Buyer's use of the Goods including

without prejudice to the generality of the foregoing any fines impositions and penalties incurred by or levied by reason of any act or default whatsoever by the Buyer or any person responsible to the Buyer claims by any third party in respect of any words descriptions copyright trademarks devices designs registered or not and infringements or actions of any kind relating to or arising from matter printed at the Buyer's request or specifications for the Goods or their manufacture

- (b) The Buyer undertakes to sell the Goods under the brand or trademarks and specifications with which the Goods are supplied and shall not deface, remove or obliterate same
- [(c) The Buyer warrants that where it requires the Company to arrange manufacture production or supply of the Goods to the Buyer's specification or by the Buyer's methods, the manufacture, means of production, product created, market used, get up and supply will not constitute an infringement of any copyright, patent, registered design, trade mark, intellectual or industrial property right of any third party, nor be in breach of any statute regulation or bye law nor shall any materials be defamatory or ille'lal In any event the Buyer shall indemnify the Company against all or any liabilities, costs, fines, expenses (including legal), claims, actions or damages from any civil or criminal proceedings (whether or not actually instituted) which the Company may suffer as a result of breach of the warranty hereunder)

13. FORCE MAJEURE

The Company shall not be liable for failure to perform or for delay in performing any of its obligations hereunder resulting from any cause beyond its reasonable control or due to any act of force majeure Upon any such cause, the Company shall give notice to the Buyer with reasonable promptness and be entitled to claim suspension of its obligations during the continuance of such cause, it being understood that the parties will use their best

endeavours to remove or avoid such cause with all personal despatch

14. TERMINATION

If:

- (a) the Buyer shall make default in or breach of any of its obligations to the Company; or
- (b) if any distress or execution shall be levied upon the Buyer its property or assets; or
- (b) if the Buyer shall make or offer to make any arrangement or composition with creditors or if an order for act of bankruptcy or if any petition or receiving order in bankruptcy shall be presented or made against the Buyer or if the Buyer shall be a limited company and any resolution or petition to wind up such company's business shall be passed or presented otherwise than for reconstruction or amalgamation; or
- (d) if an administrator or administrative receiver is appointed over such company's undertaking property or assets or any part thereof; or
- (e) if the effect of any legislation regulation judgment decree or order of the United Kingdom, or of the E.C. or of any other governmental or administrative agency having jurisdiction directly or indirectly over the Company or its supplier shall adversely affect trading conditions or the terms of trade between such suppliers and the Company

then and in any such event the Company shall have the right forthwith to determine any Order then subsisting and upon written notice of such determination being posted to the Buyer's last known address any subsisting order shall be deemed to have been determined without prejudice to any claim remedy or right the Company might otherwise make or exercise

15. WAIVER

No forbearance of indulgence on the part of the Company in enforcing the Terms and Conditions shall prejudice its strict rights hereunder nor shall it be construed as waiver thereof

16. SEVERANCE

If any clauses in the Terms and Conditions or any part of anyone of them is rendered void or unenforceable by any legislation to which it is subject it shall be void to that extent only or if unenforceable then it shall be unenforceable to the extent that it is shown that it would not be fair or reasonable to allow reliance upon it and no further

17. CREDIT REFERENCE

The Company shall be entitled at any time to cancel any Order of the Buyer by seven days' written notice to the Buyer if the Buyer's credit worthiness or standing is not in the Company's absolute opinion satisfactory notwithstanding such termination the Buyer shall be liable to pay all costs and expenses incurred to the time of expiry of notice

16. ASSIGNMENT

The Buyer shall not be entitled to assign or transfer (in whole or in part) or purport to assign or transfer the benefit of the Contract to any third party howsoever

19. NOTICES

Notices or other communications required to be given by either party under these conditions shall be in writing and delivered personally or sent by pre-paid first class registered post with recorded delivery or by telex (confirmed by recipients answerback) addressed to the intended recipient at the address set out overleaf (or at such other address as the parties may notify to each other in writing from time to time) Any notice or communication shall be deemed served immediately if delivered personally or given by telex (confirmed by recipient's answerback) or two business days after posting (seven business days if to or from abroad and sent by registered express post)

20. GOVERNING LAW

The Contract shall be governed in accordance with the laws of England to the exclusive jurisdiction of whose Courts the parties by their agreement hereto shall irrevocably be deemed to have submitted