



Stampings Limited

## TERMS AND CONDITIONS

### 1. FORMATION OF CONTRACT

- (a) Any quotation or estimate given by the Company is an invitation to the Buyer to make an offer and no order of the Buyer placed with the Company in pursuance of a quotation or estimate or otherwise shall be binding on the Company unless and until it is accepted by the Company. (b) Any Contract howsoever made between the Company and the Buyer shall incorporate and be subject to these Conditions and receipt of goods by the Buyer shall be deemed to be conclusive proof that the Buyer has accepted these Conditions in the absence of any expressed or other implied acceptance of these Conditions by the Buyer. (c) Without prejudice to the generality of the foregoing all other Terms and Conditions (except those implied in favour of a Seller which are not consistent with these Conditions) are expressly excluded (d) No variation to these Conditions shall be binding unless specifically agreed in writing between the authorised representatives of the Company and the Buyer.

### 2. ORDERS AND SPECIFICATIONS

1. No order submitted by the Buyer shall be deemed accepted by the Company unless or until confirmed in writing by the Company's authorised representative.
2. If the goods are to be manufactured or any process is to be applied to the goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.
3. No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing to the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit) costs, (including the costs of all labour and materials used) damages, charges, and expenses incurred by the Company as a result of cancellation.

### 3. DELIVERY

1. Any dates quoted for delivery of the goods are approximate only and the Company shall not be liable for any delay in delivery of the goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in writing. The goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
2. Where the goods are to be delivered in instalments, such delivery shall constitute a separate Contract and failure by the Company to deliver any one or more of the instalments in accordance with these conditions or any Claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

### 4. MISSING GOODS

If the goods are not received within 3 working days of the date of dispatch the Buyer shall notify the Company orally within 3 days and confirm such notification in writing. If no such notification is given within the time limit prescribed the goods shall be deemed to have been delivered in accordance with the Contract

### 5. RISK AND PROPERTY

- (a) Risk of damage to or loss of the goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the goods, the time when the Company has tendered delivery of the goods
- (b) Notwithstanding delivery and the passing of risk in the goods, or any other provisions of these Conditions, property in the goods delivered where delivery has taken place otherwise than shall remain vested in the Company. (notwithstanding the delivery of the goods and the passing of the risk in them to the Buyer) until
- (i) the price of the goods: and
  - (ii) all other money due from the Buyer to the Company in respect of any goods delivered or to be delivered has been paid in full.
- (c) If payment for any outstanding goods, whether delivered or not, is overdue in whole or in part the Company may (without prejudice to any of its other rights) recover or re-sell the goods or any of them and may enter upon the Buyer's premises by its servants or agents for that purpose.
- (d) Such payments shall become due immediately upon the commencement of any act or proceedings in which the Buyer's solvency is involved.
- (e) If any of the goods are incorporated in or used as material for other goods before such payment the property in the whole of such other goods shall remain with the Company until such payment has been made, or such other sold as aforesaid, and all the Company's rights hereunder in the goods shall extend to those other goods.
- (f) Until the Company is paid in full for all the goods the relationship of the Buyer to the Company shall be fiduciary in respect of the goods or other goods in which they are incorporated or used and if the same are sold by the Buyer the Company shall have the right to trace the proceeds thereof according to the principles in *re Hallett's Estate* (1880) 13ChD696, (1B74 to 80) All England Reports page 793. A like right for the Company shall apply where the Buyer uses the product in any way so as to be entitled to payment from a third party.
- (g) For the purpose of these Conditions and in the absence of evidence to the contrary goods supplied at any time by the Company to the Buyer shall be deemed to have been re-sold used or processed in the order in which they were supplied.

### 6. LIABILITY FOR DEFECTS

1. The Company does not give any warranty that the goods are free from defects which arise out of any or the following
  - (a) the design of the goods by the Company in compliance with specifications laid down by the Buyer;
  - (b) the use of materials in the manufacture of the goods by the Company in compliance with specifications laid down by the Buyer, or
  - (c) any other matter in relation to the goods in respect of which the Buyer has laid down specifications or instructions with which the Company has complied in their manufacture and/or supply,
2. (a) "Defect" shall have the meaning set out in the Consumer Protection Act 1987 (hereinafter called "the act")
3. (a) Subject to the Clause 1 above and sub-clauses (b) (c) and (d) below the Company warrants that the goods shall at the time of delivery be free from defects in design, workmanship and materials
  - (b) In relation to any goods returned to the Buyer due to a defect arising out of any of the matters referred to in Clause 1 above the Buyer agrees to be responsible for any costs, charges and expenses arising in connection with the replacement of the goods or remedy of such defect and the Company shall in no circumstances be under any obligation to refund to the Buyer the price payable by the Buyer for any such goods;
  - (c) The Company shall be under no liability in respect of any defects arising from fair wear and tear, wilful damage and negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing) misuse or alteration or repair of the goods without the Company's approval;
  - (d) The Company shall be under no liability under the above warranty (or any other warranty condition or guarantee) if the total price for the goods has not been paid by the due date for payment.

4. The Buyer hereby agrees to indemnify the Company in respect of any loss, damage, costs, charges, expenses or other liability arising out of any claims, including any claims under Part 1 of the Act, as a result of any defect in the goods whether arising out of any matters referred to in Clause 1 above or otherwise.
5. The Buyer hereby agrees to indemnify the Company in respect of any loss, damage, costs, charges, expenses or other liability arising out of any claims, including any claims under Part II of the Act which arises as a result of the Buyer's failure to do all acts possible to comply with the general safety requirement in respect of the goods.

#### **7. FORCE MAJEURE**

The Company shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a direct or indirect result of the supply of the goods by the Company being directly or indirectly prevented, hindered or delayed by reason of any circumstances outside the control of the Company and affecting the provision of all or any part of the goods by the Company's usual source of supply or the delivery of the goods by the Company's normal route or means of delivery or either circumstances whatsoever, including (without limitation) any act of god, war, riot, strike, lock out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, failure or shortage of power supplies, fire, flood, drought, explosion, difficulty in obtaining workmen, materials or transport, refusal of any licence or permit or any other sanction or request of any Government or governmental authority. In the event of such circumstances the Company shall have the option (exercisable by notice to the Buyer) to terminate the Contract (whereupon the Company shall be relieved of all liability under the Contract) to extend the time for delivery or other performance by a period equal in that during which such Circumstances subsist, or to reduce the quantity of the goods to be supplied hereunder. In all cases without incurring any liability for any loss or damage suffered by the Buyer as a result.

#### **8. CONSEQUENTIAL LOSSES**

The Company shall not be liable for any consequential losses suffered by the Buyer in any circumstances including (without limitation) the supply of defect goods delivered and delayed delivery.

#### **9. PRICE OF THE GOODS**

1. The price of the goods shall be the Company's quoted price or, where no price has been quoted (or a quoted price is no longer valid) the price listed in the Company's published price list current at the date of delivery.
2. The Company reserves the right by giving notice to the Buyer at any time before delivery, to increase the price of the goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture) any change in delivery dates, quantities or specifications for the goods, which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.
- 3 Except as otherwise stated under the terms of any quotation or in any price list of the Company, and unless otherwise agreed in writing between the Buyer and the Company, all prices are given by the Company on an ex works basis, and where the Company agreed to deliver the goods otherwise than at the Company's premises, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.
4. The cost of pallets and returnable containers may be charged to the Buyer in addition to the price of the goods but full credit will be given to the Buyer provided they are returned undamaged to the Company before the due payment date.

#### **10. TERMS OF PAYMENT**

1. The Company shall be entitled to invoice the Buyer at any time after delivery of goods as defined in Clause 3 hereof.
2. The Buyer shall pay the price of the goods by the agreed due date based on the Company's invoice, notwithstanding that delivery may not have taken place and the property and the goods has not passed to the Buyer. The time of payment of the price shall be essence of the Contract. Receipts for payment will be issued only upon request.
3. If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company shall be entitled to:
  - (a) cancel the Contract or suspend any further deliveries to the Buyer.
  - (b) appropriate any payments made by the Buyer to such of the goods (or the goods supplied under any other Contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer) and charge the Buyer interest (both before and after any Judgement) on the amount unpaid at the rate of 3% per cent per annum above HSBC Bank base rates from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest)

#### **11. INTELLECTUAL PROPERTY**

1. The Buyer warrants that any instructions or designs furnished or given by the Buyer to the Company in connection herewith shall not be such as will cause the Company in performing the Contract to infringe any patent, copyright or other intellectual property right and the Buyer shall indemnify the Company in respect of any loss or damage whatsoever arising from any infringement or claim of any person against the Company in respect of the manufacture of the goods in compliance with such Instructions or designs the sale importation or use of the goods into any country other than their country of manufacture of the application by the Buyer to the goods of any false or misleading trade descriptions.

#### **12. SEVERANCE AND WAIVER**

- (a) If at any time one or more of these Conditions (or any paragraph, sub paragraph or any part thereof) is held to be or becomes unenforceable for any reason, under any applicable law, the same shall be deemed omitted herefrom and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby,
- (b) The rights and remedies of the Company shall not be diminished, waived, or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure or delay by the Company in asserting or exercising any such rights or remedies.

#### **13. LIEN**

Without prejudice to any other rights and remedies which the Company may have, the Company shall in respect of all debts of the Buyer to the Company have a general lien on all tools, goods and other property belonging to the Buyer in the Company's possession (whether worked on or not). The Company shall be entitled upon the expiration of fourteen days notice to the Buyer, to dispose of such tools, goods or property as it thinks fit and to apply any proceeds of sale thereof towards the payment of such debts.

#### **14. JURISDICTION**

These Conditions and each and every Contract made pursuant to these Conditions shall be governed and construed and interpreted in all respects in accordance with English Law and the Company and the Buyer irrevocably submit to the exclusive jurisdiction of the English Courts in respect of any dispute arising from a Contract to which these Conditions relate.