

Photofabrication (Services) Ltd

TERMS and CONDITIONS of BUSINESS

1. GENERAL FORMATION OF CONTRACT

- 1.1 All orders and contracts for goods and services shall be subject to these conditions to the exclusion of all terms contained in, deduced with, or endorsed on the Customer's purchase order, confirmation of order, specification or other document issued by the Customer.
- 1.2 THE CUSTOMER'S ATTENTION IS DRAWN PARTICULARLY TO CLAUSES 12.2 TO 12.5 BELOW
- 1.3 Each order or acceptance of a quotation by the Customer from the Company shall be deemed to be an offer by the Customer to purchase goods subject to these conditions
- 1.4 No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the goods to the Customer

2. QUOTATIONS

All quotations are based on current rates for labour, materials and overheads. Quotations shall be valid for 30 days from the date upon which they were given, after which period they are subject to confirmation.

3. DESIGN ASSISTANCE

- 3.1 The Customer agrees to indemnify the Company against all claims for damages or costs and against all liability in respect of assistance with component and tooling design and specifications.
- 3.2 Where the Company advises the Customer on matters of component and tooling design and specification the Customer remains the design authority and shall satisfy itself that such designs and specifications will be fit for the Customer's intended purpose whether or not the intended purpose and requirements were communicated to the Company.
- 3.3 Intellectual property rights in any component, tooling or moulding design carried out by the Company on the instruction of the Customer, whether or not to the Customer's specification, shall vest in the Company until payment for all sums of whatever nature due to the Company from the Customer has been made in full in cleared funds, whereupon the intellectual property rights shall pass to the customer

4. CUSTOMER'S GOODS AND TOOLING

- 4.1 Subject to clause 12.4 the Company shall not be responsible for any loss or damage to the Customer's goods and tooling, however caused (including fire, explosion, accident, negligence, error, defective workmanship and any acts or omissions etc.) whether or not caused in fulfilment of contract.
- 4.2 Whilst in the Company's possession or that of the sub-contractor or in transit, all Customer's goods and tooling are all at the Customer's risk in all respects.

5. PATENTS AND DESIGN

- 5.1 The Customer shall indemnify the Company against any claims for damages or costs and against all liability in respect of any infringement of patent right, registered design right, copyright or other third party industrial intellectual property rights resulting from the Company's compliance with the Customer's instructions expressed or implied.
- 5.2 A Customer supplying drawings, designs, artwork or data files warrants that they are entitled to the benefit of those designs etc.
- 5.3 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any description or illustration contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the goods described in them. They shall not form part of the contract and this is not a sale by sample.

6. CUSTOMER'S FREE ISSUE RAW MATERIAL

The Company will not be responsible for replacement of rejected parts made using Customer's materials unless the Company has specifically so agreed in writing in advance.

7. PAYMENT

- 7.1 Payment is due 30 days from the end of month of invoice date unless otherwise agreed in writing. All prices quoted and invoices are strictly nett of VAT and other taxes or levies unless otherwise stated.
- 7.2 The Company shall be entitled to charge interest on any sums not so paid. Such interest shall be calculated on a day to day basis on the amount outstanding from the due date of payment at a rate of 4% in excess of the highest rate at which Barclays plc base lending rate stood at any time within which the debt remained unpaid.
- 7.3 The Company shall be entitled to charge any costs involved in debt collection of overdue amounts.
- 7.4 The Customer shall not be entitled to withhold payment of any sums due to the Company by reason of any disputed claim of the buyer for defective goods or alleged breach of contract by the Company unless such claims have been notified to the Company pursuant to clause 11 of these conditions.
- 7.5 No deductions shall be made by the Customer by way of any set off or counter claim however arising.
- 7.6 Time for payment shall be of the essence.

8. DELIVERY

- 8.1 The Company sells ex-works, the delivery and packing are to the Customer's individual requirements and will be charged accordingly.
- 8.2 Delivery terms are quoted subject to confirmation after receipt of order and are subject to raw material supply.
- 8.3 Whilst the Company will make reasonable efforts to comply with the quoted rate or time of delivery, time of deliveries is not of the essence in this contract and the Company shall not be liable for any penalty, loss, injury, damage or expense directly or indirectly consequent upon any delay or any failure in delivery or performance by the Company or its agents or servants from and cause whatsoever nor shall such delay entitle the purchaser to cancel any order, refuse to accept or repudiate any contract for work to be done.
- 8.4 Unless otherwise agreed in writing by the Company, and subject to the provisions of clause 9 below, delivery of the goods shall take place at the Company's place of business
- 8.5 If for any reason the Customer fails to accept delivery of any of the goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations:
 - (a) risk in the goods shall pass to the Customer;
 - (b) the goods shall be deemed to have been delivered;
 - (c) the Company may store the goods until delivery, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, storage and insurance)

9. EXPORT

The liability for loss or damage in transit outside the UK is as per the terms of the contract using 'incoterms 2000' as the standardised interpretation of the expression for CIF contracts or FOB contracts.

10.FORCE MAJEURE

If events beyond the reasonable control of either party (including without limitation to the generality of the foregoing words, force majeure, war, act of terrorism, riot, strikes, lockouts, act of God, storm, fire, earthquake, explosion, flood, trade disputes, shortage of raw materials or supplier and Government action) prevent or hinder the provision of services or the manufacture, delivery or acceptance of the goods, delivery or service may be suspended in whole or in part and the affected party shall immediately give notice in writing thereof to the other party. Suspension of delivery or service shall continue so long as manufacture, delivery or acceptance of goods or provisions or the services is so prevented or hindered, and the original time for delivery or service shall be extended by the period of any such suspension. If such suspension continues for longer than 90 days in respect of any goods or services either party shall have the option to terminate the contract with regard to such goods or services. Neither party shall be liable for any loss caused to the other party by such suspension or

termination except that where the Company has incurred expenditure due to the special nature of the Customer's order the Company shall be reimbursed such expenditure.

11. CLAIMS

Any claims of whatever nature arising out of this contract (including the warranty contained in clause 12 below) shall be waived by the Customer unless:

- (a) it notifies both the Company and the carrier (if any).
 - in the event of damage - within 3 working days of delivery
 - in the event of part or whole non-delivery - within 10 working days of Delivery Note date.
 - in the event of parts to be rejected - within 10 working days of Delivery Note date.
- (b) ceases to make any further use of such goods after giving the notice referred to in (a)

12. WARRANTY AND LIMITATION OF LIABILITY

- 12.1 The Company warrants the goods specified on the face hereof against defective materials and faulty workmanship. All other warranties or conditions, statutory to the extent allowed by law or otherwise, are specifically excluded.
- 12.2 Subject to conditions 4.1, 8.3 and condition 12.1, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:
- (a) any breach of these conditions
 - (b) any use made or resale by the Customer of any of the goods, or of any product incorporating any of the goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the contract
- 12.3 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the contract.
- 12.4 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation
- 12.5 Subject to condition 12.3 and condition 12.4:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall be limited to the contract price; and
 - (b) the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the contract.

13. TITLE AND RISK

- 13.1 Subject to clause 8.4, until full payment has been received by the Company for all goods or service whatsoever supplied at any time by the Company to the Customer the following terms apply.
- (a) property in the goods shall remain in the Company
 - (b) the Customer shall store the goods in such a way that they can be readily identified as the property of the Company
 - (c) if the Customer sells the goods in the ordinary course of business the proceeds of the sale shall be the property of and held in trust for the Company in a separate account
 - (d) if a Customer is in default for longer than 14 days in the payment of any sum whatsoever due to us or if any bill of exchange, cheque or other negotiable instrument drawn or accepted or endorsed by the Customer in favour of the Company is dishonoured on presentation for payment or if a receiver or administrator is appointed over any of the assets or the undertaking of the Customer or the Customer goes into voluntary liquidation otherwise than for the purpose of

reconstruction or amalgamation or causes a meeting of or makes any arrangement or composition with creditors or commits any act of bankruptcy, the Customer shall place the product at the disposal of the Company who shall be entitled to enter upon the premises of the Customer for the purpose of removing such products from the premises.

13.2 Where payment is made by cheque the Company shall not be deemed to have received payment until the cheque has been cleared.

13.3 Notwithstanding the foregoing, risk in the products shall pass to the Customer on delivery.

14. REPLACEMENT OF GOODS

The Company reserves the right to replace with sound goods any goods found to be defective by reason of materials or workmanship.

15. RETURN OF GOODS

The Company reserves the right to refuse the return of goods unless written notification of shortages or dispute is made by the Customer to the Company within ten working days of receipt by the Customer.

16. ORDERS AND SPECIFICATIONS

16.1 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order including all applicable specifications submitted by the Customer for giving the Company any necessary information relating to the goods within a sufficient time to enable the Company to perform the contract in accordance with its terms and for detailing any delivery instructions

16.2 The Company reserves the right to make any changes to the Customer's specification of the goods which are required to conform with any applicable safety or other statutory requirements

16.3 Where changes are made to the Customer's specification the Company shall notify the Customer who shall either provide a new specification or permit the Company to proceed with the manufacture of the goods in accordance with the Company's changes

16.4 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including the cost of all labour and materials used) damages charges and expenses incurred by the Company as a result of cancellation

17. QUANTITY

The Company shall be deemed to have fulfilled the contract if the goods delivered are within a tolerance of 10 per cent above or below the quantity ordered.

18. SUB-CONTRACTING

The Company reserves the right to sub-contract any order in whole or in part, and these terms shall apply notwithstanding that the Company may have sub-contracted.

19. TRADES DESCRIPTION ACT 1968

Where any trade description or other indication or representation is applied to any goods at the Customer's request the Customer warrants that the same will be true and accurate in all respects and that the supply or offer supply of any such goods will not give rise to an offence by the Company under the Trades Descriptions Act 1968. The Customer shall keep the Company fully indemnified against breach of the foregoing warranty.

20. THE DATA PROTECTION ACT 1998 ("the Act")

The Company may transfer personnel data about Customers of the Company's bankers or financiers for the purposes of providing services and for the purposes of obtaining credit insurance, making credit reference agency searches, credit control, assessment and analysis (including credit scoring, market, product and statistical analyses), securitisation and protecting the Company's interests. The Company shall provide details of its bankers/financiers and any credit reference agencies to whom personal data (as defined in the Act) are transferred upon request to any Customer whose personal data are so transferred.

21. DEFAULT

In the event of default in payment of any monies from the Customer, or should the Customer go into liquidation or become subject to a receivership, the Company may at its option stop work upon any order from the Customer then in hand and shall accept no liability in respect of such stoppage. The Company reserves a general lien on any materials, patterns and any other property of the Customer in its possession for all monies due or accruing due from the Customer on any account.

22. NOTICES

Any notice given to the Customer may be given by posting the same by first class post to the address of the Customer last known to the Company and shall be deemed to have been served 24 hours after posting.

23. JURISDICTION

The contract shall in all respects be considered as an English Contract and in conformity with English Law and all disputes shall be decided by the Court in England.



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