

TERMS AND CONDITIONS OF SALE

1. Definitions

- 1.1 "Company" means MGR Foamtex Limited, a limited liability company registered in England and Wales with registered number 02204272.
- 1.2 "Quotation" means the Company's formal written quotation or other written offer to sell the Goods.
- 1.3 "Buyer" means the person, firm, company or other organisation accepting the Quotation incorporating these Conditions.
- 1.4 "Order" means the Buyers order issued in writing, including facsimile or email, following the Buyers acceptance of the Quotation incorporating these conditions.
- 1.5 "Goods" means all items to be manufactured or supplied by the Company as set out in the Order; and, where appropriate, shall include "Services" to be provided by the Company as described in condition 9.
- 1.6 "Contract" means the agreement arising between the Company and the Buyer following receipt of the Order for the Goods. The Contract shall consist of the Order, these conditions of sale and any other documents or conditions specified or referred to in the Quotation but shall specifically exclude any conditions appearing on or referred to in the Order.
- 1.7 "Delivery" means delivery of the Goods by the Company to the Buyer in accordance with condition 5.1.

2. General

All Contracts entered into by the Company are subject to and governed by these conditions which may only be varied by the Company in writing and in any event acceptance of the Goods on delivery shall constitute acceptance of these conditions.

3. Prices and Quotations

- 3.1 All prices quoted by the Company for the supply of Goods are as shown in the Quotation and, unless otherwise agreed in writing, are on the basis that the Goods are deemed delivered to the Buyer at the point of Delivery stipulated in condition 5.1.
- 3.2 All prices are exclusive of value added tax or any other taxes customs or excise duties and the Company shall be entitled to charge these items to the Buyer at the rate applicable at the date of invoice.
- 3.3 Minimum Order values and quantities, where applicable, will be as shown in the Quotation. If no minimum quantity is stated, the minimum order value will be £250.00
- 3.4 Prices quoted by the Company are subject to withdrawal or adjustment in the event of fluctuation in the rates of exchange.

4. Payment

- 4.1 Unless otherwise agreed in writing payment of the Company's invoice shall be made by the Buyer in full in pounds sterling or other agreed currency no later than thirty days from the date of Delivery.
- 4.2 Time is of the essence in respect of payment of all invoices and in the event of delay the Company shall have the right to:
 - 4.2.1 suspend or cancel any of its outstanding obligations under the Contract; and/or
 - 4.2.2 charge interest to the Buyer in accordance with the provisions contained in the Late Payment of Commercial Debts (Interest) Act 1998 as amended; and/or
 - 4.2.3 demand immediate payment for any Goods supplied to the Buyer.
- 4.3 The Buyer shall have no right to set off any amounts owing to or alleged to be owing to it by the Company against unpaid invoices due to the Company.
- 4.4 The Company shall have the right for reasonable cause to vary or withdraw credit facilities or to require from the Buyer cash on or before Delivery or security for payment and to

withhold Delivery until such requirement is complied with. Any variation which reduces credit facilities will have the effect of requiring immediate payment of any resultant overdue balance.

5. Delivery

- 5.1 Unless otherwise agreed in writing Delivery shall take place when the Goods are ready for collection by the Buyer at the Company's premises in Thame, Oxfordshire, England.
- 5.2 All dates for Delivery are quoted in good faith and the Company will use all reasonable endeavours to adhere to them subject always to the provisions of condition 12.2.
- 5.3 The Buyer shall not be entitled to delay or refuse to accept Delivery under any circumstances; provided that if the Buyer seeks to do so then the Company shall be entitled to charge for storage of the Goods at market rates until Delivery takes place.
- 5.4 The Buyer shall be responsible for obtaining any necessary import licences and for payment of any customs duties.
- 5.5 The Company will not be liable for any liquidated damages for late delivery if the delivery performance has been affected by the supply of free issue materials from the Buyer, or where the material supplier is specified by the Buyer.

6. Acceptance

- 6.1 The Buyer shall inspect the Goods within seven days of Delivery and failure to notify the Company of any defect, shortage or other proper objection to the Goods, or their packaging within such period shall constitute acceptance by the Buyer.
- 6.2 Acceptance by the Buyer shall be without prejudice to its rights under Condition 8.

7. Risk and Title

- 7.1 The risk in and loss or damage to the Goods shall pass to the Buyer on Delivery. All Goods are packed carefully to ensure safe carriage and the Company does not accept responsibility for loss or damage in transit arranged by the Buyer.

- 7.2 Title to the Goods shall remain with the Company until the Company has received full payment for them and also full payment for any other Goods supplied under any other contract between the Buyer and the Company.
- 7.3 Until full payment is received the Buyer agrees:
- 7.3.1 to store the Goods in such a way so that they are readily identifiable as the property of the Company;
 - 7.3.2 that it has possession of the Goods solely as bailee and in a fiduciary capacity for the Company;
 - 7.3.3 not to pledge, charge or in any way encumber the Goods; and
 - 7.3.4 not to dispose of or resell the Goods otherwise than as Trustee for the Company and agrees to account immediately to the Company for such payment holding the proceeds of sale on trust for the Company until it has done so.
- 7.4 The Company shall have a right to inspect the Goods at any reasonable time whilst they remain its property and may re-possess them at any time before title passes to the Buyer.
- 7.5 In particular, in the event that the Buyer becomes insolvent as described in condition 12, the Company shall be entitled to:
- 7.5.1 immediately terminate the Contract in accordance with condition 12; and/or
 - 7.5.2 enter the site of the Buyer or any other site where the Goods are stored with such transport as may be necessary and re-possess any of the Goods to which it is entitled under Conditions 7.2 and 7.3.
- 7.6 Nothing in this condition shall confer any right upon the Buyer to return the Goods or to refuse or delay payment for them.

8. Warranty

- 8.1 The Company warrants that all Goods supplied under the Contract will conform to the relevant technical specification supplied to the Buyer; and provided they are used in accordance with the Company's written instructions, will be free from defects in workmanship and materials.

- 8.2 The Company's sole liability for breach of the warranty in Condition 8.1 shall be, at its option, to give credit for, replace or repair free of charge Goods which, during a period of twelve months from the date of Delivery, are found to be in breach of this warranty, any items replaced becoming the property of the Company.
- 8.3 On Delivery the Company will issue to the Buyer either a certificate of conformity or EASA form 1 in relation to the Goods.
- 8.4 The provisions contained in conditions 8.1 and 8.2 shall replace and shall be to the exclusion of all common law statutory or other warranties (except for the implied warranty of title) whether expressed or implied.

9. Services

- 9.1 In cases where the Company provides Services, Delivery shall be deemed to take place when the Services described in the Order are complete and all relevant documentation, as referred to in the Order, has been passed to the Buyer.
- 9.2 Services provided by the Company shall be performed with reasonable skill and proper care and attention.
- 9.3 Services provided by the Company shall comply with any technical specification agreed in writing between the Buyer and the Company.
- 9.4 Unless otherwise agreed in writing, all unpatented technology arising out of provision of the Services shall belong to the Company.

10. Intellectual Property

- 10.1 The Buyer shall notify the Company immediately if any claim is made, or action is taken against the Buyer in respect of infringement of patents, copyright or other intellectual property rights belonging to the Seller and relating to the Goods.

10.2 The Company shall be at liberty with the Buyer's assistance if necessary, but at the Company's expense, to conduct any litigation and all negotiations for settlement in relation to any claim or action as is referred to in condition 10.1.

11. Tooling and Free Issue Material

11.1 Where the Buyer issues tooling and/or Free Issue Material (FIM) to the Company in connection with the Contract such items shall be and remain the property of and at the risk of the Buyer.

11.2 The Buyer warrants that the tooling and/or FIM is of good and sound quality and suitable for manufacture of the Goods.

11.3 The Company agrees to maintain the tooling in good order and condition subject always to fair wear and tear.

11.4 The Company agrees to maintain the FIM in good condition until incorporated into the Goods

11.5 The Company shall use the tooling and the FIM solely for the purpose of the Contract.

11.6 Unless otherwise agreed in writing, the Company shall return the tooling to the Buyer at the conclusion of the Contract.

12. Exclusions and Limitation of Liability

12.1 The Company shall not be bound by any representations, statements or conditions on the part of its employees or agents, whether oral or in writing, except where such representations, statements or conditions are expressly made part of the Contract.

12.2 Save for its liability under the Warranties in Conditions 8.1.and 8.2, the Company shall not be liable to the Buyer for any direct, indirect, consequential or economic loss or damage in respect of the Goods, whether relating to delay in Delivery, installation or otherwise;

except in so far as such liability relates to death or personal injury resulting from the Company's proven negligence.

12.3 The Company accepts no responsibility for the accuracy of any sample artwork or drawing or for the adequacy of the design or specification provided by the Buyer and, unless otherwise agreed in writing, the Contract for the production of Goods shall not imply any warranty, guarantee or representation as to the accuracy of such sample or artwork or drawings or the suitability, practicability or adequacy of such design or specification.

13. Indemnities

13.1 The Buyer shall indemnify the Company in respect of any claim:

13.1.1 which may be made against the Company that the use to which the Goods are put infringes the patent, copyright or other intellectual property rights of any third party;

13.1.2 which may be made against the Company under Section 6 of The Health and Safety at Work Act 1974 or any equivalent safety legislation outside the United Kingdom in relation to the design and specification of the Goods;

13.1.3 which may be made against the Company arising out of the failure of the Buyer to observe the terms of the Contract.

13.2 The provisions of Condition 13.1 shall not apply where the claim arises as a result of the proven negligence of the Company.

14. Force Majeure

14.1 The Company shall not be liable for any failure to fulfil the Contract or any term of condition of the Contract if fulfilment has been delayed, hindered or prevented by any circumstances beyond its reasonable control.

14.2 The Company shall promptly notify the Buyer if an event of force majeure arises and may cancel the Contract without liability if such event exceeds a period of one month.

15. Insolvency

If the Buyer becomes bankrupt or makes any arrangement with its creditors, or being a company goes into administration or liquidation or has a winding up order made against it or has a receiver appointed in respect of its assets, (or the equivalent of any of these events under overseas legislation) the Company may, without compensation, forthwith terminate the Contract by notice to the Buyer without prejudice to any other rights or remedies the Company may have against the Buyer.

16. Miscellaneous

- 16.1 The failure of the Company to enforce its rights under the Contract at any time and for any period of time shall not be construed as a waiver of any such rights.
- 16.2 The Buyer undertakes not to use any trademarks or trade names applied by the Company to the Goods nor to do anything whereby the goodwill and reputation of such trademarks or trade names is prejudiced or damaged.
- 16.3 The Buyer shall not assign or transfer the Contract or any of its rights, duties or obligations under it without the prior written consent of the Company.
- 16.4 Any notice given by either party under the Contract shall only be effective if given in writing, including facsimile, and sent to the receiving party's last known address by registered mail or recorded delivery or last known facsimile number. For the avoidance of doubt notices may not be given by email or other electronic means of communication.
- 16.5 In the event of any inconsistency between these Conditions and any additional Conditions, or other terms forming part of the Contract, the latter shall prevail.
- 16.6 If any provision of these Conditions is held by any Court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

16.7 It is not intended that any rights pursuant to the Contracts (Rights of Third Parties) Act 1999 should be conferred upon or be enforceable by any person who is not a party to the Contract.

17. Governing Law

The Contract shall be governed by and construed in accordance with the Laws of England.