

TERMS AND CONDITIONS OF SALE

EQUIPMAKE STANDARD TERMS AND CONDITIONS OF SALE

1. GENERAL

The following are the general terms and conditions under which Equipmake Limited, hereinafter called the “Supplier” accepts orders for its products and services, hereinafter called the “Goods”. These terms and conditions may be varied in accordance with a specific proposal.

2. INTERPRETATION

2.1. Definitions. In these Conditions, the following definitions apply:

Acceptance Notice: the Supplier’s written acknowledgement of the Order in the form determined by the Supplier from time to time and which incorporates these Conditions by way of hyperlink or website address.

Business Day: a day (other than a Saturday, Sunday, or public holiday) when banks in England and Wales are open for business.

Conditions: these Terms and Conditions set out in this document.

Contract: the Terms and Conditions between the Supplier and the Purchaser for the supply of Goods and/or Services in accordance with these Terms and Conditions.

Force Majeure Event: has the meaning given in Clause 19.

Goods: the goods (or any part of them) set out in the Order.

Intellectual Property Rights: all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world

Order: the Purchaser’s order for the supply of Goods and/or Services either set out in writing or given verbally by the Purchaser to the Supplier **Purchaser:** the person or firm who purchases the Goods and/or Services from the Supplier.

Services: the services to be provided by the Supplier where the Goods are to be manufactured to a Specification, or installed by the Supplier at the Purchaser’s premises, as set out in the Order or agreed by the parties from time to time. **Specification:** any specification for the Goods (including any relevant plans or drawings) either provided by the Purchaser or the Supplier and agreed between the Supplier and the Purchaser.

2.2. In these Conditions, the following rules apply:

2.2.1 a person includes a natural person, company, partnership, joint venture, association, trust and a reference to a party includes its personal representatives, successors and permitted assigns.

2.2.2 the singular includes the plural and vice versa; the masculine includes the feminine

and neuter and vice versa.

2.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and any subordinate legislation made under it.

2.3 references to include, includes and in particular or anything similar are illustrative only and none of them shall limit the sense of the words preceding or following them and each of them shall be deemed to incorporate the expression without limitation.

2.4 reference to writing or written includes faxes and email.

3. ACCEPTANCE OF ORDER

3.1 These Conditions shall apply to all Orders for Goods and/or Services received by the Supplier.

The Supplier Terms and Conditions, together with the Purchaser Order the Supplier Acknowledgement and the Supplier Acceptance Notice, constitutes the entire agreement between the parties and the Purchaser

acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Terms and Conditions.

3.2 Any terms or conditions which the Purchaser may seek to impose shall be inapplicable unless expressly accepted in writing by a Director of the Supplier.

3.3 Each Order constitutes an offer by the Purchaser to purchase the Goods and/or Services upon these Conditions. The Terms and Conditions shall not be formed until the Purchaser is provided with an Acceptance Notice by the Supplier, on which date the Terms and Conditions will come into existence. The Terms and Conditions will only relate to those Goods and/or Services set out in the Acceptance Notice

3.4 All Contracts are subject to these Conditions. No variation of these Conditions will be accepted by the Supplier unless previously agreed in writing by the Supplier. The Supplier reserves the right to refuse any Order without providing a reason.

4. VALIDITY

The Supplier reserves the right to withdraw or cancel any quotation without liability prior to its acceptance. Unless previously withdrawn any quotation shall remain valid for a period of Thirty (30) days from the date thereof unless different terms are agreed and stated in an official Quotation provided by the Supplier. No order nor any amendment to any order shall be deemed to be contractually binding upon the Supplier unless and until expressly accepted in writing by the Supplier, whereupon a Terms and Conditions shall stand concluded.

5. PRICES

5.1 The price for Goods shall be the price set out in the quotation. The price of the Goods is exclusive of all costs and charges of packaging, insurance, storage and transport of the Goods, which shall be paid by the Purchaser when paying for the Goods

5.2. The charges for Services shall be on a time and materials basis as set out in Supplier's quotation [and/or Acceptance Notice]. The Supplier shall be entitled to charge the Purchaser for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services including, but not limited to, travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by the Supplier for the performance of the Services, and for the cost of any materials.

5.3. The Supplier reserves the right to increase the price of the Goods and/or Services, by giving notice to the Purchaser at any time before delivery, to reflect any increase in the cost of the Goods and/or Services to the Supplier that is due to:

5.3.1. any factor beyond the control of the Supplier including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs

5.3.2. any request by the Purchaser to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

5.3.3. any delay caused by any instructions of the Purchaser in respect of the Goods or Specification or failure of the Purchaser to give the Supplier adequate or accurate information or instructions in respect of the Goods or Specification.

5.4. In respect of Goods, the Supplier shall invoice the Purchaser as per quotation. In respect of Services, the Supplier shall invoice the Purchaser on completion of each particular Service to which the invoice relates.

6. PAYMENT

6.1. All accounts are payable on demand and in accordance with the procedure shown on the invoice for the Goods.

6.2. Should the Purchaser fail to make any payment when due under any Terms and Conditions the Supplier shall have the right by notice in writing forthwith to suspend all further manufacture and/or deliveries until the default be made good or at the Supplier's absolute discretion to determine any Terms and Conditions so far as goods remain to be delivered without prejudice to any other rights or remedies which might be available to the Supplier at law (or otherwise).

6.3. Where due payment of the price or any part thereof is not made the Supplier without prejudice to its rights hereunder, shall be entitled to charge statutory interest on the outstanding amount at the prevailing Bank of England exchange rate + 8% per annum, on a monthly basis from the date of invoice until so much of the invoiced price as is outstanding is paid.

7. DELIVERIES AND CARRIAGE

7.1. All Goods will be dispatched by the most appropriate route at the cost of the Purchaser.

Where a Purchaser suggests an alternative route or places an Order outside the normal schedule the Supplier shall have the right to charge the entire cost of delivery, irrespective of the value of the Order.

7.2. The Supplier may deliver the Goods by instalments, which may be invoiced and paid for separately. References in these Conditions to delivery of the Goods shall, where applicable, be read as to include reference to delivery of the Goods by instalments. Each instalment shall constitute a separate Terms and Conditions so that any delay or defect in an instalment shall not entitle the Purchaser to terminate any other instalment.

7.3. Deliveries will be made available Ex-works at the Supplier's goods outward area Monday – Friday between the hours of 9:00-16:00.

7.4. In the event where alternative delivery arrangements has been agreed by a Supplier Director the final destination will be to the Purchaser's goods inwards area at the stated delivery address. Any special delivery requirements or difficulties in delivering (e.g. narrow doorways, stairs, restricted access) should be made known to the Supplier at the time of placing the Order and may be subject to additional costs. The Supplier cannot accept responsibility for any difficulties in delivery as a consequence of information or lack of information supplied by the Purchaser.

7.4. The Supplier will use reasonable endeavours to deliver the Goods within the time agreed when the Supplier accepts an Order and, if no time is agreed, then within a reasonable time, but the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery that is caused by the Purchaser's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

7.5. If the Purchaser fails to accept or take delivery of the Goods within 7 days of the Supplier notifying the Purchaser that the Goods are ready, then except where such failure or delay is caused by an Event of Force Majeure or by the Supplier failure to comply with its obligations under the Terms and Conditions in respect of the Goods:

7.5.1. delivery of the Goods shall be deemed to have been completed at 9.00 am on the 8th day following the day on which the Supplier notified the Purchaser that the Goods were ready; and

7.5.2. the Supplier shall store the Goods until delivery takes place as per clause 11 and charge the Purchaser for all related costs and expenses. Costs and expenses shall include but is not be limited to packaging, storage, logistics as well as and including insurance costs.

7.6. Upon the expiry of four weeks after the Supplier notified the Purchaser that the Goods were ready for delivery and the Purchaser has not accepted or taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Purchaser for any excess over the price of the Goods or charge the Purchaser for any shortfall below the price of the Goods.

7.7. The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall

constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Purchaser to cancel any other instalment

8. DRAWINGS

8.1. All drawings, technical documents issued either before or after the formation of the Terms and Condition for the use or information of the Purchaser and other information supplied to the Purchaser including specifications shall not be copied, reproduced or communicated to any third party, or used otherwise than in connection with the Goods, without the Supplier's express consent in writing.

9. INSPECTION AND TESTING

The Supplier shall define all inspection and testing in quotation. If any additional testing is desired by the Purchaser any additional expenses which is incurred thereby shall be borne by the Purchaser.

10. DESPATCH

Any time or date for despatch specified by the Supplier is an estimate only and the Supplier shall incur no liability in respect of any delay.

11. STORAGE

If the Purchaser shall fail to give to the Supplier instructions for delivery within three weeks of notification by the Supplier that the Goods are ready for delivery, the Supplier may without further reference to the Purchaser arrange for storage of the Goods. Charges for storage and demurrage and insurance shall be paid by the Purchaser and the Goods shall be subject to a lien of the Supplier thereof.

12. PROPERTY AND RISK

Until the Supplier has been paid in full for the Goods:

12.1. the Goods remain the property of the Supplier, this shall not affect the passing of the risk to the Purchaser. The Purchaser must ensure that the goods are stored in the correct way and insured at all times.

12.2. the Supplier may at any time or times recover all or any of the Goods in the possession of the Purchaser if the Purchaser exceeds the payment terms agreed.

12.3. the Purchaser as bailee of the Goods for the Supplier will store the same for the Supplier in a proper manner without charge to the Supplier.

12.4. The risk in the Goods shall pass to the Purchaser as defined by the agreed Incoterms 2010 this will be Ex-works unless agreed differently with a Supplier Director.

13. DAMAGE, SHORTAGE OR LOSS IN TRANSIT The Supplier shall not be held in any way responsible for:

13.1. any damage, shortage or loss in transit is the responsibility of the Purchaser as per the Incoterms agreed by default the agreed Incoterms will be Ex- works.

Any damage or loss in transit must:

i. be notified in writing to the Supplier and the Carrier within five (5) days of receipt of the Goods by the Purchaser where transport was arranged by the Supplier and as per the Incoterms agreed with a Supplier Director.

ii. the Goods have been handled by the Purchaser in accordance with the Carrier's Terms and Conditions.

iii. Photographic evidence of the damaged packaging before opening and the product will be required for any action by the Supplier.

13.2. on-delivery unless the same be notified both to the Supplier and the Carrier within a reasonable period.

14. LIABILITY

14.1. Save as aforesaid all other conditions and warranties express or implied whether arising by statute or common law or otherwise are hereby expressly excluded in so far as is permitted by law and the Supplier shall not be liable for any loss, injury or damage caused or arising by reference to them.

14.2. The Supplier shall not accept any liability for any special purpose for the Goods unless the purpose for which the Goods are intended was advised to it in writing before entering the Terms and Conditions for the sale of them.

14.3. The Supplier shall not be liable for the Goods if not covered by the above warranty.

14.4. The Supplier shall not be liable in respect of any defect or other matter constituting a breach of any condition or warranty in respect of which a Purchaser has a right under any guarantee given by a third-party manufacturer of goods, either direct to the Purchaser, or to the Supplier, the benefit of which has been transmitted to the Purchaser, unless and until the Purchaser has exhausted his remedies against that manufacturer.

14.5. The Supplier shall, if the Goods were not manufactured by the Supplier, assist the Purchaser in obtaining from the manufacturer thereof the benefit of any warranty or guarantee given by such manufacturer, whether such warranty or guarantee is given direct to the Purchaser or to the Supplier with the benefit being capable of being transmitted to the Purchaser. Such assistance shall be to the extent that the Supplier in its discretion thinks fit.

14.6. The Supplier shall not be liable for any damage loss or liability suffered by the Purchaser in relation to the Goods in the nature of loss of saving or profit, wasted expenditure, loss of revenue, loss of Contract goodwill, loss of special contract profits or the like which the Purchaser acknowledges will not naturally result from breach of contract, negligence or otherwise in respect of the Goods concerned.

14.7. The liability of the Supplier to the Purchaser in respect of the Goods and/or these Terms and Conditions (in negligence, tort, Terms and Conditions or otherwise) shall be limited to the reasonable cost of remedying the defect or other matter constituting such breach (provided that the Supplier shall first be afforded the opportunity of itself carrying out the remedial work) and provided always that the Supplier's maximum liability shall be an amount equal to the Supplier's list price for the Goods at the date of this Terms and Conditions and the Supplier shall not under any circumstances be liable for any other loss or injury or damage suffered by reason of

such breach. This limitation shall not apply to death or personal injury caused by the Supplier's negligence.

15. SUPPLY OF SERVICES

15.1. The Supplier shall provide the Services to the Purchaser in accordance with the Specification in all material respects.

15.2. The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Supplier's quotation or the Specification, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services. The Supplier will not be responsible for any financial loss and damages that the Purchaser may incur as a result of the Supplier not being able to meet the estimated completion date. The Supplier will partake in communications between Supplier and Buyer to discuss progress of the Service as required by the Purchaser and agreed by a Supplier Director.

15.3. The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Purchaser in any such event.

15.4. The Supplier warrants to the Purchaser that the Services will be provided using reasonable care and skill.

15.5. Where the Service is not performed on the Supplier premises the Purchaser is responsible for the Health and Safety of the Supplier's Employees or Contractors for all factors influenced by the environment in which the service takes place.

16. INTELLECTUAL PROPERTY RIGHTS

16.1. All IPRs in or arising out of or in connection with the Services shall be owned by the Supplier, including any IPRs in the Specification where prepared by the Supplier.

16.2. The Purchaser acknowledges that, in respect of any third party IPRs in the Services, the Purchaser's use of any such IPRs is conditional on the Supplier obtaining a written licence from the relevant licensor on such terms as will entitle the Supplier to license such rights to the Purchaser.

17. CONFIDENTIALITY

17.1. A party (Receiving Party) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This Condition shall survive termination of the Contract.

17.2. The obligations of confidentiality detailed in Condition 17.1 shall not apply to any confidential information which the Receiving Party can show:

17.2.1. is or subsequently comes into the public domain other than by breach of the Receiving party's obligations under these conditions.

17.2.2. the disclosure is required by law, regulation or order of a court of competent jurisdiction.

18. TERMINATION

18.1. The Supplier may by written notice terminate the Terms and Conditions without any liability if:

18.1.1. the Purchaser fails to pay any sum due under the Terms and Conditions as per the agreed date.

18.1.2. the Purchaser breaches any terms of these Conditions and fails to cure such breach within 30 days of written notice from the Supplier requiring that such breach be remedied.

18.1.3. the Purchaser suspends or threatens to suspend payment of its debts or becomes unable to pay its debts as they fall due (as defined in section 123 of the Insolvency Act 1986) or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply.

18.1.4. the Purchaser commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors.

18.1.5. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Purchaser

18.1.6. the Purchaser (being an individual) is the subject of a bankruptcy petition or order.

18.1.7. a creditor or encumbrancer of the Purchaser attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days.

18.1.8. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Purchaser (being a company).

18.1.9. a floating charge holder over the assets of the Purchaser (being a company) has become entitled to appoint or has appointed an administrative receiver.

18.1.10. a person becomes entitled to appoint a receiver over the assets of the Purchaser or a receiver is appointed over the assets of the

Purchaser.

18.1.11. any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 18.1.1 to clause 18.1.10 (inclusive).

18.1.12. the Purchaser ceases or threatens to cease to carry on its business or a significant part of it; or

18.1.13. the Purchaser (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation

18.2. Termination, howsoever or whenever occasioned shall be subject to and shall not:

18.2.1. prejudice any rights and remedies the Supplier may have under these Conditions and/or any Terms and Conditions or under the applicable law in respect of any breach of these Conditions and/or any Terms and Conditions to the extent such rights or remedies have accrued or become available prior to such termination.

18.2.2. relieve the Purchaser of any payment obligation that arose prior to termination and all outstanding invoices shall become immediately due.

18.2.3. termination of the Terms and Conditions shall not affect the coming into force nor the continuance in force of any terms of the Terms and Conditions which are either expressly or by implication intended to come into or continue in force on or after such termination.

19. FORCE MAJUERE

19.1. No failure or omission by Supplier or Purchaser in the performance of any obligation under this Agreement shall be deemed a breach of this Agreement or create any liability if the same arises on account of force majeure, which term shall include any event or cause beyond the control of Supplier or Purchaser, as the case may be, including but not restricted to acts of God, acts or omissions of any government, or agency thereof, rebellion, insurrection, riot, sabotage, invasion, quarantine, restrictions, strike, lock out and transportation embargoes, provided that the party relying on this Section shall forthwith after any such event give written notice to the other party of its inability to perform such obligation and the reasons therefore.

19.2. If force majeure continues for a period of more than three (3) months, without the parties hereto being able to develop an alternative satisfactory arrangement, then either party has the option of immediately terminating this Agreement

19.3 The Purchaser will be responsible for any cost incurred by the Supplier relevant to the supply of the Goods and services to the point of termination. The Purchaser will then have a right to claim the raw materials charged to the Purchaser but must do so within 30 days of the termination. The Supplier must

arrange collection within this timeframe or goods will be disposed by the Supplier.

20. SEVERABILITY

In the event that any Conditions shall be determined (in whole or in part) by any competent authority to be invalid, unlawful or unenforceable to any extent, such Condition or part thereof shall to that extent be severed from the remaining terms and conditions which shall continue to have full force and effect.

21. GENERAL

21.1. Notices:

21.1.1. Any notice or other communication required to be given to a party under or in connection with this Terms and Conditions shall be in writing and shall be delivered to the other party personally or sent by prepaid first class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.

21.1.2. Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or, if sent by prepaid first-class post recorded delivery, at 9.00 am on the second working day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

21.1.3. This Condition 21 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails or fax and for the avoidance of doubt notice given under this Terms and Conditions shall not be validly served if sent by e-mail or fax.

21.2. No partnership: Nothing in these Conditions or any Terms and Conditions is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

21.3. Third parties: A person who is not a party to the Terms and Conditions shall not have any rights under or in connection with it.

22. LAW

The Terms and Conditions shall be governed by and construed in all respects in accordance with English Law. These conditions are additional to any rights attaching to the Purchaser and Supplier under statute or common law and are not in substitution, therefore. The Purchaser hereby irrevocably accepts the jurisdiction of the England Civil Courts in so far as any disputes arising under or in connection with the Terms and Conditions are concerned.