

TERMS AND CONDITIONS OF SALE

DEFINITION

In these terms and conditions:-

- "Company" means FSM Manufacturing Limited (Company Number 01453287) whose registered office is at Sturmer Road, Haverhill, Suffolk CB9 7UU and/or its subsidiary or associated companies for the time being;
- "Contract" means any contract between the Company and the Customer for the sale and purchase of Goods and/or Services incorporating these terms and conditions;
- "Customer" means the person, firm or company which contracts with the Company for the purchase of the Goods and/or the supply of Services;
- "Goods" means the products manufactured or sold by the Company to be supplied to the Customer pursuant to the Contract; and
- "Services" means the work of any kind performed by the Company to be provided to the Customer pursuant to the Contract.

GENERAL

1. Subject to any variation under 3. below the Contract shall be on these terms and conditions to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply under any purchase order, specification or other document).
2. No terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
3. Any variation to these terms and conditions and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed by an authorised employee of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company relating to the Goods or Services which is not set out in the Contract. Nothing in this clause shall exclude or limit the Company's liability for fraudulent misrepresentation.

DURATION OF QUOTATION AND TENDERS

Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 30 days only from its date unless the Company has previously withdrawn it.

ACCEPTANCE

1. Each order for Goods and/or Services shall be an offer by the Customer to purchase Goods and/or Services subject to these terms and conditions. No order placed by the Customer shall be deemed to be accepted by the Company until a written acceptance of order is issued by the Company or (if earlier) the Company commences performance of the Contract.
2. No order placed by the Customer which has been accepted by the Company may subsequently be cancelled by the Customer without the consent of the Company. The Company may at its discretion either withhold consent or grant consent subject to such conditions as it may decide including the requirement for the Customer to compensate the Company for all losses and expenses arising from the cancellation.

PRICE VARIATION

The Company shall be entitled to vary the agreed price for the Goods or Services after acceptance by the Company of the Customer's order in the following circumstances:-

- a) if any modification in the design or specification of the Goods or Services is requested by the Customer; or
- b) if the Company considers that a modification in the design or specification of the Goods or Services is required following a site survey or following further evaluation of the Customers requirements and specifications; or
- c) if the Company incurs additional costs arising from delays caused by the Customer or any failure by the Customer to give proper or accurate instructions and information.

DESCRIPTIONS AND DRAWINGS

1. Whilst every effort is made to ensure that general product descriptions and other information in correspondence, catalogues and other literature supplied by the Company are accurate they are intended for the sole purpose of giving an approximate idea of the Goods or Services described in them and the Company shall not be liable for the consequences of any error or omission therein. They shall not form part of the Contract.
2. Unless otherwise stated in writing all drawings supplied by the Customer or produced by the Company relating to the Goods or Services will form part of the Contract and both the Company and the Customer will be entitled to rely on them.

INSPECTION AND TESTS

Goods are carefully inspected and where practicable submitted to standard tests at the Company's works before despatch. If tests other than the Company's standard tests are requested by the Customer then the Company will be entitled to make an additional charge for these.

PERFORMANCE

The Company will accept no liability if the Goods or Services fail to attain any performance figures quoted by the Company unless it has specifically guaranteed them in writing, subject to any tolerances specified or agreed to by the Company.

LIABILITY FOR DELAY

1. Any dates specified by the Company for delivery of the Goods or completion of the Services are intended to be an estimate and time for delivery or completion shall not be made of the essence by notice. The Company shall be entitled to extend the time for delivery of the Goods or completion of the Services by a reasonable period if the Customer delays in providing or fails to provide proper instructions when requested by the Company.
2. The Company shall not be liable for any direct, indirect or consequential loss (including without limitation pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or completion of the Services.

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STORAGE

If due to any fault of the Customer, the Company is unable to despatch the Goods within 7 days after the date of notification that they are ready for despatch the Company shall be entitled to arrange insurance and storage either at its own works or elsewhere on the Customer's behalf and the Customer will pay to the Company its reasonable charge for such insurance or storage.

DAMAGE TO OR LOSS OF THE GOODS IN TRANSIT

1. No claim for damage to the Goods in transit or shortage in delivery will be considered by the Company unless a separate notice in writing is given to the carrier concerned and to the Company within 3 days of delivery followed by a detailed and complete claim in writing within 5 days of delivery. In the event of loss or destruction of Goods in transit advice of non-delivery must be submitted in writing to the carrier and to the Company within 10 days of the date consignment was advised by the Company to the Customer.
2. Subject to acceptance by the Company of claims being made in accordance with this condition and subject to the Customer making no further use of Goods delivered and, if requested by the Company, the Company being able to inspect the Goods delivered, the Company will (at its option) either repair or replace free of charge Goods lost or destroyed or damaged in transit as soon as reasonably practicable, or refund or waive the price payable for the Goods which are the subject of the claim but shall be under no further liability in respect thereof to the Customer.

PRICE AND PAYMENT

1. Unless otherwise agreed in the Contract, the price for the Goods is ex works and does not include value added tax which (if lawfully chargeable) shall be paid in addition.
2. Unless otherwise agreed in writing between the Company and the Customer the whole of the price is due on the date on which the Company gives notice to the Customer that the Goods are ready for despatch and/or the Services have been performed or failing such notice on the date of delivery of the Goods and/or the completion of the Services. Time for payment shall be of the essence.
3. Payment shall be made in pounds sterling or in such other currency as the Company may direct and in such form or manner as the Company may direct.
4. The Customer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
5. If the Customer fails to pay the Company the price on the due date pursuant to the Contract
 - a) the Company may suspend any further delivery of the Goods or performance of the Services; and
 - b) the Customer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank plc accruing on a daily basis until payment is made whether before or after any judgment. The Company reserves the right to claim interest under Late Payment of Commercial Debts (Interest) Act 1998.

RISK AND TITLE

1. Goods are at the risk of the Customer from the time of delivery. Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Company from the Customer on any account.
2. Until ownership of the Goods has passed to the Customer, the Customer must:
 - a) hold the Goods on a fiduciary basis as the Company's bailee;
 - b) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
 - c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company.
3. The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
 - a) any sale shall be effected in the ordinary course of the Customer's business at full market value; and
 - b) any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale.
4. The Customer's right to possession of the Goods shall terminate immediately if:
 - a) a court orders that the Customer be wound up, or the Customer adopts a resolution for winding up (otherwise than in furtherance of a bona fide scheme for solvent amalgamation or reconstruction) or has an administrator, administrative receiver or receiver appointed in respect of all or any of its undertaking or assets, or is unable to pay its debts as they fall due, or attempts to make or makes any arrangement or composition with or for the benefit of its creditors; or the Customer ceases to or threatens to cease to carry on its business; or
 - b) the Customer fails to observe or perform any of its obligations under the Contract; or
 - c) the Customer encumbers or in any way charges any of the Goods.
5. The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
6. The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

TERMINATION

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1. Without prejudice to all other rights the Company may terminate the Contract forthwith by notice in writing to the Customer if:-
 - a) the Customer fails to take delivery of the Goods when required; or
 - b) the Customer commits any breach of the Contract which (in the case of a breach capable of being remedied) shall not have been remedied within 7 days of written request to remedy the same; or
 - c) a court orders that the Customer be wound up, or the Customer adopts a resolution for winding up (otherwise than in furtherance of a bona fide scheme for solvent amalgamation or reconstruction) or has an administrator, administrative receiver or receiver appointed in respect of all or any of its undertaking or assets, or is unable to pay its debts as they fall due, or attempts to make or makes any arrangement or composition with or for the benefit of its creditors, or the Customer ceases to or threatens to cease to carry on its business.
 2. All payments payable to the Company under the Contract shall become due immediately upon termination of the Contract despite any other provision. Termination of the Contract, for whatever cause, shall be without prejudice to the rights of either party accrued prior thereto, and termination shall not affect any provision of the Contract which, in order to give full effect to its meaning, needs to survive such termination.
- a) of fair wear and tear; or
 - b) the Goods have been incorrectly stored, installed, used or maintained by the Customer or any third party; or
 - c) the Goods have been damaged by any person; or
 - d) the Goods have been altered or incorrectly repaired by the Customer or any third party; or
 - e) the Company has supplied the Goods or performed the Services to the Customers specification and compliance with that specification has caused the defect.
4. The Company will not be liable for a breach of any of the warranties above unless:-
 - a) the Customer gives written notice of the defect to the Company within 7 days of the time when the Customer discovered or ought to have discovered the defect; and
 - b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods or Services and the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
 5. The Company gives no warranty in respect of any Goods or part or parts thereof which are not manufactured by the Company but the Customer shall in such cases endeavour to pass on to the Customer the benefit of any warranty given by the manufacturer.
 6. Any repaired or replacement parts supplied by the Company in accordance with the warranty contained in the above conditions will be delivered free of charge to the Customer within the United Kingdom. In the event of it being necessary for the Company to send any representatives to site to carry out repairs to the Goods in accordance with the terms of such warranty the Customer shall reimburse the Company for all reasonable hotel and travelling expenses of any such representatives from the time when they leave their normal place of employment until their return.
 7. Provided that the Company complies with its obligations under this clause it shall have no further liability to the Customer for breach of any of the warranties in respect of the Goods or Services.

WARRANTY

1. All terms, warranties and conditions (including warranties as to quality, fitness for purpose or otherwise) which are implied by statute or common law are excluded to the fullest extent permitted by law.
2. In substitution therefore the Company gives the following warranty:
 - a) For Goods. If the Customer within one (1) year following delivery of the Goods or following the date on which the Company notified the Customer that the Goods were available for delivery (whichever is the earlier) gives written notice to the Company that a defect exists in the Goods the Company shall upon being satisfied by examination that such defect arose solely from faulty material supplied by the Company or workmanship carried out by or on behalf of the Company either (at its option) make good such defect by the replacement or repair of the defective Goods as soon as reasonably practicable or refund or waive the price payable for the defective Goods.
 - b) For Services. If the Customer within six (6) calendar months following performance of the Services gives notice to the Company that the Services are defective, the Company shall upon being satisfied by examination that such defect arose solely from faulty workmanship carried out by or on behalf of the Company either make good such defect by repair or replacement as soon as reasonably practicable or refund or waive the price payable for the defective Services.
3. The Company will not be liable for a breach of any of the warranties above if in the Company's judgment (whose decision shall be final) the defect has arisen because:-

LIABILITY

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 terms and conditions;
 - b) any use made or resale by the Customer of any of the Goods or Services; and
 - c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
2. Nothing in these terms and conditions excludes or limits the

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liability of the Company:-

- a) for death or personal injury caused by the Company's negligence;
- 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.

3. Subject to (1) and (2) above:-

- a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise arising out of or in connection with performance of the Contract shall be limited to the total price payable under the Contract for the Goods and/or Services; and
- b) the Company shall not be liable to the Customer for any loss (whether direct or indirect) of profits, business, revenue, goodwill or anticipated savings or for any indirect or consequential or economic loss whatsoever arising out of or in connection with the Contract.

or hindered from complying with its obligations under the Contract by any cause beyond its reasonable control.

7. The Contract shall be governed by and construed in all respects in accordance with the laws of England and the parties submit to the exclusive jurisdiction of the English courts in respect of any dispute or claim arising out of or relating to the Contract. The place for performance of the Contract shall be England.

GENERAL

1. The failure of a party to exercise or enforce any right under the Contract shall not be deemed to be a waiver of that right nor operate to bar the exercise or enforcement of it at any time or times thereafter.
2. The Customer shall not without the prior written consent of the Company assign, transfer or sub-let the benefit or the burden of the Contract or any part thereof. The Company may assign the Contract and/or engage sub-contractors, agents and others in the performance of the Contract without reference to the Customer and the Contract shall bind and shall endure for the benefit of the Company's assignee.
3. If any provision or part of a provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, void, or unenforceable it shall to the extent of such illegality, voidness, or unenforceability be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
4. The Contract is not intended to confer a benefit on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, and no third party shall have any right to enforce any of the provisions of the Contract.
5. Any notice required to be given pursuant to the Contract shall be in writing and shall be given by delivering the notice by hand at, or by sending the same by prepaid first class post (airmail if to an address outside the country of posting) to the address of the relevant party set out in the Contract or such other address as either party notifies to the other from time to time. Any notice given according to the above procedure shall be deemed to have been given at the time of delivery (if delivered by hand) and when received (if sent by post).
6. The Company reserves the right to defer the date of delivery of the Goods or performance of the Services or to cancel the Contract or reduce the volume of the Goods ordered by the Customer (without liability to the Customer) if it is prevented