



TERMS AND CONDITIONS RELATING TO THE SUPPLY OF PRODUCTS AND/OR ASSOCIATED SPECIALIST TOOLS

1. INTERPRETATION

1.1. In this Agreement: "**Customer**" means the purchaser of the Products and/or Tools under this Agreement who has raised the relevant PO; "**Invoice**" means any invoice pertaining to any PO, forming part of this Agreement; "**PO**" means a purchase order for Products and/or Tooling, forming part of this Agreement; "**Products**" means those products more particularly specified in the relevant PO; "**Supplier**" means Magma Moulding Ltd; "**Terms**" means these terms and conditions; and "**Tools**" means all tools, dies, moulds, patterns, drawings, jigs and any other special equipment prepared specifically in order to enable the Supplier to produce the Product.

1.2. The Terms, together with the corresponding PO(s) and Invoice(s), together form a single agreement which together are "**this Agreement**". Headings in this Agreement are for convenience and do not affect its interpretation.

1.3. If there is any inconsistency between any part of this Agreement, the following order of priority applies: (i) first, any written agreement between the parties that has been duly executed and whose term has not expired, which will apply to the exclusion of the Terms; (ii) second, the terms of the relevant PO; (iii) third, the terms of the relevant Invoice; and (iv) these Terms.

2. SUPPLY AND DISPOSAL OF PRODUCTS AND TOOLS

2.1. The Supplier shall supply and the Customer shall purchase the Products and/or the Tools (as applicable on the terms of this Agreement).

2.2. The Customer acknowledges and agrees that its standard terms and conditions (if any) shall not apply to the supply of Products and/or Tools notwithstanding any reference to such terms in any such document and that the Terms shall apply in their place. In placing any PO with the Supplier, the Customer agrees that the Terms apply to the supply of the Products and/or Tools ordered pursuant to such PO and irrevocably and unconditionally waives any right which it otherwise might have to rely on its own standard terms and conditions.

2.3. If the Tools are not used by the Supplier to manufacture Products for a period of two years or longer, the Supplier may dispose of the Tools on not less than three months' written notice to the Customer. Where such Tools are owned by the Customer, any proceeds arising from the sale or disposal of such Tools (after deducting the costs of sale or disposal and the Supplier's commission of 10% of the gross proceeds of the same) shall be for the account of the Customer.

3. PAYMENT TERMS

3.1. The Customer shall pay for the Products on the terms set out in the relevant Invoice or, if such

documents do not specify payment terms, all Invoices shall be settled in not less than 30 days. Amounts payable by the Customer shall be paid by no later than the due date against receipt of the relevant Invoice or as specified in the preceding sentence of this clause (as applicable). Subject to the terms of the relevant Invoice, amounts shall be paid in pounds sterling. Late payments under this clause 3.1 shall accrue interest at 4% above HSBC Bank PLC's base rate from time to time.

3.2. The price for the Products shall be calculated on a sales unit basis unless otherwise agreed in writing and shall include, without limitation, any: (i) financial costs; (ii) quota; (iii) costs of extra packaging and accessories; (iv) labelling costs; and (v) sampling costs (including sample delivery).

3.3. All Tools shall be paid for by the Customer on terms to be agreed between the Customer and the Supplier in writing. Where samples are delivered, all such samples shall automatically be deemed to be approved after 14 days unless the Customer notifies the Supplier otherwise in writing. Approval of samples shall not be unreasonably withheld, delayed or conditioned by the Customer. Until the Customer has paid for the Tools in full, legal and beneficial title to such Tools vest in the Supplier.

3.4. All prices under this Agreement are calculated exclusive of VAT.

3.5. The Customer shall have no right of set off, deduction or withholding in respect of any payment to the Supplier which is or may in future become due, whether under this Agreement or otherwise.

4. QUANTITIES, TECHNICAL SPECIFICATIONS

4.1. The Supplier shall deliver the quantity of Products set out in the relevant PO plus or minus a ten percent margin of error. The Customer shall be liable to pay for excess Products delivered up to such margin of error. The Customer shall not be liable to pay any amount for any surplus above such margin of error.

4.2. The parties acknowledge that the Customer's technical and quality requirements have previously been delivered to the Supplier and such requirements have been agreed between the parties (the "**Agreed Specification**").

4.3. The Supplier shall produce the Products and/or Tools (as applicable) in accordance with the Agreed Specification, which the Customer may amend on reasonable written notice prior to production of the Products and/or Tools commencing. Where the Customer changes the Agreed Specification after production of the Products and/or Tools has commenced, clause 8.6 shall apply, *mutatis mutandis*, to any work in progress or finished inventory that is in production or has been produced prior to the date of such change. The costs of reworking required by the Customer (whether before or after) commencement of

production of the Products or Tools (as the case may be) shall be borne in full by the Customer. Where the Supplier is unable to comply with the requirements set out in such Agreed Specification, the Supplier shall notify the Customer of the same and the reasons for non-compliance in writing prior to the earlier of: (i) delivery of the Products and/or Tools; or (ii) inspection of the Products and/or Tools by the Customer Representative (as defined below).

5. QUALITY ASSURANCE AND INSPECTIONS

- 5.1. The Customer may on written notice to the Supplier nominate an agent or representative (the "**Customer Representative**"), who may inspect Products or newly manufactured Tools prior to delivery. The Customer may appoint further Customer Representatives or dismiss the Customer Representative on written notice.
- 5.2. The Supplier shall allow the Customer Representative, on reasonable notice during the Supplier's business hours, reasonable access to the Supplier's premises in order to conduct, without limitation, the following: (i) factory audits; (ii) inline inspections; (iii) start-up checks; and/or (iv) quality assurance inspections.
- 5.3. No Products and/or Tools shall be delivered to the Customer unless either the Customer or the Customer Representative has confirmed in writing that: (i) the Products and/or Tools (as applicable) have passed a quality assurance inspection; or (ii) such inspection is not required. Such confirmation shall not be unreasonably withheld, delayed or conditioned by the Customer. For the avoidance of doubt, nothing in this clause 5.3 shall prevent the Supplier from delivering any Products or Tools where such Products and/or Tools conform with a sample which has been previously approved as passing a quality assurance inspection by the Customer, **PROVIDED THAT** Products and/or Tools so delivered conform with the relevant sample.

6. DELIVERY, TITLE, RISK AND REPORTING

- 6.1. The Products and/or Tools shall be delivered on the date set out in the relevant PO unless the parties agree otherwise in writing. Title and risk in the Products so delivered shall pass to the Customer ex works at the Supplier's factory gate unless the relevant PO provides otherwise. Time shall not be of the essence of this Agreement.
- 6.2. If the delivery of finished Products and/or Tools is delayed for reasons due, directly or indirectly, to the acts or omissions of the Customer or its directors, officers, employees, agents or representatives, the Supplier shall be entitled to payment for such Products and/or Tools as if such Products and/or Tools had been delivered on time and the Customer shall defend, indemnify, keep indemnified and hold harmless the Supplier for all losses, liabilities, costs, expenses, proceedings and damages properly incurred by the Supplier in relation to the transportation, storage and insurance of such Products and/or Tools for the period commencing on the date on which such Products and/or Tools should have been delivered but for the acts or omissions of the Customer.
- 6.3. The Supplier shall maintain substantially complete and materially accurate records and supporting documentation relating to the performance of its obligations under this Agreement for not less than any period required under applicable quality management policies in place at the Supplier from

time to time or as otherwise agreed by the parties in writing.

7. The Supplier shall without undue delay make available to the Customer on the Customer's written request, any information reasonably necessary for monitoring the Supplier's performance of its obligations hereunder.

8. INTELLECTUAL PROPERTY

- 8.1. Herein, "**IPR**" means any and all patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names, trade names, and domain names, rights in get-up and trade dress, goodwill and the rights to sue for passing off or unfair competition, design rights, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications, and rights to apply for and be granted, registrations granted pursuant to any of the applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world; and "**Pre-Existing IPR**" means any IPR existing on or prior to the date of this Agreement and which is required to provide the Products and/or Tools.
- 8.2. The Customer hereby grants to the Supplier a non-exclusive, royalty free licence of its Pre-Existing IPR for the duration of this Agreement to the extent required to provide the Products and/or Tools and otherwise comply with its obligations under this Agreement.
- 8.3. The Supplier hereby grants to the Customer a non-exclusive, royalty free licence of its Pre-Existing IPR, in perpetuity solely to enable the Customer to receive, use and enjoy the Products and/or Tools.
- 8.4. Neither party may assign, licence, grant security over or otherwise transfer the other party's Pre-Existing IPR without the prior written consent of the other.
- 8.5. Where required to do so in writing, a party shall promptly on written request execute (on terms satisfactory to the licensor, acting reasonably), a document confirming such that it has authorised the other party to use its IPR.
- 8.6. Each party's right to use the other party's Pre-Existing IPR is subject to the following conditions: (i) neither party shall do or omit to do any act or thing whereby the validity, enforceability or the other party's ownership of any of the other's Pre-Existing IPR may be prejudiced; (ii) each party shall (if applicable) comply at all times with the other party's brand guidelines (if any) as notified to it from time to time when using or exploiting that party's Pre-Existing IPR; (iii) each party shall use all reasonable endeavours to procure that the reputation of the other and/or the goodwill accrued to that other party's Pre-Existing IPR is not damaged in any way; and (iv) each party shall, if required in writing to do so by the other party, deliver without undue delay to that other party for its approval, all relevant materials, including (by way of example and without limitation) the text and layout of all proposed labels, advertisements and marketing and promotional material relating to the

- Products and/or Tools. If the receiving party either expressly does not approve such materials or fails to approve the same within 7 days, such materials shall not be used.
- 8.7. Each party shall promptly notify the other in writing if it becomes aware of any of the following: (i) any actual, suspected or threatened infringement of any party's Pre-Existing IPR; (ii) any claim made or threatened that any Products and/or Tools bearing any Pre-Existing IPR infringes the rights of any third party; or (iii) any other form of attack, charge or claim to which any Pre-Existing IPR may be subject.
- 8.8. The parties shall work together in good faith and shall ensure that all moral rights, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, in the Products and/or Tools are waived irrevocably and unconditionally and are not asserted.
- 8.9. Unless otherwise agreed between the parties in writing, this Agreement does not assign or otherwise transfer any IPR. Neither party may assert ownership of the other party's Pre-Existing IPR.
- 9. TERMINATION**
- 9.1. The Customer may terminate this Agreement on written notice to the Supplier: (i) in accordance with clause 13; (ii) by giving 7 days or more written notice to the Supplier if the Supplier commits a material breach of its obligations under this Agreement which is not capable of remedy or, where capable of remedy, does not remedy such breach within 7 days' of written notice given to it by the Customer specifying that a breach has occurred, setting out in writing in reasonable detail the nature and effect of such breach and the likely loss to the Customer arising from the same and requiring that the Supplier remedy such breach within such 14 day period; or (iii) on 7 days' notice in writing if the Supplier does, or omits to do, anything which shall cause material adverse publicity to the Customer, its public image or reputation.
- 9.2. Either party may terminate this Agreement immediately by notice in writing to the other if the other party is subject to an Insolvency Event, whereupon any deposit paid by the Customer shall immediately become repayable. For the purposes of this clause 8.2, "Insolvency Event" means as follows:
- (A) the other party proposes or enters into a composition, compromise or other arrangement for the benefit of its creditors or a class of creditors;
- (B) the other party obtains a moratorium or other protection from its creditors or any class of them;
- (C) any person takes any steps towards: (i) winding up (where such step is a winding up petition, it shall only constitute an Insolvency Event where such petition is not withdrawn within 60 days) or dissolving the other party; (ii) appointing a trustee, supervisor, monitor, receiver, liquidator, administrator or similar officer or other encumbrancer in respect of the other party or any of its assets and/or (iii) taking possession of or levying a distress or execution against any of the other party's assets;
- (D) an event occurs which would result in a floating charge crystallising over any of the other party's assets;
- (E) the other party stops carrying on business or threatens to do so;
- (F) the other party is unable to pay its debts or admits it is unable to do so (within the meaning of section 123 of the Insolvency Act 1986, as amended, without any need for the terminating party to prove it in court); or
- (G) any event analogous to any of the above happens in any jurisdiction.
- 9.3. The Supplier may terminate this Agreement by giving at least 7 days' written notice to the Customer if the Customer commits a breach of the terms of this Agreement and (if such breach is remediable) fails to remedy such breach within 7 days of receipt of notice in writing to do so.
- 9.4. If the Supplier, acting in its sole discretion, elects to do so, it may obtain references for the Customer and may terminate this Agreement immediately on written notice to the Customer delivery of Products and/or Tools if any references are unsatisfactory, in the sole opinion of the Supplier.
- 9.5. Immediately on termination of this Agreement each party shall return to the other all equipment, materials, Confidential Information and property supplied to it in connection with this Agreement and the licences granted by the parties under clause 7 shall terminate and neither party shall have any further right to use the other's IPR.
- 9.6. Notwithstanding any term of this Agreement, upon termination of this Agreement; (i) the Supplier may, at its sole election, complete any Products and/or Tools constituting work in progress that was in production at termination of this Agreement and the Customer shall be liable to pay for the same if such work in progress is completed by the Supplier; (ii) the Supplier shall in all circumstances be entitled to keep any deposit made in order to secure the production of the Products and/or Tools.
- 10. WARRANTIES**
- 10.1. The Supplier warrants, represents and undertakes that at all times: (i) its obligations under this Agreement shall be performed with all reasonable diligence, skill and care in accordance with the Agreed Specification and otherwise in accordance with good industry practice (and, in the event that there is any conflict between such standards, the higher standard shall prevail); (ii) it shall comply with: (a) any codes of conduct or similar with which it has agreed in writing to comply from time to time; and (b) all applicable legal requirements relating to the production and supply of the Products and/or Tools; and (iii) it shall ensure that all of its staff (including any sub-contractors, agents or consultants): (a) perform this Agreement without causing any damage to the Customer's business, public image, reputation or goodwill; (b) hold appropriate professional qualifications; (c) are lawfully able to work in the jurisdiction in which they are engaged; and (d) are capable of providing the Products and/or Tools or any ancillary services for which they are engaged.
- 10.2. The implied terms set out in sections 12 to 15 (inclusive) of the Sale of Goods Act 1979, as amended (insofar as they apply to the Products and/or Tools) apply to this Agreement.

- 10.3. The Customer warrants, represents and undertakes to the Supplier at all times that: (i) the Agreed Specification: (a) is compliant in all respects with applicable laws and regulations pertaining to the Products and/or Tools in relation to the jurisdictions in which the Products will be sold; and (b) meets all of the Customer's requirements for the Products and/or Tools; (ii) all of its Pre-Existing IPR is valid, subsisting and enforceable and such Pre-Existing IPR and the Agreed Specification (and the Products and/or Tools intended to be manufactured in accordance therewith) do not infringe the IPR of any third party or other rights of any third party; and (iii) no action or proceedings are pending, or to the best of the Customer's knowledge, threatened in respect of any of its Pre-Existing IPR.

11. INDEMNITIES AND LIMITATIONS

- 11.1. The Supplier shall defend, indemnify, keep indemnified and hold the Customer harmless from any and all losses, liabilities, costs, expenses, proceedings and damages in each case calculated on a full indemnity basis, arising from or in connection with:

- (A) any claim made against the Customer for actual or alleged infringement of a third party's IPR arising out of, or in connection with, the Supplier's Pre-existing IPR;
- (B) any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Products and/or Tools, to the extent that the defects in the Products and/or Tools are attributable to the acts or omissions of the Supplier, its staff, agents or subcontractors;
- (C) any damage or destruction to any of the Customer's premises or property to the extent that such damage or destruction is attributable to the acts or omission of the Supplier, its staff, agents or sub-contractors;
- (D) any material failure to comply with the provisions of the Modern Slavery Act 2015 or the Bribery Act 2010; and
- (E) a material breach by the Supplier of any law or its obligations under this Agreement which causes any material breach of applicable law or regulation by the Customer.

- 11.2. The Customer shall defend, indemnify, keep indemnified and hold the Supplier harmless from any and all losses, liabilities, costs, expenses, proceedings and damages in each case calculated on a full indemnity basis, arising from or in connection with any breach of clauses 9.3(i) or 9.3(ii).

- 11.3. In clauses 10.3 and 10.4, "**liability**" means any liability arising out of or in connection with this Agreement whether arising in contract, tort, (including, without limitation, negligence), misrepresentation, restitution, breach of statutory duty, under any indemnity or otherwise. Subject to clauses 10.4 and 10.5, the liability of the Supplier under this Agreement shall not exceed: (i) in cases where such liability arises as a result of any failure of Products and/or Tools, 100% of the charges (net of VAT) levied by the Supplier in respect of the consignment of Products and/or Tools which gave rise to such liability; or (ii) in any other case, £50,000.

- 11.4. Nothing in this Agreement excludes or limits the liability of either party in respect of: (i) death or

personal injury caused by its negligence (including negligence of its staff, agents or contractors); (ii) fraud or fraudulent misrepresentation; or (iii) any liability which may not otherwise be limited or excluded by law.

- 11.5. Subject to clause 10.4, the Customer shall not be liable, whether in contract, tort (including, without limitation, negligence), misrepresentation, restitution, breach of statutory duty or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement.

- 11.6. In the event that any indemnity payment made pursuant to this Agreement is subject to any deduction, set-off, withholding, or liability to tax, such indemnity payment shall be increased by an amount that will result in the receipt by the indemnified party of the full amount of the indemnity payment as if no such deduction, set-off, withholding, or liability to tax had been imposed or applied. The indemnifying party shall pay such additional amount to the indemnified party promptly upon receipt of a written notice from the indemnified party accompanied by reasonable evidence of the amount of the deduction, set-off, withholding, or liability to tax that has been imposed or applied.

12. INSURANCE

- 12.1. The Supplier shall at all relevant times take out and maintain with reputable insurers such policies of insurance as a reasonably prudent person carrying on the same business as the Supplier would ordinarily take out, including, without limitation: (i) insurance necessary to insure the Supplier against product liability and other laws which impose liability as a result of the manufacture, sale or distribution of products generally until such time as risk in the Products and/or Tools passes to the Customer; (ii) public liability insurance; and (iii) any other insurance required by applicable law. Such insurance shall not be less than £1,800,000 in the aggregate for any policy year.
- 12.2. If requested by the Customer in writing, the Supplier shall provide the Customer with written evidence of the existence of its insurance policies and of the payment of the relevant premiums.

- 12.3. Risk in any of the Customer's Tools stored at the Supplier's premises shall lie solely with the Customer. The Customer shall be responsible, at its sole cost and expense, for taking out and maintaining any insurance covering risks relating to such Tools.

13. CONFIDENTIALITY AND ANNOUNCEMENTS

- 13.1. In this Agreement, "**Confidential Information**" means all confidential information disclosed to either party by the other (the "**Discloser**") concerning the business or affairs of the Discloser, including (without limitation) any information relating to the Discloser's IPR, operations, pricing, processes, initiatives, plans, product information, market opportunities and customers.

- 13.2. No party who receives Confidential Information of the Discloser (the "**Recipient**") may disclose any Confidential Information other than in accordance with this clause 12.

- 13.3. The Recipient may disclose the Discloser's Confidential Information as follows: (i) to the Recipient's, employees, directors, officers, agents, representatives or professional advisers ("**Representatives**") who need to know such

- Confidential Information for the purposes of carrying out the Recipient's obligations under this Agreement, provided that the Recipient shall ensure that its Representatives comply with the confidentiality obligations contained in this clause 12 as though they were a party to this Agreement. The Recipient shall remain principally liable to the Discloser where any Representative fails to comply with the obligations of confidence and security owed to the Discloser under this Agreement; (ii) as may be required by law, court order or by any governmental or regulatory authority or rules of any securities exchange to which the Recipient is subject; and (iii) to the extent the Confidential Information has become publicly available or generally known to the public at the time of the disclosure other than as a result of a breach of this clause 12.
- 13.4. On termination of this Agreement, the Confidential Information and any records or copies of the same in whatever form, must be destroyed or returned promptly to the Discloser without delay on its written request.
- 13.5. The Supplier shall not without the Customer's prior written consent advertise or publicly announce that it is or has provided Products and/or Tools to the Customer.
- 14. FORCE MAJEURE**
- Neither party shall be liable for any expense, loss or damage resulting from delay or prevention of performance of the Agreement that is caused by fires, floods, acts of God, riots, pandemic, epidemic, thefts, accidents or any other circumstance that is beyond the affected party's control (but excluding for the avoidance of doubt any strikes, lock-outs or industrial action, by the employees, workers or agents of the Supplier) (a "**FM Event**"). If the FM Event prevents, hinders or delays the affected party's performance of its obligations for a continuous period of more than 60 days, or periods which, when aggregated, are in excess of 90 days, after the date which the FM Event began, the Customer may by notice immediately terminate this Agreement.
- 15. GENERAL**
- 15.1. This Agreement is divisible, and each delivery of any consignment of Products and/or Tools under this Agreement shall be considered a separate transaction. The failure of the Supplier to deliver any consignment of Products and/or Tools or any defect in any such consignment shall not give rise to any right of the Customer to terminate the Agreement as a whole, or any other consignment.
- 15.2. The Customer may not assign, transfer, mortgage, charge, sub-contract, declare a trust over or deal in any other manner with all or any of its rights under the Agreement without the Supplier's prior written consent.
- 15.3. Any notice or communication to be given under this Agreement shall be in writing and shall be delivered by email to the address customarily used by the relevant party for handling correspondence in relation to this Agreement or hand or sent by pre-paid first class recorded delivery post (or, in the case of international post, by airmail) to the party to be served at that party's registered office (if it is a company) or its principal place of business (in any other case) from time to time marked for the attention of the directors of that party. Any such notice shall be deemed to have been received: (i) if delivered by hand, at the time of delivery; (ii) if delivered by email, at the time of transmission; or (iii) if posted, at 9.00am (local time) on the third business day after posting (or in the case of airmail, on the fifth business day after posting).
- 15.4. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 14.4 shall not affect the validity and enforceability of the rest of the Agreement.
- 15.5. The obligations of the parties under this Agreement shall survive delivery of the Products and/or Tools to the Customer. Clauses 1, 6.3, 6.4, 8.5, 8.6, 10.2 to 10.6 (inclusive), 11, 12 and 14 shall survive termination of this Agreement.
- 15.6. A waiver of any right or remedy under this Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. The failure or delay by any party in exercising any right, power or remedy that it might have under this Agreement or law shall not in any circumstances impair such right, power or remedy nor operate as a waiver of it, nor shall it prevent or restrict the further exercise of that or any other right or remedy. The single or partial exercise by any party of any right, power or remedy under this Agreement shall not in any circumstances preclude any other or further exercise of it or the exercise of any other right, power or remedy. Any waiver of a breach of, or default under, any of the terms of this Agreement shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of this Agreement.
- 15.7. A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any provisions of this Agreement.
- 15.8. The parties' rights and remedies under this Agreement are cumulative and additional to any other rights or remedies they may have in law or in equity and shall not be affected by any party rescinding, or failing to rescind, this Agreement.
- 15.9. This Agreement sets out the entire agreement between the parties relating to its subject matter. Save as expressly set out in this Agreement, each party acknowledges that it has not relied on any statement, representation, warranty, promise or assurance that is not set out in this Agreement.
- 15.10. This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and shall be interpreted in accordance with English law and subject to the exclusive jurisdiction of the English courts.