

## Standard Terms and Conditions for the Sale of Goods by Facet Manufacturing Limited

In these Terms and Conditions, the following words have the following meanings:

*The Company:* Facet Manufacturing Ltd  
*Goods:* All/any Goods/Services offered for sale by the Company  
*The Customer:* Any third party(ies) who order or purchase Goods/Services from the Company  
*Writing:* Any written form including, but not limited to, Electronic Data Transfer, such as Email, Fax and any other comparable means of communication  
*The Contract:* a contract for the supply of Goods by the Company

### **1. GENERAL**

- (1) These Terms & Conditions (which may be amended by the Company from time to time) apply to Goods provided by the Company and specifically exclude any other terms and conditions the Customer may seek to impose
- (2) No alteration, waiver or modification of these Terms and Conditions shall be valid unless countersigned by a Director of the Company.
- (3) Any order received by the Company where the date of delivery has not been specified will be deemed to have a delivery date within a period of twelve calendar months from the date of the order.
- (4) Additional Special Terms and Conditions apply to the sale of HMI products by the Company which are available upon request
- (5) Additional Special Terms and Conditions apply to the Sale of Kitting Products/Services by the Company which are available upon request
- (6) In addition to the rights and remedies contained in these Conditions, the Company shall have all the rights and remedies afforded to a seller pursuant to any rule of law. All rights and remedies of the Company under these Terms and Conditions shall be cumulative and not in the alternative.

### **2. ACCEPTANCE OF ORDERS**

- (1) The Company's quotations are valid only for a period of 30 days.
- (2) The Customer order constitutes an offer to buy Goods from the Company. By the issue of an order, the Customer is deemed to have accepted these Terms and Conditions to prevail over all others. The Contract will be formed when the Company acknowledges its acceptance of the Customer's order.
- (3) As soon as the Company has accepted an oral or written order the Customer is bound to accept the Goods. An accepted order may only be varied or cancelled with the Company's written consent which will not in any way prejudice the Company's right to recover from the Customer full compensation for the loss or expense arising from such cancellation.
- (4) Engagements made by the Company's agents or representatives are only valid when confirmed in writing by the Company.

### **3. PRICE AND PAYMENT**

- (1) Prices stated in the Company's acknowledgement of the order for imported goods are based on the relevant currency/Sterling exchange rate in force at the date thereof.
- (2) If between the date of order and the date of despatch the cost of the Goods has increased or the value of Sterling has fallen against the relevant currency, the Company reserves the right to increase the price of the Goods accordingly without prior notice.
- (3) The exchange rate in force at any particular date will be the relevant currency/Sterling exchange rate published in the Financial Times on that date, or, if no such rate is published, such exchange rate as the Company shall, in its reasonable opinion, determine.
- (4) Unless otherwise specified, prices quoted are exclusive of VAT and all other taxes and duties payable, except import tariff, which is included in the price.
- (5) Unless otherwise specified, all prices are exclusive of packing and delivery.
- (6) Where a credit account is agreed, Customer orders are subject to credit approval before acceptance, and periodic review of credit limits.
- (7) Where a credit account is agreed, the Customer will make payment in full as per the terms of the application form, and no deductions are to be made for set-offs or counter-claims. The time for payment is to be of the essence of the contract. If the Customer fails to pay the full price on the due date, then all outstanding invoices submitted by the Company to the Customer under any contract become immediately payable.
- (8) The Company reserves the right to make delivery subject to immediate cash payment.
- (9) Bills of exchange, Banker's Drafts and Letters of Credit will be accepted only by prior agreement in writing and the Customer will be liable for any discounting or bank charges incurred.
- (10) A clerical mistake or a mistake arising from any accidental slip or omission in a Letter of Credit will not discharge the Customer from his obligation to pay for the Goods and the Customer will ensure that payment to the Company is made.
- (11) The Company reserves the right to charge compound interest at 3% above the Bank of England base rate per annum on all amounts overdue. The Customer will be liable for all costs incurred in the collection of the amounts outstanding after the due date of payment on a full indemnity basis.
- (12) If the Customer is in default in making payment, the Company may decline to make further deliveries without affecting its right under, or repudiating the Contract. If despite default by the Customer the Company continues to supply Goods, this will not constitute a waiver or in any way prejudice the Company's legal position.

### **4. SAMPLES**

- (1) Samples are provided to enable the Customer to judge for himself the specification and quality of the Goods. Sales by sample by the Company will take one of the following forms:
  - (i) The sample is manufactured by the factory appointed by the Company to be specific to the Customer's requirement as per a specific detail provided by the Customer.
  - (ii) The Company has specified on a quotation that pre-bulk manufacture samples will be provided for approval,

(iii) Conditions of development, tooling and supply of samples are shown on a quotation from the Company to the Customer. Sales by sample are non-cancellable, non-returnable and the agreed delivery dates for these goods can not be changed by the Customer.

- (2) In all other cases than (i), (ii) and (iii) above, the provision of samples of Goods will be only to illustrate the non-specific product to the Customer and will not constitute a sale by sample. The Customer will take the Goods at his own risk as to their corresponding with the said sample and subject to the normal variation between bulk and sample.

### **5. DATA REGARDING GOODS**

- (1) All Goods are supplied by the Company to the Customer according to the applicable data sheet specification and the Customer must use the Goods according to the specification. The Company will not accept responsibility for any defects caused by the Customer's use of the Goods outside their specification.
- (2) The Company does not warrant the accuracy of any data supplied to the Customer by the Company, its suppliers or agents.
- (3) Specifications, drawings and other documents relating to the Goods remain the property of the Company and may not be transmitted to any third party without the Company's written consent.
- (4) All such documents must, if so required by the Company, be returned to the Company within seven days of the Company's request.

### **6. GOODS**

- (1) If between the date of acceptance of the order and the date of delivery the Company or their suppliers adopt any changes in construction or design of any Goods, the Customer will accept the Goods as modified. The serial number shown on any Goods is not part of the description of the Goods and is included solely for the Company's purposes.
- (2) All specifications, drawings, dimensions, capacity and other details are intended to give a general idea of the Goods, but will not form part of the contract unless otherwise agreed in writing. If the Company's description of the Goods varies from the Manufacturer's description, then the Manufacturer's description shall take precedence. The Manufacturer's description is available from the Company on request in writing.

### **7. QUALITY**

- (1) The Company shall use all reasonable endeavours to pass on to the Customer the benefit of any warranties given by the manufacturer of the Goods.
- (2) The Company will only accept liability for any defect provided:-
  - (i) Returns to the Company are only accepted via a Returns Authorisation Number, which should be obtained by the Customer prior to the return of any goods to the Company.
  - (ii) The Customer should inspect the Goods immediately upon delivery and give written notice to the Company of any alleged damage in transit, such notice to be received by the Company within seven days of delivery of the Goods. Any other quality claims should be notified to the Company in writing within 30 days of the Customer's receipt of the Goods.
  - (iii) In the case of any quality claim, the Customer should afford the Company a reasonable opportunity to inspect the Goods and if so requested by the Company return a sample of, or all of, the allegedly defective Goods to the Company, carriage pre-paid, for inspection to take place at the premises of the Company, and if deemed necessary by the Company to return the Goods to the original supplier for testing.
  - (iv) In the case of any quality claim, the Customer makes no further use of the Goods that are alleged to be defective after the time at which the Customer discovers or ought to have discovered that they are defective.
  - (v) Any Goods returned by a Customer to the Company must be returned in their original packing. Any costs of damage to the Goods in transit whilst being returned to the Company that is considered to be caused by inadequate packaging will be borne solely by the Customer.
- (3) Notwithstanding Paragraphs (1) and (2) above the Company will not be responsible for:-
  - (i) Defects caused due to compliance by the Company with the Customer's own instructions.
  - (ii) Defects caused by the incorrect operation or handling of the Goods by the Customer.
  - (iii) Defects caused by the Customer using the Goods outside their specification or outside published performance data.
  - (iv) Customer's use of goods in a manner not specified at the time of order from the Company.
- (4) If the Company is of the opinion that any Goods are defective the Company may remedy by the following methods, at its discretion:-
  - (i) Replace the Goods; or
  - (ii) Take such steps as the Company deems necessary to bring the Goods into a state where they are free from such defects; or
  - (iii) Issue at the Company's opinion either a partial or a full refund or credit note for the appropriate part of the purchase price, provided that the liability of the Company will not exceed the purchase price of the relevant Goods.Performance of any of the above options will constitute an entire discharge of the Company's liability under this warranty.

- (5) The above warranty is the sole remedy given by the Company in respect of the Goods. All other warranties, conditions or other terms implied by any rule of law are excluded to the fullest extent permitted by law including (without limitation) all warranties, conditions or other terms implied by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982.

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### **8. PERFORMANCE IN INSTALMENTS**

The Company may perform the Contract in instalments and each instalment will be deemed to be a separate contract and no failure of or delay in any instalment, nor any defect in the content thereof will entitle the Customer to treat the Contract as repudiated with regard to any remaining instalments.

### **9. DELIVERY**

- (1) The Company will use all reasonable endeavours to keep to any date specified for delivery but the Company accepts no liability in case of failure to do so within a reasonable period following the specified date. The Company will not be liable to make good any damage or loss arising directly or indirectly out of delay in delivery whether or not such delay is caused by the fault of the Company.
- (2) Unless specific instructions from the Customer are accepted in Writing by the Company, the Company may select a suitable carrier to deliver the Goods. The risk passes to the Customer at the point of delivery or attempted delivery by the appointed carrier.
- (3) If the Goods are to be collected by the Customer from the Company, the risk therein shall pass to the Customer as soon as the Customer or agent has collected the Goods.
- (4) The specification for packing the Goods will be entirely at the discretion of the Company who may pack the Goods in such manner and with such materials and in such quantities as it in its absolute discretion thinks fit and will not be obliged to comply with the packaging instructions or requests of the Customer.
- (5) If for any reason the Customer is unable to accept delivery of the Goods at the time when they are due and ready for delivery, the Company may, if its storage facilities permit, and at the sole risk of the Customer, store the Goods and the Customer will be liable to the Company for all reasonable costs (including insurance, transport and administration costs) thereby incurred. This provision is without prejudice to any other claim, which the Company may have in respect of the Customer's failure to take delivery at the appropriate date.
- (6) Payment of the costs referred to in 9.(6) may at the Company's discretion be due on the date on which the consignment was ready for delivery.
- (7) Carriage will be charged according to the Company's standard rates prevailing at the time.

### **10. PROPERTY**

- (1) Property in the Goods will remain with the Company until payment in full of all, or any monies due, or owing by the Customer to the Company.
- (2) In the event of non-payment in accordance with Condition 3 above, the Company has the right to trace into the proceeds of sale of any of the Goods.
- (3) Until such time as payment in accordance with Condition 3 above is made, the Customer shall hold the Goods as the Company's fiduciary agent and bailee and is required to store the Goods in such a way as to clearly identify the ownership of property in Goods as belonging exclusively to the Company.
- (4) In the event that the Goods have been inserted or incorporated into another product or equipment, the Goods remain the absolute property of the Company and the Company may remove the Goods from the other product or equipment.
- (5) Nothing in this Clause will prevent the Customer from selling the Goods in the ordinary course of his business to a third party on the condition that if the Customer owes money to the Company or the payment of such monies is the subject of dispute between the parties the Customer will:-
  - (i) Pay all sub-monies into a separate account in trust for the Company.
  - (ii) Transfer all the rights they have in the sub-sale transaction to the Company.
- (6) The Company may for the purpose of recovery of its Goods enter upon the premises where their Goods are stored, or are believed to be stored.
- (7) The Company may repossess their Goods in the event of any breach of these Conditions by the Customer.
- (8) For the purpose of exercising its remedies in Condition 10.(6 & 7) above the Customer acknowledges that the Company has its licence and right of access to enter upon the Customer's Premises.
- (9) The Customer shall give written notice of this Condition to any factor or other person except a purchaser of goods in good faith.
- (10) In the event of certain goods having been paid for by the Customer and other goods not having been so paid for the Customer must show that any goods remaining in its possession are goods for which it has paid.
- (11) This Condition 10 does not entitle the Customer to return the Goods or to refuse or delay payment on the grounds that the property has not yet passed nor shall it constitute an agency.
- (12) The Customer appoints the Company his agent with full authority to execute on his behalf any document or instrument which may be required in order to perfect the Company's title and interest in the Goods.
- (13) The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all moneys owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

### **11. EXCLUSIONS**

- (1) Save where the same cannot be excluded by statute:-
  - (i) All conditions and warranties express or implied are hereby expressly excluded.
  - (ii) The Company will be under no liability for any loss or damage howsoever caused which arises in respect of indirect or consequential loss or damage.
  - (iii) The Company will be under no liability for any loss or damage howsoever caused which arises in respect of the Customer's liability to a third party whatsoever.

(iv) Without prejudice to any other term or condition, the Company will be under no liability for any loss or damage of whatever kind howsoever caused or arising unless the same is due to its wilful default.

- (2) Without prejudice to the generality of 11.(1) all advice and recommendations given by or on behalf of the Company to the Customer as to the method of storing, applying or using the Goods, the purpose for which the Goods may be applied and the suitability of using the Goods in any manufacturing process or in conjunction with any other materials are given without liability on the part of the Company, its servants or agents.
- (3) In the event that notwithstanding the provisions of 11.(1) and 11.(2), the Company is found liable for any loss or damage, that liability will in no event exceed 125% of the price of the Goods to which the liability relates.
- (4) Nothing in these Terms and Conditions shall exclude or limit the Company's liability for death or personal injury caused by its negligence.

### **12. SET-OFF AND COUNTERCLAIM**

In respect of all unpaid debts due from the Customer to the Company under any Contract, the Company will have a general right of lien over the Customer's goods and property that may be in the possession of the Company, even though such goods, or some of them may have been paid for. After the expiration of 14 days notice to the Customer, the Company will be entitled to dispose of such goods and property as it deems fit and apply the proceeds towards such debts.

### **13. FORCE MAJEURE**

- (1) The due performance of the Contract is subject to cancellation or variation by the Company as a result of any act of God, war, riot or civil dispute, strikes, lock-outs or other labour dispute, fire, flood, drought or accident, legislation, requisitioning or other act or order by any government department or other authority or any other cause whether of the foregoing classes or not beyond the Company's control. In such event no liability will attach to the Company by reason of cancellation or variation of any Contract, and the Company may apportion its available Goods among its Customers as it thinks fit.
- (2) Completion of the Contract may be wholly or partially suspended and the time of suspension added to the original Contract in the event of stoppage, delay or interruption of work in the establishment of the Company or any of its suppliers before or during the delivery period as a result of any of the causes set out above or any causes whatsoever beyond the control of the Company.
- (3) This clause applies to any of the above causes occurring either in the United Kingdom or in the country of origin of the Goods.

### **14. TERMINATION**

If the Customer should:

- (1) Default in or commit any breach of its obligations under the Contract;
  - (2) Commit any act of bankruptcy or has any execution or distress levied upon any of its goods or property;
  - (3) Make any arrangement or composition with its creditors;
  - (4) If any resolution or petition to wind-up its business is passed or presented: or
  - (5) A receiver of the whole or part of its undertaking, property or assets or any part thereof is appointed or the Customer goes into administration
- The Company will have the right forthwith to determine any Contract then subsisting and to repossess Goods pursuant to Condition 10 without prejudice to any claim or right the Company might otherwise make or exercise.

### **15. MISREPRESENTATION**

Save in the case of fraud, any error, omission, misrepresentation or mis-statement in the Contract or in the course of negotiations leading thereto will not entitle the Customer to rescind the Agreement nor will the Customer be entitled to any damages or compensation in respect thereof.

### **16. WAIVER**

The Company's rights and remedies will not be prejudiced by any indulgence or forbearance to the Customer and no waiver by the Company of any breach by the Customer will operate as a waiver of any subsequent breach.

### **17. SEVERANCE**

The unenforceability or invalidity of any condition or sub-condition of the Conditions will not affect the enforceability or validity of the remainder and if any of these Conditions or any part of one of them is rendered void, voidable or unenforceable by any legislation to which it is subject it will be void, voidable or unenforceable to that extent and no further.

### **18. PROPER LAW**

The construction, validity and performance of this Contract will be governed by the Law of England and the parties hereby submit to the non-exclusive jurisdiction of the English Courts. The paragraph headings herein are only aids to reference and will not affect the construction of these Conditions.

### **19. INTELLECTUAL PROPERTY**

If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted to the Company by the Customer, the Customer shall indemnify and keep indemnified the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification.

### **20. THIRD PARTY RIGHTS**

No rights or benefits are, or are intended to be, conferred on any third party under the Contracts (Rights of Third Parties) Act 1999.