

HCM HONG KONG AND CHINA MOULDS LIMITED - CONDITIONS OF BUSINESS

1. Definitions

In these conditions the following words have the following meanings unless the context requires otherwise: "CAD Data" means the computer aided design information, drawings, material, illustrations, diagrams and other representations provided by You to Us in respect of the Products and Services to be provided under this Contract; "We" means Hong Kong & China Moulds Limited incorporated in England and Wales CRN:4262886 registered office at 11-13 Gretton House, Waterside Court, Third Avenue Centrum 100 Burton on Trent DE14 1WQ; "Contract" means any contract between Us and the You incorporating these conditions for the sale of Products and/or the provision of the Services; "You" means the person whose order for Products/Services is accepted by Us; "Deposit" means a one off a non-refundable payment of 40% of the total price and which is due from You to Us upon submission of Your final order and with completed CAD Data; "Intellectual Property Rights" means without limitation all patents, copyright, design rights (whether registered or unregistered), trade marks (whether registered or unregistered) skill and/or know-how and other similar rights, whether existing now and/or in the future, wherever existing in the world together with the right to apply for protection of the same) in the Products, and/or arising from the Services; "Liability" means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities; "Maintenance and Use Manual" means the rules, procedures and guidelines issued by Us to You from time to time relating to the maintenance and use of the Products; "Products" means any casts, moulds, tools and/or other such products, materials and/or goods ordered from Us by You and/or to be supplied by Us to You; "Sample" means any example, model, trial, illustration or test work produced by Our using the Product; "Services" means the design, drawing, engineering and/or maintenance and repair services and/or any other services and/or work to be performed by Us for You in the course of supplying the Product; and "Shot" means the single injection, by You, of material, substance and/or other matter into the Product;

2. Basis of contract and orders

- 2.1 These conditions shall govern the agreement between Us and You to the exclusion of any other terms or conditions.
- 2.2 No variation to these conditions shall be binding on Us, and Our employees, sub-contractors and/or agents are not authorized to make any representations or warranties concerning the Products and/or Services unless contained in Our quotation or otherwise agreed in writing. You acknowledge that You do not rely on any representation and/or warranty which has not been made in accordance with these conditions.
- 2.3 "Quotations" (unless stated otherwise) are valid and shall be available for approval by You for a period of 20 days from the date of the quotation. Quotations may be withdrawn by Us at any time during this period by oral or written notice and may be subject to revision upon receipt by Us of the final CAD Data.
- 2.4 You shall be responsible for the accuracy of an order and the CAD Data and for giving Us any information necessary for Us to perform the Contract.
- 2.5 The Contract between Us and You shall come into effect on Our written acceptance of Your order by Our authorized representative. We shall have the right to refuse to accept any orders placed for Products and/or Services.
- 2.6 If You purport to cancel this Contract for any reason you shall have no further recourse against Us under this Contract.

3. Samples

- 3.1 The production of any Samples for You shall, unless otherwise agreed in writing, be at Your cost and shall be sent to You, where appropriate, by air.
- 3.2 If You approve any Samples then You shall have no claim in respect of, nor any right to reject, any Products and/or Services provided the Products and/or the Services in question are of the same description, specification, quality and fitness for purpose as the Product used by Us to produce the Samples provided to You as appropriate. Your approval given in this way will remain effective whether or not Your customer later approves and accepts the end Product manufactured using the Products.

4. Delivery

- 4.1 We will use Our reasonable commercial endeavours to ensure delivery on the dates specified but dates for delivery are estimates only and are not guaranteed. Time is not of the essence in relation to such dates.
- 4.2 The Products will be delivered FOB Hong Kong (by sea) in accordance with Incoterms 2000. If You require delivery to be effected by air transport then We will provide all relevant expertise, assistance and advice but You will be solely responsible for the costs involved. The cost of delivery using this method of transportation will be included in the price.
- 4.3 Where Products are to be delivered in installments, each delivery shall constitute a separate and distinct contract and failure by Us to deliver, or any claim by You in respect of, any installment shall not entitle You to repudiate and/or terminate this Contract as a whole.
- 4.4 You shall have no right to reject Products and/or Services and shall have no right to rescind for late delivery and/or performance unless the due date for delivery and/or performance has passed and You have served on Us a written notice requiring the Contract to be performed and giving Us not less than 30 working days in which to do so and the notice has not been complied with.
- 4.5 We shall not be required to fulfill orders in the sequence in which they are placed. You shall be responsible at Your own cost for all arrangements to unload the Products when delivered. Where the Products are to be lifted using heavy plant and machinery You must adhere to the "Lifting" section of the Maintenance and Use Manual. Delivery will be made between 9.00am and 5.00pm on working days.
- 4.6 You shall procure during normal working hours that We have free right of access to the address for delivery to facilitate delivery of the Products.
- 4.7 If You refuse to take delivery of any Products then We shall be entitled to withhold delivery and/or performance of any other Products and/or Services and to treat this Contract as repudiated by You.
- 4.8 If the parties agree that the Products are to be collected from Our premises or any other agreed location, then You shall collect the Products within 3 working days of being notified that the Products are ready for collection. If the Products are not collected by You within the specified period We may despatch the Products to You at Your expense and risk and/or store the Products at Your expense and risk until despatch and/or collection.

- 4.9 We may comply with reasonable requests by You for postponement of delivery of the Products and/or performance of the Services but shall be under no obligation to do so. Where delivery or performance is postponed at Your request then You shall pay all Our costs and expenses incurred as a result including reasonable charges for storage, transportation and insurance. In addition You shall be obliged to pay for the Products and/or Services as if delivery and/or performance had not been postponed.

5. Price and Payment

- 5.1 The price of the Products and/or the Services shall be as quoted to You and/or any revision of the original quote provided by Us in accordance with clause 2.3 above.
- 5.2 Except as otherwise stated, prices are ex-works, and You shall be liable to pay Our charges (if any) for transport, packaging and insurance.
- 5.3 We may increase Our prices in relation to the Products and/or the Services which We have agreed to supply where the increase is to take account of increases in costs, expenses and/or materials. You will be informed in writing by Us of any increases in prices for the Products and/or the Services not less than 30 days before such increase takes effect. Prices are exclusive of any applicable VAT for which You shall additionally be liable.
- 5.4 Our terms of payment are unless otherwise agreed in writing: 40% of the price upon receipt of Your order; 30% following the first Shot; and 30% within 15 days after the Product has been tested and approved by you.
- 5.5 You will be deemed to have approved the Product: 5.5.1 Once you have approved any Sample; 5.5.2 Once the Product is being used in the course of production or once the Product has physically left its country of origin, whichever incident occurs first; or
- 5.6 If You fail to make any payment in full on the due date We may charge You any reasonable additional administration costs and/or interest (both before and after judgment) on the amount unpaid at the rate of 4% above the base rate from time to time of Our bank or the then prevailing rate under the Late Payment of Debts (Interest) Act 1998 whichever is the higher. Such interest shall be compounded with monthly rests.
- 5.7 Any monies received by Us from You may be applied by Us at Our option, in any order, against any additional administrative costs and/or interest charged prior to application against any principal sums due from You.
- 5.8 We may invoice each delivery of Products and/or stage of the Services separately.
- 5.9 You shall pay all sums due to Us under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies. Payment shall not be deemed to be made until We have received either cash or cleared funds in respect of the full amount outstanding. We may render an invoice to You any time after the Products have been ordered.
- 5.10 If payment in full is not made to Us when due then We may withhold or suspend future or current deliveries of the Products and/or performance of the Services and delivery and/or performance under any other agreement with You.
- 5.11 If Services are cancelled or this Contract terminated or delivery and/or performance is suspended or postponed before completion of the Services We shall be entitled to be paid on a quantum meruit basis for that part of the Services performed. We may invoice You accordingly and such monies shall be immediately due for payment.
- 5.12 We may set a credit limit for You at Our sole discretion. Changes in Your credit limit will be notified to You. We may refuse to accept orders for Products and/or Services and/or to suspend or withhold delivery of Products and/or the performance of the Services if such Products and/or Services would result in You exceeding Your credit limit or the credit limit is already exceeded.
- 5.13 You may cancel delivery of the Products and/or performance of the Services on condition that You indemnify and keep indemnified Us against any and all lost profits, costs (including increased administration costs and legal costs on a full indemnity basis), expenses, damages and any other loss and/or Liability suffered by Us as a result of such cancellation.

6. Specification

- 6.1 Any specification supplied by Us to You shall only be approximate unless stated on Our quotation or agreed in writing.
- 6.2 The quantity, quality, description and/or specification for the Products and/or the Services shall be that set out in the Our quotation (if agreed by You).
- 6.3 You are responsible for checking the quotation and satisfying yourself that any specification given is accurate and adequate for the Products and/or Services.
- 6.4 If there is an error in the specification made by Us. Where that error is material and it has been relied upon, You may cancel that part of the Contract which is affected by the error without Liability due to cancellation.
- 6.5 We shall have no Liability for errors in specifications or details supplied by You and You are solely responsible for accuracy. You agree to indemnify and keep indemnified Us against any and all claims, losses, expenses, proceedings, actions, awards, liabilities, costs (including legal costs on a full indemnity basis and increased administration costs) and any other losses and/or liabilities arising out of use of specifications, details and/or drawings supplied by You.
- 6.6 We may make changes to the specification of the Products and/or Services as required from time to time by law, applicable safety requirements or manufacturing requirements provided that they do not have a material adverse effect on the quality and/or performance of the Products and/or the Services.

7. Intellectual property rights and confidentiality

- 7.1 You shall not make any modification to the Products or their packaging, nor alter, remove, or tamper with any trade marks used on or in relation to the Products and/or Services.
- 7.2 All Intellectual Property Rights shall be owned by: 7.2.1 Us absolutely where We have designed and provided the specification for the Products in the course of performing the Services; and/or 7.2.2 You absolutely where You have provided the specification for the Products.
- 7.3 You agree that, at Our cost, You will do all acts and/or things and execute all documents and/or deeds which are necessary or desirable to give effect to clause 7.2.1 above and/or to assist Us in the application, registration, renewal and/or protection of such intellectual property rights.

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- 7.4** Where You own the Intellectual Property Rights under 7.2.1 You grant to Us an non-exclusive royalty-free perpetual license to use all of the Intellectual Property Rights owned by You which We have utilized in the performance of the Services and We may use such Intellectual Property Rights for conducting other research and/or design projects for Our other customers.
- 7.5** We shall be free to utilize for the benefit of Our other customers any skill and/or know-how that we may develop or acquire in the performance of the Services.
- 7.6** We will keep confidential and not use except for purposes contemplated by this Contract, all information relating to the Products and/or Services and all confidential business information regarding Us, which may be disclosed to us or which we may learn except where such information is public knowledge or is required to be disclosed by law.
- 8. Property and Risk**
- 8.1** Risk in the Products shall pass to You at the time of delivery. Delivery shall be deemed to occur: 8.1.1 at the time when the Products arrive on the ship which is to transport them to their destination; or 8.1.2 in accordance with clause 4.8, when We notify You that the Products are available for collection.
- 8.2** We shall retain title and ownership of the Products until we have received payment in full in cash or cleared funds of all sums due and/or owing for all Products and/or Services supplied to You by Us under this Contract and any other agreement between Us and You.
- 8.3** Until payment in full of the price for all Products supplied to You is made, You shall store Products separately from any products or goods belonging to You or any third party and must be clearly marked and identified as being Our property. You agree that Us and/or our agents shall be entitled to enter Your premises to check compliance with this clause.
- 8.4** Until title in the Products has passed to You, You shall keep the Products insured for the price at which the Products were sold to You against all insurable risks and shall procure that Our interest is noted on such policy of insurance. You shall hold any proceeds of such policy of insurance in relation to the Products on trust for Us and upon receipt of the same account to Us for any proceeds of such policy of insurance in relation to the Products. Any monies received from You by Us in accordance with this clause shall not discharge Your liability to pay the price for the Product and/or Services plus interest accrued in accordance **with clause 5.6 but shall be set off against any such liability.**
- 9. Default**
- 9.1** If You:- 9.1.1 fail to make any payment to Us when due; 9.1.2 breach the terms of this Contract and, if the breach is capable of remedy, have not remedied the breach within 14 days of receiving notice requiring the breach to be remedied; 9.1.3 persistently breach any one or more terms of this Contract; 9.1.4 pledge or charge any Products which remain the property of Us, or cease or threaten to cease to carry on business, or propose to compound with Your creditors, apply for an interim order under Section 252 Insolvency Act 1986 or has a Bankruptcy Petition presented against You, enter into voluntary or compulsory liquidation, have a receiver, administrator or administrative receiver appointed over all or any of Your assets, or take or suffer any similar action in any jurisdiction; 9.1.5 exceed the credit limit set by Us; 9.1.6 appear to Us due to Your credit rating to be financially inadequate to meet Your obligations under the Contract; and/or 9.1.7 appear reasonably to Us to be about to suffer any of the above events; then We shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 9.2 below.
- 9.2** If any of the events set out in clause 9.1 above occurs in relation to You then:- 9.2.1 We may enter, without prior notice, any of Your premises (or premises of third parties with their consent) where Products owned by Us may be and repossess and dispose of or sell any Products found which are owned by Us so as to discharge any sums due to Us under this Contract or any other agreement with You; 9.2.2 We may require You not to re-sell or part with the possession of any Products owned by Us until You have paid in full all sums due to Us under this Contract or any other agreement with You; 9.2.3 We may withhold delivery of any undelivered Products and stop any Products in transit; 9.2.4 We may withhold the performance of any Services and cease any Services in progress; 9.2.5 We may cancel, terminate and/or suspend without Liability to You any contract with You; and/or 9.2.6 all monies owed by You to Us forthwith become due and payable.
- 9.3** We shall have a lien over all property or goods belonging to You which may be in Our possession in respect of all sums due from You. Upon the termination of the Contract for any reason if any monies due to Us from You have not been paid within 14 days of such termination We may sell any property or goods over which it has a lien in accordance with the above (and You agree that We may give good title for such property and/or goods) and shall apply the proceeds of sale firstly in discharging any costs or expenses of sale, secondly in repaying any interest owed by You to Us, thirdly in payment of any principal sums owed to Us and fourthly We shall account to You for the remainder (if any).
- 10. Limitations on Liability**
- 10.1** We shall have no Liability for any defect in the Products caused or contributed to as a result of the Products being used for display or demonstration purposes or being handled by Your customers.
- 10.2** We shall have no Liability for defective Products and/or Services where the defect has been caused or contributed to by You to the extent so contributed. We shall have no Liability to You if the price for the Products and/or the Services has not been paid in full by the due date for payment.
- 10.3** We shall have no Liability to You for defective Products and/or Services, Products not despatched or Products damaged or lost in transit unless the event is notified to Us within the appropriate time limit.
- 10.4** We shall have no Liability for damage, loss, liability, claims, costs or expenses caused or contributed to by Your continued use of defective Products and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to You.
- 10.5** You shall give Us reasonable opportunity to remedy any matter for which We are liable before You incur any costs and/or expenses in remedying the matter Ourselves. If You do not do so We shall have no Liability to You.
- 10.6** You shall produce to Us written evidence of any claims for which it is alleged that We are liable together with written details of how the loss was caused by Us and the steps You have taken to mitigate the loss before We shall have any Liability for the claim by You.
- 10.7** We shall have no Liability to You to the extent that You are covered by any policy of insurance and You shall ensure that Your insurers waive any and all rights of subrogation they may have against Us.
- 10.8** We shall have no Liability to You for any: 10.8.1 consequential losses; 10.8.2 loss of profits and/or damage to goodwill; 10.8.3 economic and/or other similar losses; 10.8.4 special damages and indirect losses; and/or 10.8.5 business interruption, loss of business, contracts, opportunity and/or production.
- 10.9** You shall be under a duty to mitigate any loss, damage, costs or expenses that You may suffer (including maintaining an adequate stock of Products).
- 10.10** Our total Liability to You shall not exceed £50,000.
- 10.11** Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of: 10.11.1 Liability for breach of contract; 10.11.2 Liability in tort (including negligence); 10.11.3 Liability for breach of statutory duty; and 10.11.4 Liability for breach of Common Law, except clause 10.1 above which shall apply once only in respect of all the said types of Liability.
- 10.12** All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law. Nothing in this Contract shall exclude or limit the Liability of Us for death or personal injury due to Our negligence or any Liability which is due to Our fraud or any other liability which it is not permitted to exclude or limit as a matter of law.
- 11. General**
- 11.1** You agree to indemnify and keep indemnified Us against any and all losses, proceedings, lost profits, damages, awards, expenses, claims, costs (including increased administration costs and legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by Us and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by You. No waiver by Us of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 11.2** If any provision of this Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- 11.3** Either party shall have no Liability to the other for any delay in performance of this Contract (other than in relation to payment) to the extent that such delay is due to any events outside [the affected party's] reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, subcontractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. If a party is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
- 11.4** You shall not assign Your interest in the Contract (or any part) without Our written consent. All third party rights are excluded and no third party shall have any right to enforce this Contract. This shall not apply to members of Our group or any associated or connected company or organization of Us from time to time who shall, subject to Our consent, have the right to enforce this Contract as if they were Ours. Any rights of a third party to enforce this Contract may be varied and/or extinguished by agreement between the parties to this Contract without the consent of any such third party. This Contract is governed by and interpreted in accordance with English law.
- 11.5** Any dispute between the parties under this Contract shall be referred by either party on notice to the other for determination by an independent expert who shall be appointed either by agreement between the parties or failing agreement within 7 days of the date of the notice on the application of either party by the President of the Law Society.
- 11.6** The expert shall act as an expert and shall be requested to consider such representations as may be made to him by either of the parties in person or in writing. The expert shall notify the parties of his determination as soon as possible and in any event within 1 month of his appointment.
- 11.7** The parties shall initially pay and bear the cost of the expert in equal proportions. The expert's determination shall be final and binding on the parties. The expert may make an award as to costs in his absolute discretion.
- 11.8** In the event of the expert refusing to act or being incapable of acting either party may apply to the President of the Law Society for the appointment of an alternative expert and this procedure may be repeated twice. If after the procedure has been repeated twice the dispute remains unsettled it shall be referred to and resolved by the Courts and the parties agree to submit to the exclusive jurisdiction of the English courts. This shall not prevent either party seeking interim injunctive relief from a court of law.