

HT MOULDING TECHNOLOGY LTD TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 In these conditions “buyer” means the person who accepts a quotation of the seller for the sale of the goods or whose order for the goods is accepted by the seller.”goods” means the goods (including any instalments of the goods or any parts of them)which the seller is to supply in accordance with these conditions. “seller” means HT Moulding Technology Ltd, trading as Moulding Technology Ltd, Edgeworthstown Business Pk , Edgeworthstown , in the county of Longford, in the Republic of Ireland . “conditions” means the standard terms and conditions of sales set out in this document. “Contract” means the contract for the purchase and sale of the goods, “tooling” means any equipment used in the manufacture of the goods.
- 1.2 The headings in these conditions are for convenience only and shall not affect their interpretation.

2. Basis of the sale.

- 2.1 The seller shall sell and the buyer shall purchase the goods in accordance with any written quotation of the seller which is accepted by the buyer, or any written order of the buyer which is accepted by the seller, subject in either case to these conditions which shall govern the contract to the exclusion of any other terms and conditions.
- 2.2 Any variation of these conditions must be agreed in writing between the buyer and seller.
- 2.3 Any advice or recommendation relating to the goods given by any representative of the seller will not be binding on the seller, unless confirmed by the seller in writing. This does not exclude liability for fraudulent misrepresentation.
- 2.4 Any typo graphical or other error or omission in any sales literature , quotation, invoice or other document issued by the seller shall be subject to correction without liability on its part.

3.ORDERS AND SPECIFICATIONS

- 3.1 No order shall be deemed to be accepted by the seller unless and until confirmed in writing.
- 3.2 The buyer shall be responsible to the seller for insuring the accuracy of the terms of any order (including any applicable specification) submitted by the buyer and for giving the seller any information relating to the goods within a sufficient time to enable the seller to perform the contract in accordance with its terms.
- 3.3 if the goods or,underclause 7 . any tooling are to be manufactured or any process is to be applied to the goods or tooling by the seller in accordance with a design specification submitted by the buyer, the buyer shall indemnify the seller against all losses and damages suffered by the seller as a result of infringement of any patent,copywrite, design, trademark, or other industrial or intellictual property rights of any other person which results from the sellers use of the buyers design or specification.
- 3.4 the seller reserves ownership of all intellictual property rights (including copyright and trademarks) in any designs, documents , process, or products created by the seller in relation to the goods and/or to the tooling.

3.5 the seller reserves the right to make any changes in the specification of the goods to conform with any applicable statutory or European Union safety or other requirements where the goods are to be supplied to the seller's specification, which do not materially affect their quality or performance.

3.6 No contract may be cancelled by the buyer except with the written agreement of the seller and on terms that the buyer shall indemnify the seller in full against all loss (including loss of profit), costs (including the cost of labour and materials used), damages, charges, and expenses incurred by the seller as a result of cancellation.

4. Samples

4.1 If the seller supplies samples to the buyer then the relevant goods supplied by the seller will be based upon such samples as regards colour and size although shall be subject to reasonable variation without liability on part of the seller. Any variation subsequently required by the buyer shall be the subject of negotiation between the parties.

5. Price of the Goods.

5.1 the price of the goods shall be the seller's quoted price. Subject to 5.2 below, all prices quoted are valid for the stipulated quantity (and no other) and for 30 days only or by earlier withdrawal by the seller or by acceptance by the buyer. Subject to clause 5.2, after such period of 30 days, the price may be altered by the seller without giving notice to the buyer.

5.2 the seller reserves the right, by giving notice to the buyer at anytime before delivery, to increase the price of the goods to reflect any increase in the cost to the seller which is due to any factor which is beyond the control of the seller, any change in delivery dates, quantities, or specifications for the goods which is requested by the buyer, or any delay caused by the instructions of the buyer or failure of the buyer to give the seller adequate information or instructions.

5.3 the price is exclusive of any applicable value added tax, for which the buyer shall be additionally liable.

6 Terms Of Payment

6.1 the seller shall be entitled to require payment of the price of the goods with the buyer's order.

6.2 the seller shall be entitled to :-

6.2.1 offer and withdraw credit accounts at any time with demand for payment.

6.2.2 request references and make credit reference searches in relation to prospective and current buyers.

6.3 subject to clause 6.1 :-

6.3.1 the seller shall be entitled to invoice the buyer for the price of the goods on or at anytime after the delivery of the goods, unless the buyer or, where clause 8.3.3 applies a 3rd party wrongfully fails to take delivery of the goods, in which event the seller shall be entitled to invoice the buyer for the price at any time after the seller has tendered delivery of the goods.

6.3.2 the buyer shall pay the price of the goods (without deduction or set off) by the end of the calendar month following the month of the seller's invoice, notwithstanding that the delivery may not have taken place and the property in the goods has not passed to the buyer.

6.4 the time of payment of the price shall be the essence of the contract.

6.5 if the buyer fails to make any payment of the contract or any other contract between the buyer and seller on the due date, without prejudice to any other right or remedy available to the seller, the seller shall be entitled to (1) cancel this contract or any other contract between the buyer or the seller (2) suspend any further deliveries to the buyer under this contract or any other contract and / or (3) charge the buyer interest (both before or after any judgement) on the amount unpaid at the rate of 2% per annum above AIB plc base rate from time to time until payment in full is made.

7. Tooling.

7.1 The property in any tooling used to manufacture the goods shall remain with the seller unless the buyer agrees to pay the cost of the tooling [as notified by the seller in writing] in addition to the price of the goods. References to tooling in the remainder of clause 7 are to tooling to be charged to the buyer. The property in any tooling shall pass to the buyer when the seller has received in cash or cleared funds the full sum due for any such tooling.

7.2 Despite the fact that the property in any tooling may have passed to the buyer, the seller shall be entitled to retain such tooling for the period of one year [or such other period as the parties may agree in writing. From the date the buyer makes the final payment in respect of it. There after the buyer be entitled collect that tooling but the seller shall have no obligation to deliver it to the buyer other than making it available for collection.

7.3 Notwithstanding clause 7.2, risk in the tooling shall pass to the buyer as soon as the tooling has been manufactured and the seller should have no liability in respect of loss or damage to such tooling whilst in the sellers possession save to the extent that the same result from the sellers negligence. The seller shall notify the buyer when such tooling has been manufactured.

7.4 The Seller's liability in respect of the Tooling shall be limited to the same extent as its liability in respect of the Goods under the provisions of this Contract.

7.5 Any dimensions stipulated by the Buyer for the Goods shall be observed as nearly as possible but the Seller shall not be liable for any alteration on or deviation from such dimensions which do not have a material adverse effect on goods having regard to the intended use of the Goods of which the Buyer notifies the Seller prior to the date of the Contract.

7.6 The Seller shall not be liable to the Buyer if the dimensions stipulated by the Buyer for the Goods result in the manufacture of the Goods which are unsuitable for any purpose.

7.7 The Seller shall be entitled to require payment of the price of the Tooling at the time of the Buyer's order.

7.8 Subject to clause 7.7 the Buyer shall pay half of the price of the Tooling at the time of order and the Seller shall be entitled to invoice the Buyer for the remainder of the price on the Seller sending samples produced using that Tooling to the Buyer. The provision of clauses 6.3.2, 6.4 and 6.5 shall apply to the payment of such invoices.

7.9 The Buyer shall be liable for Tooling maintenance that is required one year after the Tooling has been approved.

8. Delivery.

8.1 Unless otherwise agreed Goods will be sent to the Buyer by a three day delivery service chosen by the Seller in which case delivery of the Goods shall

be affected by the Seller delivering them to the carrier. Thereafter transport of such Goods shall be subject to the carrier's conditions.

8.2 The Buyer shall be responsible for any delivery costs in respect of the Goods unless the Seller states in writing that it shall bear the delivery costs. Where delivery costs are initially borne by the Seller the Seller shall forthwith be entitled to render an invoice in respect of such costs and the provisions of clauses 6.3.2, 6.4 and 6.5 shall apply to the payment of the invoice.

8.3 If it is agreed that the Goods shall be delivered by a method other than that referred to in clause 8.1 then delivery shall be effected:

8.3.1 where the Goods are to be collected by the Buyer from the Seller's premises, upon the Seller notifying the Buyer that the Goods are ready for collection.

8.3.2 where the Goods are delivered by the Seller, by the Seller delivering the Goods to the address for delivery.

8.3.3 where the Goods are to be transported by a third party, upon collection by or delivery to that third party of the Goods.

8.4 Any periods of time or dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence.

8.5 The Seller shall not be responsible for any loss or damage suffered by the buyer as a result of short delivery unless the Buyer has informed the Seller in writing within ten working days from the date of delivery and, in any event, the seller's liability shall be limited to the price of the Goods.

8.6 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and, in respect of any one or more instalment, any failure by the Seller to deliver or any claim by the Buyer shall not entitle the Buyer to treat the Contract as a whole as repudiated.

8.7 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may;

8.7.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage, or:

8.7.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price of the Contract.

8.8 Where, upon delivery of the Goods, the Buyer discovers that it has incorrectly ordered those Goods, the Seller's standard handling charge will be charged if the Seller agrees to accept return of those goods. Without prejudice to the right of the Seller to refuse to accept return of Goods in any case, the Seller will not accept return of Goods if more than one month has elapsed since they were delivered to the Buyer.

9. Risk and property.

9.1 Goods supplied by the Seller shall be at the Buyer's risk immediately on delivery or when the Seller tenders delivery of the Goods, whichever is the earlier and the Buyer shall insure accordingly.

9.2 Title in all Goods supplied or sold by the Seller shall be retained by the Seller until all sums due on any account whatsoever from the Buyer to the Seller have been received by the Seller either in cash or cleared funds.

9.3 Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the seller and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

10. Warranties and Liability.

10.1 Nothing in these conditions shall exclude the Seller's liability for death or injury caused by its negligence.

10.2 The Seller warrants that all Goods will be free of defects on delivery.

10.3 If the Seller is in breach of the warranty contained in clause 10.2, the Buyer shall advise the Seller in writing not later than ten days after the date of delivery of the Goods and the Seller shall at its sole option repair or replace all or any of the Goods or refund the price of the defective Goods.

10.4 The warranty contained in clause 10.2 shall be the extent of the Seller's liability for defective Goods.

10.5 The warranty contained in clause 10.2 is subject to following conditions:

10.5.1 the Seller shall be under no liability in respect of any defect arising from drawing, design or specifications supplied by the Buyer.

10.5.2 the Seller shall be under no liability under the warranty (or any other warranty or conditional guarantee) if the total price of the Goods has not been paid by the due date of payment.

10.5.3 the warranty does not extend to parts, materials or equipment not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer of those part or materials to the Seller.

10.5.4 the Seller does not warrant that the Goods are fit for any particular purpose of the Buyer.

10.6 Unless otherwise expressly provided in these Conditions, all implied warranties or conditions are excluded to the fullest extent permitted by law and the Seller will not be liable to the Buyer for any loss of any kind whatsoever which arises out of the breach or implied warranties or conditions, or breach of any duty of any kind imposed on the Seller by operation of law.

10.7 The Seller will not be liable for any consequential loss (including without limiting the foregoing loss of anticipated profits or expected future business; damage to reputation; goodwill; damages, costs or expenses payable by the Buyer to any third party; loss of any order or contract) arising from breach of the Contract or of any implied warranty, condition or other term or any other or any duty imposed on the Seller by law.

10.8 Without prejudice to any other provision of this clause 10, the Seller will not be in breach of the terms of the Contract for any delay in performing or failure to perform, its obligations under the Contract if that failure or delay was due to any cause or circumstance beyond the Seller's reasonable control. The Buyer indemnifies the Seller against any loss suffered by the Seller as a result of any claim brought by the third party against loss, injury or damage caused by the Goods or the Tooling in any way connected with the Contract provided that this clause will not require the Buyer to indemnify the Seller against any liability for the Seller's own negligence.

11. Insolvency of buyer.

11.1 This clause applies if the Buyer makes any composition or voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or an encumbrance takes possession, or a receiver is appointed; or any of the property or assets of the Buyer; or the Buyer ceases, or threatens to cease, to carry on business; or the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

11.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or any other or suspend immediately any further deliveries under the Contract or any contract without any liability to the Buyer, and if the Goods have been delivered but not paid for, the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11.3 On termination of this Contract for any reason whatsoever, the Buyer shall pay to the Seller all costs, expenses, (including legal and other fees incurred), arrears, charges or other payments arising in respect of the Goods under the Contract.

11.4 The seller shall :-

11.4.1 offer the goods for sale to recover amounts owing including any such extra costs of transport, insurance, legal or any other costs incurred as a result of the insolvent position of the buyer.

11.4.2 manufacture and sell up to the values of such sales that will satisfy the outstanding amounts in full, or such use (sale or use of to manufacture a product to enable sales of plastic parts) of the tooling and moulds and ancillary equipment such that all outstanding amounts are fully realised, such that the total net amounts are recovered towards the outstanding account, including all costs and interest.

12. Export Terms.

12.1 Where the Goods are supplied for export from the Irish Republic the provisions of this clause shall (subject to any special terms agreed in writing between the Buyer and Seller) apply notwithstanding any other provisions of these Conditions.

12.2 The Buyer shall be responsible for complying with any legislation or regulations governing the export of the Goods or any product incorporating the Goods from the Irish Republic (including if necessary satisfying Customs and Excise that value added tax is not payable on the price) and the importation of Goods into the country of destination and payment of duties thereon.

12.3 Unless otherwise agreed transport of the goods to the buyer from the sellers premises shall be arranged by the seller at the buyers cost. Where such cost is initially paid by the seller, the seller shall forthwith be entitled to render and invoice in respect of such costs and the provisions of clauses 6.3.2., 6.4 and 6.5 shall apply to the payment of such invoices. Delivery of such goods shall be effected when they are collected by the carrier from the sellers premises. Thereafter transport of such goods shall be subject to the carriers conditions.

General.

13.1 The buyer shall not transfer , assign or sub-contract its obligations under the contract without the sellers prior written permission.

13.2 Any notice shall be in writing including by fax addressed to the other party at, in case of the seller, its address in clause 1 above and in the case of the buyer at its registered address or such other as may at the relevant time have been notified to the seller. Hand delivered notices shall take effect immediately, postal notices two working days after posting by the first class post and, if sent by fax, at the date and time of the senders transmission acknowledgement slip or (if lost) on receipt.

13.3 HT Moulding Technology Ltd is registered in Ireland and the registered office is at Moulding Technology Ltd , Edgeworthstown Business Pk, Edgeworthstown, Co . Longford, Ireland. The company registration number is registered office 6432470c.

13.4 No waiver by the seller of any breach of the contract by the buyer shall be considered as a waiver of any subsequent breach of the same or any other provision. Failure by the seller to enforce any of these conditions shall not be a waiver of the sellers rights.

13.5 if any provision of these conditions is held by a competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

13.6 The contract shall be governed by the laws of the Republic Of Ireland. Any dispute shall be referred to the exclusive jurisdiction of the Irish Courts.