

ARRK Europe Limited - Terms & Conditions of Sale

(1) Contracts

(1) These conditions shall apply to all contracts for the sale of goods by ARRK Europe Limited ("the Company") and shall override and take the place of any other terms or conditions produced or referred to by the Customer.

(2) Each order for the goods to be supplied by the company shall be deemed to be an offer by the customer to purchase the goods upon these Conditions and shall be accepted entirely at the discretion of the Company by means of the Company's standard acknowledgement form.

(3) No variation of or addition to these Conditions will bind the Company or part of any relevant contract, and no order placed may be cancelled, deferred or varied without the written agreement of a director of the Company.

(4) All quotations issued by the Company shall lapse after 30 calendar days and may be withdrawn at any time, prior 10 days written notice.

(2) Prices

(1) All prices are quoted in pounds sterling, unless otherwise stated. Except as specified in clause 5.2 below, all prices are exclusive of value added tax and any other taxes, duties and impositions and any packaging, carriage and insurance costs all of which shall be paid by the customer at the same time as, and shall be treated as an additional part of, the price.

(2) Any changes occurring between quotation data and order data may affect the final costs. All final quotation costs on any order placed for tooling and/or injection mouldings will only be confirmed against final order information. Orders placed against quotation information, which have changed or subsequently change, should be accepted by the Customer within 48 hours from its reception.

(3) Any subsequent modifications to tooling or injection mouldings from the original order data will be quoted in addition to the original order. Orders placed for modifications must be placed as separate orders and will be invoiced separately against standard payment terms as shown in section 3.

(3) Payment

(1) Payment of the total price is due no later than 30 days after the date of the Company's invoice.

(2) Payment terms for injection mould tooling are strictly one third at time of order (payment is due no later than 14 days after the Company's invoice), one third on delivery of first samples (payment is due no later than 30 days after the Company's invoice) and balance upon acceptance of samples to original order information.

(3) The Customer must make all payments without any withholding, deduction, set-off or counterclaim in United Kingdom sterling or in any other currency agreed by the parties, in immediately available funds.

(4) Time of payment by the Customer is of the essence in each contract.

(5) The Company reserves the right to claim statutory interest at 8% above the Bank of England reference rate in force on the date the debt becomes overdue and at any subsequent rate where the reference rate changes and the debt remains unpaid in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

(4) Goods

(1) The quantity and description of the goods shall be as set out in the Company's written quotation.

(2) The Customer acknowledges that the goods are supplied to the Customer's own design (for which the Company has no responsibility). The Customer shall ensure that all designs provided by it to the Company comply (and production of the goods in accordance with the designs will comply) with all relevant health and safety or similar laws.

(3) The Company shall not be deemed to have any knowledge of the purpose for which the goods are required unless expressly notified by the customer and a statement describing this purpose is included on the Company's written acknowledgement form.

(4) In any instance where the design is not suitable for manufacture, modifications to the data may be required, at additional cost to the Customer. The Company will require approval in writing from the Customer that the modifications made to the design are acceptable and that clauses 4.2 & 4.3 above apply before proceeding.

(5) Delivery, Risk, etc.

(1) Delivery dates quoted are based on capacities at time of quotation and may vary significantly with any delay in order placement. Orders can be confirmed verbally with an order number but must be backed up with a faxed confirmation immediately. Failure to confirm the order in writing shall entitle the Company at its sole discretion without notice to suspend further work being undertaken on that project. Goods will not be dispatched without an official copy of the purchase order.

(2) The Company will arrange for the goods to be delivered by a reputable carrier to the address of the Customer shown on the relevant acknowledgement form issued by the Company. All projects are quoted on an ex-works basis. All deliveries and special services (including deliveries to overseas addresses and Same-Day couriers) will be charged for in addition to the quoted price and will be shown on the invoice.

(3) The Company will use reasonable endeavors to meet any stated delivery but will not be liable for any loss or damage resulting from delay however caused. The goods may be delivered in advance of the quoted delivery date.

(4) Risk of the goods shall pass to the Customer upon delivery to the Customer's address as set out above or, if the goods are collected from the Company's premises by or on behalf of the Customer, upon collection. The Customer shall make all necessary arrangements to take delivery of the goods whenever tendered by the Company and if the Customer wrongfully fails to take delivery of the goods, risk shall nevertheless pass when the goods are tendered to the Customer.

(5) The Company shall at its own cost insure the goods against loss or damage during transit to the value their contract price and shall (subject to the Customer complying with clause 6 below) hold on trust for the Customer any proceeds of such policy in the event of loss or damage to the goods in transit to the extent that the price for the goods has already been paid. The Company shall have no further liability to the Customer for any loss or damage to the goods prior to delivery.

(6) Within a period of 24 hours from the date of delivery, the Customer shall notify the Company by any means that the goods received are in accordance with the order placed. Moreover, within a period of 3 days after the date of delivery, the Customer shall notify, in writing, the Company and any Carrier detailing any shortage or damage in the goods received and of any non delivery within 7 days after the expected date of delivery, give the Company, any carrier and their agents a reasonable opportunity to inspect any quantities or damaged goods as delivered. If the customer fails to do so, the Company will not be liable for the non-delivery, short or damaged delivery and the Customer may not reject the goods for damaged delivery, whether caused before or after risk passes. In no event may the Customer reject goods because not all the goods ordered are delivered.

(7) The Customer shall be deemed to have accepted the goods unless notice has been received by the Company that they are not in accordance with the contract within 7 days of the date of delivery. After acceptance the Customer shall not be entitled to reject the goods.

(8) The Company may deliver the goods by separate installments each of which may be invoiced separately. The failure of the Customer to pay for any installment (or any order) on the due date for payment shall entitle the Company, at its sole discretion, to suspend further deliveries of the goods pending payment by the Customer and/or treat this contract as repudiated by the Customer. In this instance, the Customer will be notified by the Company.

(9) The Customer must insure the goods in their full replacement value against all risks prudently insured against between risk and property passing and must on demand produce evidence of such insurance to the

Company. Until the full price has been paid, the Customer shall hold trust for the Company policy and proceeds of insurance to the extent of the unpaid price.

(6) Property

(1) Notwithstanding delivery of the goods the property in the goods shall not pass to the Customer and full legal and beneficial ownership of the goods shall remain with the Company, until receipt by the Company of payment in full for the goods and all other goods and modification work, whether or not of the same type, supplied by the Company to the Customer and any default interest and all other monies on any account whatsoever owed by the Customer to the Company.

(2) Pending the passing of property, the Customer shall be bailee of the goods for the Company and must not dispose of, charge or encumber the goods or any interest therein or purport to do so, must retain possession of them in good condition and free from any lien, distress, execution or other legal process. Must store them separately or mark them so that they may be readily identified as the Company's property, must inform the Company of their whereabouts on request and must return, the goods to the Company on request. If the Customer fails to do so the Company may enter the Customer's premises and repossess the goods.

(3) All goods retained by the Company at the Customer's request must be insured by the Customer for their full replacement value against all risks. All goods will be placed into storage subject to a monthly charge. All goods placed into storage may be subject to a refurbishment charge upon their removal.

(4) All prototype tooling for services other than export injection moulding remains the property of the Company unless otherwise specified and will be retained by the Company for a period of three months from the original contract completion, after which it will be disposed of, unless otherwise instructed in writing by the Customer.

(7) Warranties and Liability for the Goods

(1) Subject to the conditions set out below the Company warrants that the goods will correspond with the Customer's design and will be free from defect in material and workmanship for a period of one month from delivery.

(2) The above warranty is given by the Company subject to the following conditions:

(i) The Company shall be under no liability in respect of any defect in the goods arising from any drawing, design or specification supplied by the Customer.

(ii) The Company shall be under no liability in respect of any defect arising from fair wear and tear, willful damage, negligence, abnormal, working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the goods without the Company's approval;

(iii) The Company shall be under no liability if the total price for the goods has not been paid up by the due date for payment;

(iv) The Customer shall notify the alleged defect in the goods to the Company as soon as detailed in 5.6 after discovering the same and upon request return the goods to the Company carriage prepaid;

(v) The Company shall be under no liability in respect to the use of the goods for pressures, temperatures or services not provided for in the Company's acknowledgement form. The Company should be notified before any such use occurs as inappropriate use may expose operators to serious risk.

(3) Subject as expressly provided in these conditions, all warranties, conditions or other terms implied by statute or civil law are excluded to the fullest extent permitted by civil law.

(4) Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition of the goods of their failure to meet specification is notified to the Company in accordance with these conditions, the Company shall be entitled to repair, rectify or replace the goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the goods (or a proportionate part of the price). The replacement of the goods or any part of those because of any repair made to the goods shall have a warranty of one month from the delivery.

(5) Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation or any implied warranty, condition or other term, or any duty at civil law, or under the express terms of the contract, for any loss including without limitation consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever which arise out of or in connection with the supply of the goods or their use or resale by the Customer, except as expressly provided in these conditions.

(6) The Company shall not be liable to the Customer or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party) shall be regarded as causes beyond the Company's reasonable control.

(8) Warranties and Liability for the Services

(1) The Company warrants that:

(i) services will conform in all respects to the specifications, Statements of Work and other description and requirements relating to the services that have been furnished, specified or approved by the buyer;

(ii) services be suitable for their intended use by the buyer, including the specified performance in the facility or equipment specified by the buyer and the environment in which the services are or reasonably may be expected to perform;

(iii) services be provided by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the buyer to expect in the circumstances;

(iv) any documents, including drawing and specifications produced or acquired by the Company under a Purchase Order will belong to Buyer, subject only to the Company's patent rights, but without any other restrictions on Buyer's use, including reproduction, modification, disclosure or distribution of the documents or the information contained therein. To the extent such documents contain original work of authorship created in order to comply with a Purchase Order, the copyrights to such work shall be owned by Buyer;

(v) the Company agrees not to label any such documents with a notice asserting that the documents contain confidential or proprietary information of the Company. Any engineering drawing that the Company is required to prepare and furnish to Buyer will conform to the requirements of the local computer aided design and standards of the Buyer;

(vi) all drawing, know-how, and confidential information supplied to the Company by the Buyer and all rights therein will remain the property of Buyer and will be kept confidential by the Company in accordance. The Company is licensed to use Buyer's drawings, know-how, and confidential information only for the purpose of fulfilling its obligations under a Purchase Order. The Company will not disclose such drawing to third parties unless this is required for the Company to fulfil its duties under a Purchase Order. The Company will ensure that any third party to whom the Company subcontract any of the work hereunder is bound by all the terms and conditions relating to such work to which the Company is bound under Purchase Order;

(vii) the Company will furnish to Buyer, or another party designated by Buyer, without restrictions on use or disclosure, all information and data the Company acquires or develops in the course of the Company's activities under a Purchase Order. At Buyer's request, the Company also will discuss with Buyer or another party designated by Buyer, without restrictions on use

or disclosure, any potential design, and quality or manufacturing problems with supplies the Company worked on or produced pursuant to a Purchase Order;

(viii) at the Buyer's request, the Company will furnish to Buyer all other information and data of the Company which the Buyer deems necessary to understand the operation and to maintain the goods delivered under a Purchase Order, with no restrictions on use other than the Company's patent rights;

(ix) with respect to inventions which the Company conceives or first reduces to practice in the course of the Company's experimental or developmental activities under a prior development agreement, early sourcing agreement, or a Purchase Order, the Company grants to Buyer a permanent paid-up, nonexclusive, worldwide license, with a right to sublicense others, to make, have made, use, have used and sell, compositions, machines, and processes, covered by patents obtained for such inventions.

(9) Intellectual Property

(1) The Customer shall have no rights to any intellectual property owned by or licensed to the Company and the Company will have no rights to any intellectual property owned by the Customer. The Company shall have no liability to the Customer in the event that the goods or other items relating to their production (including, without limitation, all tools, casts and models) ("Tools") or their production, use or duplication, infringe any intellectual property rights of a third party.

(2) All looks, know how, samples and other items relating to the production of the goods shall remain the Company's property, shall be treated as confidential and shall not be used, copied, reproduced or disclosed to any person without the Company's prior written consent.

(3) If any claim is made against the Company that the goods or tools infringe or that their use, duplication, or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with the claim, or paid or agreed to be paid by the Company in settlement of the claim and the Customer shall at its own cost give the Company all reasonable assistance for the purposes of any such proceedings or negotiations.

(10) Insolvency of the Customer

(1) This clause applies if:

(i) the Customer makes any 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 (other than for the purpose of amalgamation or reconstruction); or

(ii) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the customer; or

(iii) the Customer ceases or threatens to cease, to carry on business; or

(iv) the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

(2) If this clause applies, then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the contract or suspend any further deliveries under the contract without any liability to the Customer, and if the goods have been delivered but not paid for the price shall become immediately due and payable not withstanding any previous agreement or arrangement to the contrary.

(11) Export Terms

(1) Where the goods are supplied for export from the United Kingdom, the provisions of this clause 10 shall (subject to any special terms agreed in writing between the Customer and the Company) apply notwithstanding any other provision of these conditions. If there is any inconsistency between the provisions of incoterms and these conditions, these conditions shall prevail.

(2) The Customer shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties thereon.

(3) Delivery of the goods for export shall be at the Company's premises on an ex-works basis and the risk of damage to or loss of the goods shall pass to the customer upon delivery.

(4) The Company shall have no liability for any claim in respect of any damage to the goods during transit.

(5) Payment of all amounts due to the company shall be made by direct automated transfer to the Company's bank. The Customer shall be liable for all bank charges raised by the Customer or the Company's bank for the payment of amounts due to the Company.

(12) Indemnity

The Customer undertakes with the Company to indemnify and hold harmless the Company from and against all liabilities, losses, damages, costs, charges and expenses (including without limitation legal fees and expenses on a full indemnity basis), actions, claims and demands incurred by or brought against the Company and arising directly or indirectly out of the production of the goods by the Company in compliance with the Customer's designs or any breach by the Customer of any of its obligations under any relevant contract with the Company.

(13) General

(1) Any notice required or permitted to be given by either party to the other under these conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

(2) No waiver by the Company of any breach of the contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

(3) If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the provisions of these conditions and the remainder of the provision in question shall not be affected.

(4) The headings in these conditions are for convenience only and shall not affect their interpretation.

(5) The Company may license or sub-contract all or part of its rights and obligations under any relevant contract without the customer's consent but the Customer may not assign charge or otherwise dispose of any of its right under any relevant contract.

(6) Drawings, documents and any other materials of any kind provided by the Customer to the company in connection with the goods shall only be retained by the Company for three months from the date of delivery of the goods. Should the Customer require the return of the drawings, documents and any other materials they should notify the Company in writing.

(7) The Company shall not be liable for any such failure to fulfil obligations under any contract if such failure is attributable to a force majeure event.

(14) Law and Jurisdiction

(1) These conditions and each relevant contract shall be governed and construed in accordance with the laws of England.

(2) For the Company's benefit the Customer submits to the jurisdiction of the English courts and agrees (without limiting the Company's rights to bring proceedings in any other courts of competent jurisdiction, whether concurrently or not) that the English courts shall have jurisdiction to settle any claim or dispute in relation to any relevant contract and that their judgements will be binding, conclusive and enforceable by the courts of other jurisdictions.