

## **1. INTERPRETATION**

### **1.1 In these conditions:**

**'Buyer'** means the person whose order for goods is accepted by the Seller (including any of its successors-in-title and permitted assignees or transferees).

**'Buyers Specification'** means all specifications, drawings, designs and other materials which are in any way provided by the Buyer to the Seller or required by the Buyer to be used by the Seller in the course of the Buyer requesting the Seller to perform any Contract.

**'Conditions'** mean the standard terms and conditions of the sale set out in this document.

**'Contract'** means any contract for the manufacture, modification and/or sale and purchase of Goods and/or provision of Services from the Seller to the Buyer, which shall in any event be subject to these Conditions.

**'Event of Insolvency'** means, in relation to a party, that such party has a bankruptcy order made against him or makes an arrangement or composition with his creditors or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator over it or notice of intention to appoint an administrator is given by it or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986) or a resolution is passed or a petition presented to any court for its winding-up or for the granting of an administration order in respect of it or any proceedings are commenced relating to its insolvency or possible insolvency; or such party suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or it ceases to trade; or any similar or analogous event occurs in relation to it in any jurisdiction.

**'Goods'** means the goods (including any instalment of the goods or any parts for them) which the Seller has agreed to supply to the Buyer under any Contract (which shall include, without limitation, Goods which are manufactured or modified by the Seller to the Buyers Specification).

**'Seller'** means Sharpak Healthcare Ltd whose address is 1 Harwood Industrial Estate, Harwood Road, Littlehampton, West Sussex BN17 7AU.

**'Services'** means any services related to design of Tooling, maintenance of any tools, conversion work in relation to inherited tooling or other services in relation to any Goods which are agreed to be provided by the Seller to the Buyer under any Contract.

**'Tooling'** means the moulds which are paid for and are the property of the Buyer and are used to produce the Goods required by the Buyer.

**'Writing'** includes telex, cable, facsimile and comparable means of communication (but shall exclude email).

1.2 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## **2. CONDITIONS APPLICABLE**

2.1 These Conditions shall apply to any Contract to the exclusion of all other terms and conditions (including any terms and conditions endorsed upon, delivered with or referred to in any purchase order or other document sent by you to us) except if an amendment to or variation of these Conditions in writing has been expressly accepted by a duly authorised official of the Seller in Writing.

2.2 Each order or acceptance of a quotation for Goods or Services by the Buyer to the Seller shall be deemed to be an offer to buy such Goods or Services, subject to these Conditions. No binding contract shall be created by the placing of an order by the Buyer (whether in accordance with a quotation or tender issued by the Seller or otherwise) or the issuance of a quotation by the Seller, unless the Seller gives Written notice that the order has been accepted or that the Seller has otherwise commenced performance of a Contract (and any quotation the Seller gives is supplied on this basis). Acceptance of delivery of the Goods or other commencement of work under a Contract shall be deemed conclusive evidence of the Buyers acceptance of these Conditions.

2.3 No terms or conditions endorsed on, delivered with or contained in the Buyers purchase order, confirmation of order, specification or other document whatsoever shall form part of the Contract simply as a result of such document being referred to in a Contract.

2.4 The Sellers employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.5 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyers own risk, and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

2.6 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

### 3. ORDERS AND SPECIFICATIONS

3.1 No order submitted by the Buyer shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Sellers authorised representative (which for these purposes shall include email) or the Seller commences fulfilment of the Order.

3.2 The Buyer shall be responsible to the Seller for ensuring the completeness and accuracy of the terms of any order (including any applicable Buyers Specification) submitted by the Buyer, and for giving the Seller any necessary information relating to the Goods, Services or otherwise within a sufficient time to enable the Seller to perform the Contract in accordance with its terms. In particular, weights of components are estimated by calculations based on the Buyers Specifications and no warranty can be given as to the accuracy of their weight as it can only be an estimate. Should the dimensions be changed or the Buyers Specifications be found to be inaccurate, the Seller reserves the right to submit new prices based on actual component weights.

3.3 The quality, quantity and description of any specification for the Goods shall be those set out in the Sellers quotation or any Buyers order which has been accepted by the Seller to form a Contract.

3.4 Before commencement of production of Goods from any new or modified or inherited Tooling or any manufacture or modification of Goods as a result of Services provided by the Seller to the Buyer, the Seller requires that an authorised representative from the Buyer confirms that a sample of Goods so produced is at the correct and required quality level and consequently approved, by signing positive acceptance of a set of master samples and/or a copy of the inspection report (the '**Acceptance Documents**') and returning these Acceptance Documents set to the Seller. Failure to respond within 7 days from delivery of the Acceptance Documents to the Seller shall constitute deemed acceptance. Either on positive or deemed acceptance ("Acceptance") in accordance with this Clause 3.4, the Seller shall be entitled to perform the Contract and manufacture or modification of the Goods to the relevant samples. No complaint from the Buyer will be accepted by the Seller on Goods produced in accordance with a sample which has been Accepted.

3.5 The Seller reserves the right to make any changes without liability in the specification of the Goods or Services which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to the Buyers Specification, which do not materially affect their quality or performance.

3.6 No Order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing 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 all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

## **4. PRICE OF THE GOODS**

4.1 The Price payable for the Goods shall be the Sellers price current on the date upon which the Goods are despatched from the Sellers works. Prices for Services shall be as set out in the Sellers quotation or as otherwise agreed between the Buyer and the Seller in Writing.

4.2 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods or Services to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods or Services which is requested by or otherwise agreed with the Buyer and/or or the failure of the Buyer to give the Seller adequate information or instructions.

4.3 Prices exclude any applicable value added tax, which the Buyer shall be additionally liable to pay the Seller.

4.4 The Seller reserves the right to charge the Buyer for delivery and/or insurance of the Goods while in transit where such costs have been notified to the Buyer as well as for any customs duties which may be payable in relation to the Goods being delivered.

## **5. CONTINUITY**

5.1 Notwithstanding acceptance of the Buyers order, the Seller reserves the right without liability to discontinue the manufacture, supply and delivery of any Goods or line of Goods at any time provided that (as the Buyers sole remedy for such discontinuance) the Seller shall reimburse the Buyer all sums which have been paid by the Buyer to the Seller in advance in anticipation of such Goods or line of Goods.

## **6. TERMS OF PAYMENT**

6.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods and shall be entitled to invoice the Buyer for the Services on or at any time after delivery of the Services. However, if the Buyer fails to take delivery of the Goods in accordance with these Conditions, the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of the Goods.

6.2 Payment is due on the 30th day following the date the Seller has issued an invoice, or (where notified by the Seller) is due before delivery.

6.3 Time of payment shall be of the essence. Payment shall not be deemed to have been received until the Seller has received cash or cleared funds.

6.4 The Buyer shall make all payments due under any Contract in full without any deduction by way of set-off, counterclaim, discount, abatement or otherwise unless you have a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.

6.5 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

6.5.1 cancel the Contract and/or suspend any further deliveries or installments to the Buyer under that or any other Contract, or as a pre-condition to continuing with performance of any existing Contract or to acceptance of any further orders, , to require payment in full of sums due under this Contract and/or which are outstanding under any other Contract;

6.5.2 charge the Buyer interest (both before and after judgment) on the outstanding amounts, at the rate of 3% per annum above the Lloyds Bank Plc base rate from time to time (interest to be compounded daily), until payment in full is made.

6.5.3 further to the Sellers remedies set out in these Conditions, the Buyer acknowledges that its failure to make payments by the due date may cause delay to the work in progress and render the expected delivery date unattainable.

6.6 All payments due to the Buyer under any Contract shall become immediately payable on termination of that Contract.

## **7. PACKAGING**

7.1 The prices quoted include the cost of the Sellers normal packaging. If the Buyer requires any special type of packaging to be used at any time, it should notify the Seller when placing any order (providing all relevant details) and should request a special quotation from the Seller to take account of such packaging.

## **8. DELIVERY**

8.1 The Seller will use all commercially reasonable endeavours to comply with any delivery time required by the Buyer.

8.2 Any dates or times quoted by the Seller for delivery of the Goods are approximate only and unless it is agreed in Writing to the contrary, the Seller shall not be liable for any loss whatsoever and howsoever arising suffered by the Buyer as a result of the Seller failure to deliver the Goods within any delivery time limits quoted or for any other delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

8.3 Goods shall be delivered by the Seller to the agreed delivery location. The Buyer is responsible for providing (at its expense) adequate and appropriate equipment and manual labour for loading and unloading Goods.

8.4 The Seller reserves the right to deliver Goods by installments in any sequence and to deliver a separate invoice in respect of each installment. Where the Goods are delivered in installments, the Contract shall become severable and each installment shall be deemed to constitute a separate Contract. Failure by the Seller to deliver any one or more of the installments in accordance with these Conditions or any claim by the Buyer in respect of any one or more installments shall not entitle the Buyer to treat the Contracts in relation to all other installments of Goods as repudiated.

8.5 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 directly as a result of the Sellers fault) then, without prejudice to any other rights or remedy available to the Seller, risk in the Goods passes to the Seller, delivery shall be deemed to have occurred and the Seller may:

8.5.1 store the Goods until actual delivery and charge to the Buyer the reasonable costs (including insurance) of storage; or

8.5.2 sell or dispose of 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 under the Contract.

8.6 If the Seller delivers to the Buyer a quantity of Goods which is a variation of the quantity stated in the relevant Contract, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of such variation, and shall pay for such Goods at the pro-rata Contract rate.

8.7 The quantity of any consignment of Goods as recorded by the Seller on dispatch from its place of business shall be conclusive evidence of the quantity received by the Buyer, unless the Buyer is able to prove manifest error.

8.8 The Seller shall not be liable for any non-delivery of Goods or shortage in delivery of Goods (even if caused by its negligence) unless the Buyer has given the Seller written notice within 7 days of the date when the Goods would in the ordinary course of events have been received (in the case of non-delivery) or the date of actual delivery (in the case of delivery shortages). The Sellers liability for non-delivery of Goods or delivery shortages shall be to replacing the Goods within a reasonable time or issuing a credit note at the pro-rata Contract rate against any invoice raised for such Goods.

## **9. RISK AND PROPERTY**

9.1 The Goods are at the risk of the Buyer from the time of delivery.

9.2 Notwithstanding delivery and passing of risk in the Goods or any other provision of these Conditions, the

property and title in the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due to it in respect of (i) such Goods and (ii) all other sums under any Contract which are or which become due to the Seller from the Buyer under any account. Until such time as ownership and title of the Goods passes to the Buyer in accordance with this Clause 9, the Buyer shall:

9.2.1 hold the Goods on a fiduciary basis as bailee for the Seller;

9.2.2 without prejudice to the foregoing, keep and store the Goods (at no cost to the Seller) as separate from those of the Buyer and third parties and properly packaged, stored, protected and insured and identified as the Sellers property;

9.2.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

9.2.4 maintain the Goods in satisfactory condition and keep them insured at all times for their full price against "all risks" to the reasonable satisfaction of the Seller. On request, the Buyer shall produce a copy of the policy of insurance to the Seller.

9.3 The Buyer may resell the Goods before ownership passes to it solely on the following conditions:

9.3.1 any sale must be effected in the ordinary course of the Buyers business at full market value;

9.3.2 any such sale shall be a sale of the Sellers property on the Buyers own behalf and the Buyer shall deal as a principal when making such a sale;

9.3.3 the proceeds of any such sale and the benefit of any such contract of sale shall be held in trust by the Buyer for the Seller absolutely until such time as the property in the Goods passes to the Buyer, and any monies so received by the Buyer shall not be mixed with other money or paid into any overdrawn account and shall be identified as the Sellers money or property at all material times (provided that if the total amount of such monies held on trust for the Seller exceeds the total of all sums then due to the Seller from the Buyer, the Buyer may deal in any manner whatsoever with any excess sums); and

9.3.4 the Seller may by written notice terminate the Buyers power of sale at any time if the Buyer suffers or is in the reasonable opinion of the Seller likely to suffer an Event of Insolvency.

9.4 The Seller shall be entitled to recover the price of any Goods or Services notwithstanding that property in the Goods has not passed from the Seller.

9.5 Until such time as property in the Goods passes from the Seller the Buyer upon written request shall deliver up to the Seller such Goods as have not ceased to be in existence or resold. Upon the receipt by the Buyer of such written request, the rights of the Buyer under the above Clause 9.3 shall cease forthwith. For these purposes the Goods will be deemed to be all those products in the Buyers possession which are or have been described in the Sellers quotations.

9.6 The Buyer shall not pledge or in any way charge by way of security for any indebtedness the Goods, which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does or purports to do so, all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

9.7 The Buyers right to possession of the Goods shall terminate immediately if:

9.7.1 the Buyer suffers or undergoes an Event of Insolvency

9.7.2 the Buyer encumbers or in any way charges any of the Goods.

9.7.3 the Buyer fails to pay for the Goods or any related Services on the due date.

9.7.4 the Buyer fails to pay any other debt due to and payable to the Seller.

9.7.5 the Buyer commits any breach of these Conditions.

9.7.6 any distress or execution is levied upon goods of the Buyer.

9.8 Without prejudice to the other rights of the Seller:

9.8.1 the Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises or place where the Goods are or may be situated in order to inspect them, and where the Buyers right to possession has terminated, recover them and

9.9 The Seller shall be entitled to suspend all deliveries of Goods to the Buyer and performance of Services under any Contract and/or terminate any such Contract(s) without liability if any of the circumstances in Clause 9.7 apply.

9.10 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyers right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.

9.11 Should the Buyer wish to arrange for the removal of Tooling from the Seller in order that a third party may take over the production of goods required by the Buyer, the Seller reserves the right to retain all or part of any Tooling, material, or components belonging to the Buyer which are stored on the Sellers premises until all outstanding debts owed by the Buyer to the Seller have been settled to the satisfaction of the Seller, until which point the Seller shall have a lien over the relevant items.

9.12 On termination of any Contract, howsoever caused, the Sellers (but not the Buyers) rights contained in this Clause shall remain in effect.

## **10. WARRANTY AND LIABILITY**

10.1 The Seller warrants that:

10.1.1 goods will conform in material respects with any agreed specification or master sample which has been Accepted; and

10.1.2 that it will use reasonable care and skill in performing any Services. The Seller acknowledges and accepts the conditions implied by section 12 of the Sale of Goods Act 1979. Except as expressly stated otherwise herein, all warranties, conditions and other terms implied by statute or common law (whether as to fitness for any purpose or otherwise) are, to the fullest extent permitted by law, disclaimed and excluded from any Contract.

10.2 The Buyer shall give written notice to the Seller of any shortfall in quality of the Goods including any damage or partial loss of the Goods and if no notice is received by the Seller within 7 days of the date of delivery of the Goods to the Buyer, Goods shall be deemed to have been accepted by the Buyer as being in good order and in conformity with the Contract and no claims will be accepted thereafter.

10.3 Where any valid claim in respect of any of the Goods which is based in any defect in the quality or condition of the Goods or their failure to comply with any Contract is notified to the Seller in accordance with these Conditions, the Sellers sole liability and the Buyers exclusive remedy shall be for the Seller to replace the Goods (or the part in question) free of charge or, at the Sellers sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price).

10.4 The Buyer acknowledges that components are counted by weight. Since the production process is variable, the weight will vary, and this will result in varying quantities in each container. The Seller undertakes to carry out all reasonable measures to ensure that variations are minimized and any such variation will be a very small amount and will average either side of the mean.

10.5 The Buyers attention is drawn to the various publications available from the Seller and the Sellers suppliers describing the chemical and physical behavioral characteristics of the Goods. The Sellers has used reasonable endeavours to ensure that the information stated therein is accurate but cannot warrant that it is so. The Seller further does not warrant that such information is comprehensive or up-to-date (or will be kept up-to-date) and/or reflects the behaviour of the Goods in all situations.

10.6 Notwithstanding that the Seller may give information or advice concerning the use of the Goods, the suitability for use of any substance or thing in connection with the Goods and other technical advice from time to time (whether in the course of provision of Services or otherwise), the Buyer must rely upon its own skill and judgment in relation to such matters and its responsible for assessing the suitability of the Goods and Services for its own needs, and the Seller

shall not be liable in any way in this regard.

10.7 The Buyer acknowledges that modifications or repairs to Tooling may result in unforeseen changes to component performance which cannot be predicted. No warranty is therefore given that the Seller will successfully predict the effects of design changes to tooling or components. Undesirable component performance will be corrected at the expense of the Buyer.

10.8 The warranties given by the Seller in these Conditions are subject to the following qualifications:

10.8.1 the Seller shall be under no liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by the Buyer;

10.8.2 the Seller shall be under no liability in respect of any defect arising from wear and tear, willful damage, negligence, abnormal working conditions, failure to follow the Sellers instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Sellers approval;

10.9 Where Goods have not been manufactured by the Seller and are merely being re-sold by the Seller, the warranty in Clause 10.1(i) shall not apply. However, the Seller shall use reasonable endeavours to transfer to the Buyer the benefit of any warranty or guarantee which has been given to the Seller itself in relation to such Goods. The Buyer is requested to contact the Seller for further details in relation to warranties on Goods which have been manufactured by anyone other than the Seller.

10.10 Nothing in these Conditions shall exclude or limit the Sellers liability for (i) death or personal injury caused by the Seller's negligence; (ii) under section 2(3), Consumer Protection Act 1987; (iii) any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; and/or (iv) for fraud or fraudulent misrepresentation.

10.11 Subject to Clause 10.10, (i) the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution, through indemnification or otherwise, arising in connection with the performance or contemplated performance of any Contract, shall be limited to the Contract price; and (ii) in any event, the Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for indirect, special or consequential compensation whatsoever (howsoever caused, through indemnification or otherwise) arising in connection with the performance or contemplated performance of any Contract (whether or not the such losses are foreseeable or the Seller has been advised of the possibility of such losses).

10.12 The Seller shall not be liable to the Buyer or deemed to be in breach of Contract by reason of any delay in performing, or any failure to perform, any of the Sellers obligations in relation to the goods, if the delay or failure was due to any cause beyond the Sellers reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Sellers reasonable control: Act of God, explosion, flood, tempest, fire or accident; War or threat of war, sabotage, insurrection, civil disturbance or requisition; Acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind imposed by any governmental, judicial, parliamentary or local authority; Import or export regulations or embargoes; Strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the seller or of a third party); Difficulties in obtaining raw materials, labour, fuel, parts or machinery; Power failure or breakdown in machinery.

10.13 In addition, the Seller shall not be liable in any way in connection with any Contract or otherwise to the Buyer where such liability is due to any act or omission of the Buyer itself (or its servants or agents).

## **11. HEALTH AND SAFETY / ENVIRONMENTAL ISSUES**

11.1 The Seller ensures that, as far as reasonably practicable, its products are safe and without risk to health and safety when properly used. However, all products can constitute a health hazard if used incorrectly and/or without regard to the Sellers health and safety recommendations. It is a condition of supply of the Goods that the Buyer acquaints itself with any appropriate health and safety information available from the Seller and any other appropriate sources and takes its own health and safety measures.

11.2 The Buyer shall, on or before delivery of the Goods as herein provided, if so requested by the Seller, enter into a written undertaking to take such steps as may be specified to the Buyer by the Seller. Such undertaking will specify reasonable guidance for safe and proper use of Goods. However, the Buyer shall at all times use or handle Goods at its own risk and shall maintain appropriate employer insurance cover. The Buyer shall indemnify the Seller in respect of any third party claims made against the Seller (including any claims, demands, actions, costs and liabilities in respect of

personal injury, death, damage to property or loss of any kind, direct or indirect or consequential) which arising out of or in connection with the Buyers (or any of its servants, agents or end-users) use, handling and/or storage of the Goods.

## **12. INTELLECTUAL PROPERTY / COMPLIANCE WITH LAWS**

12.1 The Buyer warrants that it has and will continue to have all necessary rights (including without limitation intellectual property rights of whatever nature) to supply the Buyers Specification to the Seller and to require the Seller to manufacture or modify the Goods and/or perform any Contract in accordance with the Buyers Specification. The Buyer will indemnify the Seller and hold the Seller harmless from and against any claims, demands, actions, costs, liabilities or losses (including reasonable legal fees) arising out of a breach of the warranty in this Clause 12.1.

12.2 Subject to Clause 12.1, the Seller warrants that it has and will continue to have all necessary rights (including without limitation intellectual property rights of whatever nature) to manufacture the Goods and supply the Services under any Contract to the Buyer.

12.3 Nothing in these Conditions shall constitute a transfer or assignment of either partys intellectual property rights. If, in the course of performing any Contract or in any way otherwise, the Seller creates or devises improvements to processes or manufacturing specifications, or creates design of tooling or production elements of any components ("Improvements") which the Buyer may be interested in adopting in relation to future Goods or otherwise exploiting, or which the parties have agreed are to be incorporated into future Goods or Tooling (and which have been so incorporated), the Seller reserves the right to charge the Buyer additionally at any time for licence fees in relation to such Improvements as a condition of use. The Buyer acknowledges that such Improvements will have been developed by the Seller on its behalf on the understanding that the Seller will generally recoup its value over long-standing order commitments. Therefore, if at any time the Buyer wishes to remove tooling from the Sellers premises or to move production of any goods from the Seller to another party, should the Buyer also wish to use Improvements as part of any future manufacture or activity, the Buyer agrees that the Seller shall be entitled to payment of licence fees for such Improvements on the Sellers request. The Buyer shall pay any reasonable costs incurred by the Seller in checking the condition of any goods and preparing and packing the goods in a suitable fashion for transfer to the Buyer or another party.

12.4 The Buyer warrants that it will comply with all applicable laws and regulations in relation to its activities in connection with any Contract and with any Goods, including without limitation the EC Directive on Waste Electrical and Electronic Equipment (WEEE) and EC Directive on the Restriction of the Use of Certain Hazardous Substances in Electrical and Electronic Equipment (RoHS) and any laws implementing the same in the United Kingdom (collectively the "Laws"). The Buyer will assume primary responsibility for compliance with the Laws in relation to any Goods. However, if the Seller is obliged to incur any costs or take any action to comply with the Laws in relation to any Goods (by virtue of being a manufacturer or otherwise), the Buyer shall fully indemnify and hold the Seller harmless for all costs, damages, expenses, liabilities and losses that the Seller may incur or suffer in this regard. For the avoidance of doubt, this provision shall survive termination of any Contract.

## **13. CONFIDENTIAL INFORMATION**

13.1 Each party (the "Recipient") shall keep secret and not use or disclose to anyone (except on a need to know basis for internal use to its employees or individual consultants bound by express written secrecy obligations and in any case strictly in connection with a Contract only) without the prior written consent of the other (the "Disclosing Party") any Confidential Information received from or belonging to the Disclosing Party. The Sellers Confidential Information shall include, without limitation, any of its know-how, technical information, intellectual property or documents.

13.2 Clause 13.1 above shall not apply to any Confidential Information to the extent that (i) disclosure is required to or by any Court, Tribunal or Governmental Authority with competent jurisdiction or by law; (ii) it is or becomes generally and freely publicly available through no fault of the Recipient or its servants or agents; (iii) it can be shown to have been independently originated by the Recipient or communicated to it in circumstances otherwise than where its disclosure to the recipient imparted a duty of confidence.

## **14. EVENTS OF DEFAULT AND TERMINATION**

14.1 This Clause applies if:

14.1.1 the Buyer fails to make any payment which has become due to the Seller under the terms of these Conditions or any Contract or any other contract or order between the Buyer and the Seller incorporating this Clause or where the



Buyer otherwise commits any breach of its obligations under any Contract;

14.1.2 the Buyer undergoes an Event of Insolvency or the Seller reasonably apprehends that it believes in good faith that the Buyer is about to undergo an Event of Insolvency and notifies the Buyer accordingly.

14.2 If any of the provision of this Clause 14.1 applies then (without prejudice to any other right or remedy available to the Seller) the Seller shall be entitled to cancel any Contract and any other contract or order incorporating this term or suspend any further deliveries under any such contract or order without any liability to the Buyer by giving written notice. If any Goods have been supplied by the Seller to the Buyer under any Contract or order but not paid for, all monies then due or to become due by the Buyer to the Seller under such Contract or any other contract or order incorporating this term shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary and the Seller shall be entitled to retain any deposits paid by the Buyer on account of such liability.

## **15. MOULDING TOOLS**

15.1 Tools made to the order of the Buyer for the manufacture of Goods (including mouldings) to be supplied under any Contract, remain the Sellers property (and legal and beneficial ownership such tools shall continue to be vested in the Seller) and shall not be transferred to the Buyer until the conditions set out in Clause 9.2 have been met and and the Buyer has discharged all his liabilities to the Seller whether under these Conditions, any Contract or otherwise.

15.2 Tools made by the seller for the manufacture of Goods (including mouldings) to be supplied under any Contract to the buyer, remain the Sellers property ad infinitum when the seller has only charged for a contribution towards the cost of producing the tooling.

15.3 The Seller reserves the right to destroy or sell for its own account any of the Buyers Tooling which has been left at the Sellers premises and which has not been used for a period of three years, on giving the Buyer three months notice in writing.

15.4 The Seller undertakes (i) to keep the Buyers tools which are in regular use and stored on the Sellers premises in good working order; repairs required for wear and tear due to processing, such work to be at the expense of the Buyer (and the Seller shall invoice the Buyer for such work from time to time, payment to be made in accordance with these Conditions); and (ii) not to use the Buyers tools for any other customer without the Buyers written consent.

15.5 The Buyer shall be liable to pay the total or any proportion of the Contract price for the tool supplied by the Seller as agreed between the Buyer and the Seller normally as follows:

- I) 50% at the same time the Buyer places the order for the tool with the Seller and such order is accepted;
- ii) 50% at the time of the Seller receiving samples from the tool.
- iii) 100% of production costs 30 days from despatch.

15.6 Payment for tools supplied as in Clause 15.4, or for modifications or repairs to any tools as agreed between the Buyer and the Seller, will become due within 7 days from the date of the invoice (and Clause 6.2 shall not apply to such payments).

15.6 It is the responsibility of the Buyer to arrange insurance against all risks which it regards as appropriate, including where it stores its Tooling and equipment on the Sellers premises.

## **16. PENALTY CLAUSES**

16.1 Penalty Clauses on the Buyers orders or contracts cannot be accepted. Penalty clauses agreed by the Buyer with another party cannot be passed to the Seller under any circumstances.

## **17. GENERAL**

17.1 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.

17.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

17.3 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

17.4 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

17.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

17.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

17.7 All communications between the parties about the Contract shall be in writing and delivered by hand, sent by pre-paid first class post or recorded delivery or sent by fax to the recipients last known address.

17.8 Communications shall be deemed to have been received (i) if delivered by hand or sent by recorded delivery, on the day of delivery; (ii) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); (iii) if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day (together with evidence of successful transmission).