

1. Definitions

- a) "the Company" means Baker & Bellfield Limited
- b) "the Customer" means the company or person who has contracted with the Company for the purchase of Goods or Services.
- c) "the Contract" means any Goods or Services forming the subject of this Contract including parts and components of or materials incorporated in them.
- d) "Goods" means any goods supplied by the Company under the Contract.
- e) "Services" means any work or services supplied by the Company under the Contract.
- f) "Conditions" means the terms and conditions set out herein.

2. Application

a) These Conditions apply to all contracts entered into by the Company and shall over-ride any terms and conditions inconsistent herewith and/or sought to be imposed by the Customer which are hereby expressly excluded. No variation of any of these Conditions shall be binding on the Company unless expressly accepted by the Company in writing. In the event of any conflict between these Conditions and the particulars stated overleaf the latter shall prevail.

b) The Company's employees or agents are not authorised to make any representations concerning the Goods or the Services unless confirmed by the Company in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations, which are not so confirmed.

3. Quotations and Contract

a) Unless previously withdrawn the Company's Quotation is open for acceptance within the period stated therein or when no period is stated within thirty days only after its date. The information provided in the Quotation is submitted in good faith but the Quotation does not constitute an offer. In the event of any order being placed by the Customer the Company's acceptance notice in writing will establish a binding Contract incorporating these Conditions. The Company reserves the right to refuse an order.

b) Where tooling is necessary to fulfil a Contract the Company will request payment of such tooling in advance of manufacture.

4. Limitation of Liability

The Company shall be entitled in the first instance in respect of defective goods (whether arising pursuant to the Contract or to statute or Common Law) to replace such Goods or (at the Company's option) the making of an allowance not exceeding the price paid for them, and the Company will not in any event be liable for any labour or other charges in connection with the installation or removal of defective or replacement goods.

a) Any guarantee hereunder is given in lieu of the implied conditions contained in Sections 13, 14 and 15 of the Sale of Goods Act 1979 and any other condition or warranty implied by trade custom or usage. The Customer hereby acknowledges:

- 1) That the Customer purchases the goods works or services in the course of business and not for private use;
- 2) That the Customer knows the extent of the meaning of this clause and the limitations thereby imposed by it upon Sections 13,14 or 15 of the Sale of Goods Act 1979.
- b) The Company shall not be obliged to consider grounds for return of Goods or claims for compensation unless the claim and the reason for it are made in writing to the Company.
- c) The maximum liability of the Company whether in contract, tort or otherwise for any direct damage to property or direct loss due to any defective Goods suffered by the Customer shall be limited to a maximum aggregate amount of £5,000 per Contract.
- d) The Company shall not be liable to the Customer whether in Contract, tort, or otherwise and even if foreseeable by or in the contemplation of the Customer for any loss of profit, business, revenue, goodwill, data, or savings whether sustained by the Customer or any other person; or any special, indirect, or consequential loss whether sustained by the Customer or any other person.
- e) The Company undertakes to manufacture and supply goods (unless otherwise expressly agreed in writing) to a United Kingdom destination whereupon the company warrants and guarantees the goods so supplied within the United Kingdom. Any defect fault or other shall be rectified by BBL using the strict compliance of its warranties whereby any such fault(s) shall be corrected to goods supplied to a United Kingdom destination. Where goods have been despatched by a client in the United Kingdom to another location not within the United Kingdom, it shall be the responsibility of the company who purchased the goods in the United Kingdom to return the goods to enable any warranty work to be undertaken or if it is agreed to replace such defect goods to the same address within the United Kingdom and no onward ultimate destination costs will be accepted by the Company. In such circumstances no claim for consequential loss will be accepted by the company.

5. Delivery Dates

a) Any dates quoted for the manufacture or delivery of Goods or Services are estimates only, but the Company will use reasonable efforts to deliver on dates quoted. In no event shall time be of the essence of the Contract as regards delivery and the Customer shall not be entitled to refuse to accept Goods or Services because of late delivery.

b) So long as any circumstances whatsoever beyond the Company's control prevent or delay manufacture or delivery, the Company shall not be bound to manufacture or make delivery of any Goods which it may have contracted to manufacture, sell or supply.

c) The Company shall not be liable in any manner whatsoever for failure or delay in manufacture or delivery, howsoever such a failure or delay has been caused provided that the Company shall have made reasonable efforts to deliver the Goods or Services ordered.

d) The Company shall have the option to effect delivery by instalments and to issue a separate invoice in respect of each instalment.

6. Delivery and Carriage

Delivery shall be deemed to have taken place:

- a) in the case of carriage arranged by the Company in its own transport or otherwise, when Goods are taken from the vehicle at the delivery point in the United Kingdom specified in writing by the Customer and agreed by the Company prior to despatch;
- b) in the case of carriage arranged by the Customer by its own transport or otherwise when the Goods are loaded onto the vehicles used;
- c) in the case of Services at the time of performance;
- d) if the Company does not receive forwarding instructions sufficient to despatch the Goods within 14 days after they are ready for despatch, the Customer shall take delivery or arrange for storage, and in default thereof the Company shall arrange storage on the Customer's behalf and all charges for storage and insurance and demurrage shall be to the Customer's account.
- e) Wherever possible the Company will deliver its product using its own transport. Where this is not possible and has to contract to use a transport company or courier service and the goods are required to be delivered by a certain time or on an agreed service notwithstanding the Goods are subsequently delivered then the transport company or courier service will be deemed to have failed to deliver the Goods on time and therefore forfeit any claim to payment. When Goods are delivered in a damaged state or not at all then the transport company will not lay claim to payment of their services and the transport/courier company will be charged the full replacement cost irrespective if the Goods subsequently arrive at the deemed destination. The Company will reserve the right to withhold payment on their account until such matters are resolved.

7. Inspection and Acceptance of Goods and Services

a) The Customer shall inspect the Goods or Services immediately on receipt and shall within 3 days thereof give to the Company and the carrier notice in writing (time being of the essence) if it is claimed that the Goods have been damaged in transit or if such Goods or Services are not in accordance with the Contract as to specification or quantity, in default of such notice the Goods or Services shall be deemed to be accepted subject to Clause 10 hereof. This Clause is without prejudice to Clause 4 hereof. The Customer will be deemed to have inspected and accepted Goods as satisfactory if cutting or fitting has commenced.

b) Notice of non-delivery must be given in writing by the Customer within 14 days of the date of invoice otherwise claims cannot be accepted.

c) If the Customer shall fail to make any notification (under sub-clause (a) or (b) hereof) the Company shall be under no liability whatsoever in respect of loss or damage to the Goods howsoever occurring after they were handed to the carrier and the Customer shall remain liable to pay the full price for Goods so lost or damaged.

d) The Company reserves the right to change the interior specification detail of any profile shape in order to improve performance or give greater efficiency or to determine any improvement that the Company may feel beneficial.

8. Prices

- a) All prices are subject to VAT at the then current rate and to any other duties and insurance or other costs.
- b) List prices are subject to alteration at any time without notice and all orders are accepted on condition that they are charged at prices ruling at the date of dispatch.
- c) Any charge for delivery will be charged extra.
- d) If supply of Goods or Services cannot be made by the notified supply date due to matters outside the Company's control or if additional costs are incurred due to insufficient information being supplied by the Customer then the Company reserves the right to increase invoice prices in relation to increased costs.

9. Settlement Terms

- a) All invoices are payable in pounds, sterling, within 30 days of the date of the Company's invoice at the Company's premises stated on the invoice and in no circumstances shall the Customer be entitled to make any deduction or withhold payment for any reason.
- b) Time for payment shall be of the essence of the Contract. Without prejudice to any other rights of the Company if the Customer fails to pay the invoice price by the due date the Customer shall not be allowed any discount given in that invoice and shall pay interest on any overdue amount from the date upon which payment was due until paid (both before and after judgement) on a daily basis at a rate of five per cent (5%) per annum over the base rate from time to time of Lloyds TSB Bank Plc and reimburse to the Company all costs and expenses (including legal costs) incurred in the collection of the overdue amount.
- c) The Customer shall not be entitled to withhold payment of any sums due to the Company by reason of any dispute relating to any Goods/Services or deliveries or right of set off or counterclaim which the Customer may have or allege or for any other reason whatsoever.

d) The Company shall be entitled to require an interim payment at the rate of thirty per cent (30%) of the Contract value on orders up to £50k in value and at the rate of forty per cent (40%) of the Contract value on orders above £50k. The Company reserves the right to request further interim payments during the Contract.

e) If the Customer fails to make any payment by the due date then without prejudice to any other right or remedy of the Company.

f) The Company shall be entitled to suspend all further work/deliveries under the Contract and/or any other contract with the Customer and in such event the Customer shall not be released from its obligations to the Company, under the Contract or any other contract.

g) The Company shall also be entitled to treat the Contract with the Customer as having been terminated by the Customer and to claim damages for breach of contract.

10. Title

a) For the purposes of Section 12 of the Sale of Goods Act 1979 the Company shall transfer only such title or rights in respect of Goods as the Company has and if the Goods are purchased from a third party shall transfer only such title or rights as that party had and has transferred to the Company.

b) Notwithstanding the earlier passing of risk title shall remain with the Company and shall not pass to the Customer until the amount due under the invoice for them has been paid in full.

c) Until title passes the Customer shall hold the Goods as bailee for the Company and shall store them separately or make them so that they can at all times be identified as the property of the Company.

d) The Company shall be entitled at any time before title is passed to repossess and dismantle without being liable for any damage caused in so doing and use or sell or any of the Goods and so terminate (without liability to the Customer) the Customer's right to use, sell or otherwise deal in them and for that purpose or determining what if any Goods are held by the Customer and inspecting any premises of the Customer.

e) Until title passes the entire proceeds of sale of the Goods shall be held in trust for the Company and shall not be mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Company's money.

f) The Company shall be entitled to maintain an action for the price of any Goods notwithstanding that the title has not passed to the Customer.

g) The Company shall reserve the right to manufacture and retain custody of Customer tooling for a two year period, commencing from the date of the first order. The Company will retain the tooling on its premises (free of charge) for that two year period, and shall be entitled to manufacture product from the Customer's tooling when required by them to do so.

h) If after two years the Customer requires ongoing use of the tooling then storage costs will apply however if after a 12 month period of a Customer not using the tooling belonging to them the Company reserve the right to inform the Customer of their intention to set aside the tooling for disposal.

11. Confidential Information

The Company retains its shared design rights and its right to refuse to forward any tooling for use by another company in pursuant of manufacturing shapes previously manufactured from the tooling created by Bakerbellfield Ltd.

12. Termination Default

All sums owing by the Customer to the Company shall become immediately due and payable (with interest thereon at the rate of five per cent (5%) above Lloyds TSB Bank Plc base lending rate from time to time) and the Company shall have the right forthwith to suspend all further manufacturing or other work or service carried out for the Customer and to withhold all further deliveries of Goods or to determine any contract then subsisting between the Company and the Customer upon the happening of any of the following events:

- a) If the Customer (i) shall make any default in paying any sum under any contract with the Company as and when it becomes due; ii) shall have distress or execution levied on any of its goods or property; or iii) shall make or offer to make any arrangement or composition with creditors; or
- b) If the Customer being a limited company, passes or has presented any resolution or petition to wind up the Customer (other than for the purpose of reconstruction or amalgamation without insolvency), or if a Receiver or Administrator shall be appointed over the whole or any part of the Customer's business; or
- c) If the Customer shall commit any act of bankruptcy or have a petition presented against him. Such determination shall give rise to no liability whatsoever on the Company's part but shall be without prejudice to the Company's rights to payment in respect of manufacturing or other work or services already carried out or Goods already delivered and the Company may receive and dispose of any Goods in which it has retained title and for that purpose enter upon any premises where such Goods may be.
- d) If the Customer fails to pay off its debt to the Company then the guarantee on the goods supplied will become null and void and all remedial work to correct defect product will not be undertaken.

13. Insurance

a) Goods or Services supplied hereunder shall be at the Customer's risk immediately on delivery to the Customer or elsewhere to its order in accordance with Clause 6 hereof (whichever is sooner) and the Customer should arrange to be insured accordingly.

b) Any item that is the property of the Customer but held on the premises of the Company including such items as mould boxes or specific material owned by the Customer for work in progress, should be insured by the Customer for loss or damage.

14. Cancellation and Variation of Orders

i) Orders may be cancelled in whole or in part or varied by the Customer only with the written consent of the Company and the Company reserves the right to make a cancellation charge to meet its expense and losses incurred being a reasonable assessment of the losses incurred by the Company.

ii) In the event of partial cancellation of an order or any variation of the order being accepted by the Company, the Company reserves the right to revise its prices and to make a charge to meet the Company's expenses and losses incurred being a reasonable assessment of the losses incurred by the Company.

15. Postponement of Delivery

In the event that the Customer requests a postponement in the manufacture or delivery of Goods the Customer will be liable to pay for the Goods at the price then ruling at the date on which they are eventually dispatched (notwithstanding the fact that the Company may have agreed a fixed price). In such circumstances the Company may invoice for such Goods at any time provided that the Goods have passed the Company's quality control check and the Customer hereby acknowledges that any such invoice is payable in accordance with these Conditions whether or not such Goods have been delivered. The Customer shall also be liable to pay to the Company on demand a charge to be laid down by the Company in respect of the storage and handling of the Goods during the period of postponement and to reimburse to the Company on demand any charges incurred by the Company in effecting storage with a third party. If the Customer does not specify a date for delivery or if when a specified date is reached the Customer then asks the Company to delay delivery of the Goods without fixing a date for delivery, the Company shall not be bound to deliver the Goods, and may treat such a request as breach of contract.

16. Returns

The Company will not accept the return of any Goods to it unless such return has received its prior written approval.

17. Catalogues etc.

All drawings, illustration, description and specifications in the Company's catalogues, price lists and other advertising material are intended to give no more than a general idea of the goods manufactured by the Company and such information is not intended to be and shall not be relied upon as giving a precise description of any Goods nor as being a representation as to any matter contained therein, nor shall any of it form part of any contract with the Customer.

18. Damage or Loss in Transit

The following provisions shall apply whether the Company has agreed to deliver goods to the Customer within the United Kingdom or elsewhere. The Company will take all measures to ensure safe carriage, but cannot be held liable for any damage to Goods in transit caused by any carrier except to the extent of the carrier's liability to the Company in respect of such carriage whether or not the extent if the carrier's liability is made known to the Customer.

19. Exports from United Kingdom

Where Goods are exported from the United Kingdom the provisions of this Clause shall apply to the Contract notwithstanding anything to the contrary elsewhere in these Conditions. Goods for export will unless otherwise agreed to be delivered FOB to a United Kingdom port nominated by the Customer or (in default thereof by the time of despatch from the Company's premises) selected by the Company. Where Goods are exported on CIF terms the CIF costs and charges incurred by the Company and shall be paid to the Company by the Customer and shall form an addition to the price of the Goods payable in the same manner at the same time. The risk in Goods on FOB and CIF terms shall pass when they cross the ship's rail at the port of loading.

20. Intellectual Property

a) Where the Company manufactures Goods to a design provided or specified by the Customer (not being an existing design of the Company), the Customer shall indemnify the Company against all liabilities, damage, claims, losses and expenses paid or incurred by the Company (including all sums paid by the Company in settlement of any claim or action) in consequence of the infringement of patent, registered design, copyright or other legal rights of a third party.

b) Where Goods have been supplied by the Company in accordance with a specification or design of the Customer the Company shall have no liability to the Customer should such Goods not be fit for their purpose.

21. Indemnity

The Customer shall indemnify the Company from and against all liability, loss, damage, injury cost, expenses claims and demands arising from a case other than negligence or breach of contract of or by the Company.

22. Laws and Jurisdictions

All contracts are deemed to be entered into in England and shall be governed and constituted in accordance with English Law and shall be subject to the jurisdiction of the English Courts.

23. General

a) These Conditions shall be interpreted without reference to their headings. The nonenforceability of any part of these Conditions shall not affect the validity of the remainder of these Conditions and parts thereof which shall remain fully enforceable.

b) Any notice to be given under these Conditions may be delivered, or sent by prepaid post sent first class, addressed to the party to be served at its registered office for the time being or (if not a company) at its last known address and shall be deemed served on the second business day after the date of posting. "Business day" shall mean a day other than a Saturday, Sunday or an English Bank or Statutory Public Holiday.

c) The rights of the Company or the Customer shall not be prejudiced by any indulgence or forbearance extended by either party to the other and no waiver by either party shall be a waiver of any subsequent breach.

d) The Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract. No party who is not a party to the Contract shall have the right under the said Act or otherwise to enforce any term of the Contract.

e) The Company shall be entitled to apply any amount due to the Customer under any contract in or towards payment of any sum owing by the Customer to the Company in relation to any matter whatsoever.