

TERMS AND CONDITIONS OF PLASMOTEC LIMITED

"**The Company**": Plasmotec Limited registered number 2281896 whose registered office is at Units G2 to G4 Lincoln Park, Ward Road, Buckingham Road Industrial Estate Brackley Northamptonshire NN13 7LE; and

"**The Customer**": means the person, firm or company by whom the Order is placed.

**1. Operative provisions:**

**Interpretation**

For the purposes of these Terms and Conditions the following expressions shall have the following meanings:

- 1.1. "Agreement" means these Terms and Conditions together with any Order Acknowledgment
- 1.2. "–Period" means the period of time referred to in the Order Acknowledgement upon which the price of the Tooling and Goods to the Customer has been calculated
- 1.3. "Forecast" means a forecast provided by the Customer for Goods required in the Period
- 1.4. "Goods" means the finished goods described in the Order and manufactured by the Company pursuant to the Agreement;
- 1.5. "Standard Mouldings" means any mouldings described in the order other than Custom Mouldings
- 1.6. "Custom Mouldings" means mouldings required by customers to conform to their own individual design and specification
- 1.7. "Tooling Cost" means the selling price of the Tooling including the manufacturing costs as set out in the Order Acknowledgment
- 1.8. "Territory" means United Kingdom;
- 1.9. "Tooling" means the tooling described in the order or otherwise (save when they relate to standard catalogue mouldings) made for the purposes of manufacture of goods to be supplied under any agreement to which these terms and conditions apply
- 1.10. "VAT" means value added tax.

**2 Application and grant**

The Customer appoints the Company as its manufacturer in the Territory of the Goods and grants to the Company (and the Company accepts) the exclusive right to manufacture the Goods for the Period on the terms but subject to the conditions contained in this Agreement.

**3. Acknowledgements and duties**

- 3.1 The Customer may change the specifications of the Tooling and/or Goods at any time prior to the Company commencing the manufacture of the relevant order for the Goods subject to the Customer paying any costs incurred as a result of the change. Such cost are to be agreed prior to any change to the specification being implemented.
- 3.2 The Company shall endeavour to supply the Customer with Goods in accordance with any Forecast supplied.
- 3.3 Quotations issued by the Company whether verbally or in writing do not constitute offers and are subject to acceptance by the Company of the Customer's order when placed and unless otherwise agreed no contract involving the manufacture of a new tool or tools shall be concluded until written acceptance by the Company of the Customer's order. Customers are asked to confirm all verbal orders in writing within ten days of the original instructions.

3.4 The Customer shall be entitled to sell the Goods and pass property in the same to third parties in the normal course of its business or manufacture other Goods out of the same or sell such other Goods until otherwise notified by the Company or until the happening of any of the following events:-

- 3.4.1. any notice to the Customer that an Administrative Receiver or other Receiver or Manager is to be or has been appointed in respect of its undertaking or a material part thereof or other property or assets
- 3.4.2. any notice to the Customer that a petition to wind up the Customer is to be or has been presented to the Customer under Section 518 of the Companies Act 1985 or otherwise or any notice to the Customer of a proposal to pass a Resolution to wind up the Customer (including any proposal by the Customer so to do)
- 3.4.3. a decision by the Customer to make a voluntary arrangement or composition with its creditors or any notice to the Customer and/or any of its creditors that a proposal for the same is to be or has been made
- 3.4.4. the Customer becoming unable to pay its debts as such expression is defined by the Insolvency Act 1986 or any subsequent legislation

On receipt of written notice from the Company or on the happening of any of the events set out above the Customer's authority to sell the Goods shall be immediately withdrawn and all such Goods and other Goods made therefrom shall immediately be delivered to the Company.

#### **4. Price and payment**

- 4.1 The parties shall agree at the outset of the Agreement a price for the Goods required during the Period and a price for the Tooling ("the Agreed Costs"). The Agreed Costs of the Goods and Tooling will be shown on the Order Acknowledgment and based on the Forecast.
- 4.2 Payment for the Goods, Tooling or any other costs arising shall be made in accordance with the terms shown on the Order Acknowledgement and any invoices rendered to the Customer
- 4.3 Any payment under the Agreement which is not made on the due date shall be subject to default interest at the annual rate of 6 per cent above the base rate of National Westminster Bank plc from time to time in force from the date such payment fell due to the date of actual payment both before as well as after judgment to be calculated on the basis of a 365 day year.
- 4.4 All payments under the Agreement shall be made in pounds sterling.
- 4.5 If the cost to the Company of performing its obligations under the Agreement shall be increased by reason of the making or amendment after the date of the Agreement of any law or any order or regulation having the force of law that shall affect the performance of the Company's obligations under the Agreement, the amount of such increase shall be added to the price.
- 4.6 The Customer agrees that prior to full payment being made as aforesaid the Company may at any time repossess any of the Goods and enter upon the Customer's premises and remove such Goods therefrom (and dispose of the same in any manner it may decide) and that prior to such payment the Customer shall keep such Goods as fiduciary agent and bailee and separate and identifiable for this purpose.
- 4.7 Standard or Custom Mouldings with a net invoice value of £400.00 or more will be carried free of charge except where special carriage terms or delivery to an address outside main land England are specifically requested.
- 4.8 Where components are to be imported the Company reserve the right to vary the price quoted to reflect the rate of exchange for purchase of the relevant currency in pounds sterling.
- 4.9 Quoted prices are based on specific quantities and therefore do not necessarily apply to an order for a smaller or greater quantity.

4.10 The Company reserves the right to adjust the Agreed Costs by any reasonable amount following any event outside the control of the Company as a result of which the Company incurs additional manufacturing costs.

## **5. Ownership of the Tooling and Goods**

5.1 Risk of damage to or loss of the Goods or Tooling remains with the Customer at all times.

5.2 Ownership of the Goods shall pass to the Customer upon payment in full of the relevant invoice(s) relating to those Goods

5.3 Ownership of the Tooling shall remain vested in the Company until both the expiration of the Period and the following has been satisfied:

5.3.1 Payment has been made in full for all Goods recorded in the Forecast notwithstanding the fact that the Forecast Goods may not have been manufactured or delivered to the Customer; and

5.3.2 Payment of any sums in relation to the Tooling Cost have been paid in full; and

5.3.3 Payment for all goods and toolings under any agreement between the Customer and the Company have been paid in full

## **6. Shared Tooling Ownership**

If the Parties agree that the Tooling referred to in this Agreement is to be the subject of a shared ownership agreement and such agreement is recorded on the Order Acknowledgement then clause 5.3 of this Agreement shall not apply and the following clauses shall take effect:

6.1 Ownership of the Tooling shall vest in the parties jointly in such shares as shown on the Order Acknowledgement

6.2 The Company will retain possession of the Tooling until such time as clause 6.4 has been satisfied.

6.3 Either party may terminate the Agreement after the expiration of the Period by giving not less than three months written notice.

6.4 The Company may serve written notice on the Customer within two months from receipt of any notice under clause 6.3 informing the Customer that the Company will retain possession of the Tooling.

6.5 If no notice is served under clause 6.3 and

6.5.1. Payment has been made in full for all Goods recorded in the Forecast notwithstanding the fact that the Forecast Goods may not have been manufactured or delivered to the Customer; and

6.5.2. Payment of any sums in relation to the Tooling Cost have been paid in full

6.5.3. Payment has been made in full by the Customer to the Company for the Company's share in the Tooling for the sum recorded on the Order Acknowledgment

6.5.4. Payment for all goods or toolings under any agreement between the Customer and the Company have been paid in full; and

6.5.5. Payment of the compensation as set out in clause 6.5 of this Agreement if applicable has been made

ownership and possession of the Goods and Tooling shall pass to the Customer

6.5 The Customer acknowledges that in entering into a shared ownership agreement the Company has invested its own time and resources and if the Customer exercises its rights under clause 6.3 then upon termination of the Agreement reasonable compensation will be paid to the Company.

## **7. Samples and Design**

- 7.1 In all cases where the Customer requires Custom Mouldings the Company will initially provide samples prior to the first production run for Customer approval with an Initial Sample Inspection Report ("ISIR"). The Company will then subject to reasonable variation use all reasonable endeavours to ensure the production is consistent with the samples that have been approved. Approval of samples will be deemed to be acceptance of the relevant Toolings notwithstanding any deviation from any dimensions previously agreed by the parties or contained in any drawings supplied by either party.
- 7.2 The Customer shall promptly consider the ISIR supplied by the Company to the Customer with samples produced from new Tooling or revised or modified Tooling. If the Customer is satisfied with the ISIR and the samples then the Customer shall return the ISIR promptly endorsed and signed with his acceptance thereof. If the Customer has not done so within fourteen (14) days of receipt of the ISIR then the Customer shall be deemed to have done so and the Company shall be entitled to invoice the Customer for any uninvoiced balance of the costs of any tooling work unless in the meantime the Customer shall have drawn the attention of the Company in writing to any defects or changes. If in any circumstances samples have been supplied by the Company to the Customer without an ISIR being available then any order for goods placed by the Customer before an ISIR has been returned (or is deemed to have been returned) endorsed with the Customer's signed acceptance will only be accepted on the basis (which is agreed between the Company and the Customer) that the ISIR is deemed to have been accepted by the Customer.
- 7.3 Where either Custom Mouldings or Standard Mouldings are purchased the Customer shall try and test samples provided for suitability sizing and colour and (even if the Customer should not do so) shall be deemed to have done so and approved any such samples provided.
- 7.4. The following provisions of this condition shall apply to designs and drawings etc.:-
- 7.4.1. The Customer shall accept responsibility (to the entire exclusion of the Company) for all designs supplied to the Company by the Customer and/or approved by the Customer and the Company shall have no liability or responsibility whatsoever for any design defect in any goods tooling(s) mouldings and/or goods which conform to such design
- 7.4.2. The Customer shall consider promptly all designs and drawings prepared by the Company and (unless the Customer shall be dissatisfied in any respect in which event the Customer shall give to the Company notice in writing with full particulars forthwith upon receipt) the Customer shall return to the Company within fourteen (14) days of receipt copies of such designs and/or drawings signed and endorsed by the Customer with its acceptance thereof (in such form as the Company may reasonably require) and if the Customer shall not do so it shall be deemed to have done so.
- 7.4.3 As a matter of standard practice the Company requires the Customer to give its written approval of a design for or a drawing of a moulding prior to manufacture of the tool in question and in giving such approval the Customer confirms its satisfaction with such design or drawing and its willingness to commission the manufacture of a tool to provide mouldings consistent with the design or drawing.

## **8. Tooling**

- 8.1 The Company shall not use the Tooling for any other customer without the Customer's prior consent.
- 8.2 Unless otherwise agreed the Company reserves the right to charge (on a quantum merit basis) for drawing work undertaken for the Customer.
- 8.3 The Company shall be under no obligation to proceed with cutting metal and/or other work in connection with the making

or manufacture of tooling or the production of samples unless and until any and all relevant drawings and/or ISIRs have been approved by the Customer in accordance with this Agreement.

- 8.4 Whilst in possession of tooling manufactured for a Customer the Company shall not be under any obligation to carry out any particular work of maintenance repair refurbishment or servicing to it and (in particular but without prejudice to the generality of the foregoing) shall not be under obligation to maintain such tooling after (in the reasonable opinion of the Company) it has reached or is about to reach the end of its useful life.
- 8.5 The Company reserves the right to charge for work of maintenance repair refurbishment or servicing to such tooling and to obtain agreement to its proposed charges before undertaking work.

## **9. Delivery inspection and acceptance**

- 9.1 The Company shall endeavour to ensure that the Goods manufactured for the Customer are of a reasonable quality.
- 9.2 The Company shall endeavour to supply the Goods as requested by the Customer. The Company reserves the right to vary the quantity of any order by up to 10% either above or below the order and this variation will not constitute a breach of this Agreement and will not entitle the Customer to reject the Goods.
- 9.3 The Customer shall inspect each shipment within 10 working days after arrival at the Customer's address, and promptly notify the Company whether the shipment is accepted or rejected either in part or in full.
- 9.4 The shipment shall be deemed accepted by the Customer if notification to the contrary has not been received by the Company in writing within 12 working days after its arrival at the Customer's address.

## **10. Undertakings and warranties of the Company**

The Company undertakes and agrees with the Customer that in the case of any breach of any warranty then the Company shall at its option as soon as reasonably practicable take such steps as may be reasonably necessary to replace such Goods or render them in accordance with such warranty or refund such sums as the Customer has paid to the Company in respect of such Goods.

## **11. Warranty and liability**

- 11.1 The Company does not exclude or limit its liability in negligence for death or personal injury, or for fraudulent misrepresentation, or otherwise insofar as any exclusion or limitation of its liability is void, prohibited or unenforceable by law.
- 11.2 Subject to the foregoing provisions, all representations, warranties and conditions implied by trade custom, course of dealing, statute, common law or otherwise are excluded to the fullest extent permitted by law.
- 11.3 In no circumstances shall the Company be liable to the Customer, in contract, tort, negligence or otherwise, for any incidental or consequential loss including, without limitation, third party claim for any loss of profit, business, revenue, goodwill or anticipated savings or for any special, exemplary or consequential damages or other financial loss, howsoever caused, whatsoever arising out of or in connection with the Agreement or the supply of the Goods or any services or their use or resale (if applicable) by the Customer.
- 11.4 In the event that, notwithstanding the provisions of the Agreement, the Company is found liable for any loss suffered by the Customer arising in any way out of or in connection with the Agreement or the supply of any Goods, that liability shall in no event exceed the price paid for such Goods.

11.5 The Company accepts no responsibility where material or components supplied by the Customer or through its offices or from sources dictated by the Customer shall be defective or in any unsatisfactory condition and the Customer shall indemnify the Company against any loss suffered by the Company arising as a result of such defects or conditions.

## **12. Indemnity**

The Customer shall indemnify and keep the Company indemnified from and against all actions, proceedings, costs, claims, damages, losses whatsoever suffered or incurred by the Customer in consequence of any breach of any representations, warranties, undertakings or obligations on its part contained in the Agreement or the exercise by it of the rights granted to it under the Agreement.

## **13. Force majeure**

13.1 The parties agree that either party shall notify the other promptly of the occurrence of a force majeure event and the likely or anticipated period of delay. In the event that such force majeure event continues for a period in excess of 6 months, the other party shall be entitled to terminate the Agreement upon service of written notice.

13.2 The Company shall not be liable for any breach of its warranties, indemnities or obligations under the Agreement due to any matter reasonably beyond its control including but not limited to strikes, lockouts, trade disputes, acts or defaults of third parties, acts of God, force majeure or other unforeseen circumstances and shall not be liable for any loss or damage resulting therefrom suffered by the Customer or as a result of the Company failing to carry out its obligations under the Agreement.

## **14. Termination**

14.1 Upon expiration or termination of the Agreement for any cause, the rights and obligations of the parties under the Agreement shall (subject to the provisions of the Agreement) terminate, with the exception of any payment obligation incurred prior to or as a consequence of such expiration or termination.

14.2 Any rights to terminate the Agreement shall be without prejudice to the other rights of the parties.

## **15. General**

15.1 Unless otherwise expressly agreed in writing by a Director of the Company all toolings or mouldings goods or services supplied and/or work undertaken by the Company are made supplied and/or undertaken upon these Terms and Conditions of Business and no agent or representative of the Company has any authority to vary or omit these Terms and Conditions or any of them. These Terms and Conditions of Business apply to the exclusion of all other Terms and Conditions (except any which might be implied by law in favour of the Company) and in particular to the exclusion of any which the Customer may purport to apply under any Order Confirmation of Order or otherwise. All Orders shall be deemed to be an Offer by the Customer to contract with the Company pursuant to these Terms and Conditions.

15.2 The Agreement constitutes the entire understanding between the parties and supersedes any prior or contemporaneous agreement including any terms and conditions of the Company and any representations or warranties made by either party and not stated in the Agreement.

15.3 The Agreement shall not constitute a joint venture or a partnership between the parties and neither party shall be entitled to act as agent of the other.

15.4 Any provision of the Agreement which proves to be invalid or void or illegal shall not in any way affect, impair or invalidate any other provision and the remaining provisions shall remain in full force and effect.

15.5 The clause headings in the Agreement are for convenience only and shall not affect the interpretation of the Agreement.

15.6 No third party who is not a party to the Agreement shall have the right to enforce the Agreement.

## **16 Notices**

16.1 Any notice given to a party for the purpose of the Agreement shall be in writing and shall be deemed to have been properly served if delivered or sent in person, by courier, by fax, by email, by prepaid recorded delivery or registered post to such person at the address stated above or such other address as that party may have expressly designated in writing from time to time for the purposes of the Agreement to the party giving notice.

16.2 Any notice so given shall be deemed to have been served:

## **17 Law**

The Agreement shall be governed by and construed in accordance with the laws of England whose courts shall be the courts of exclusive jurisdiction