

TERMS AND CONDITIONS OF SALE

1. In these Terms and Conditions (“the **Terms**”) the following words shall have the following meanings:
 - Seller** FLOPLAST Limited and/or its subsidiaries and/or associates
 - Buyer** any person(s), firm or company who purchases the Goods from the Seller under the Contract
 - Contract** any agreement between the Seller and the Buyer for the sale and purchase of the Goods
 - Goods** any goods, products or services agreed in the Contract to be supplied to the Buyer by the Seller (including part of any part of them)
2. These Terms apply to all Contracts for the sale of Goods by the Seller, notwithstanding any purported variation on any purchase order, confirmation of order, specification or other document or item of correspondence submitted by the Buyer to the Seller. Each order for the Goods by the Buyer shall be deemed to be an offer by the Buyer to purchase Goods subject to these Terms.
3. No variation of these Terms shall have any effect unless such variation is expressly agreed in writing and signed by a duly authorised officer of the Seller. For the avoidance of doubt, no employee or agent of the Seller has authority to vary, add to or depart from the Terms or make any representations in relation to the Goods sold hereunder or the Contract.
4. All quotations are made or orders (whether or not scheduled orders) accepted on the following basis.
 - a. The Goods will be charged at the prices current as at the date of despatch (“the **Price**”), and is calculated inclusive of materials and labour (“the **Costs**”) current at the date of despatch. Transport costs are included for all deliveries made within the UK where the order value is greater than or equal to £750, excluding Value Added Tax. Unless otherwise stated the Price is exclusive of Value Added Tax and all other duties and taxes whether national, state or local. In the unlikely event that the Costs increase during the period between the date of despatch and the date of delivery of the Goods or the day on which delivery of the Goods is completed, the Seller reserves the right to increase the Price with reference to that increase in the Costs.
 - b. Where an order is received for a quantity less than that quoted for or where delivery is required in instalments smaller than those specified in the quotation, the Seller reserves the right to increase the Price to meet additional administrative costs.
 - c. Any time or date named by us for the delivery is intended as an estimate only and we shall not be liable in damages or otherwise for any loss, direct or consequential occasioned by the delivery after such estimated time or date, nor shall the Buyer have any rights to terminate or rescind the contract on the grounds that delay in delivery has occurred. In no case shall we consign Goods by air freight or any other express transport other than following the Buyer’s written request and only at the Buyer’s expense.
 - d. The Seller is entitled to make delivery of the Goods by instalments.
 - e. Where specifications are to be supplied the Buyer shall supply such specifications in reasonable time to enable us to complete delivery within the period named.
5. Payments for the Goods shall be on the followings terms:
 - a. Unless otherwise stated all accounts must be paid in full in cleared funds within 30 days from date of invoice (“the **Due Date**”).
 - b. All payments must be made on or before the Due Date as a condition precedent to future deliveries.
 - c. Time for payment shall be of the essence.
 - d. The Seller may at any time, or times, without notice to the Buyer, set off any liability of the Buyer to the Seller in respect of purchases of Goods from the Seller against any liability of the Seller to the Buyer in respect of purchases made by the Seller from the Buyer, whether any such liability is present or future (whenever arising), liquidated or unliquidated.
 - e. If the Buyer fails to pay to the Seller on the Due Date any sum due pursuant to these Terms the Buyer will be liable to pay interest to the Seller on such sum at the annual rate of 5% above the base lending rate from time to time of the Bank of England accruing on a daily basis from the Due Date until the date of actual payment (inclusive), whether before or after any judgement. The Buyer shall pay the interest in addition to the overdue amount.
 - f. All payments payable to the Seller under the Contract shall become due immediately upon termination of the Contract for whatever reason.
6. Where any special part is manufactured and delivered in accordance with the Buyer’s design pattern, drawing, sample or material (“the **Buyer’s Specification**”) then:
 - a. The Seller’s interest is confined to manufacture in accordance with the Buyer’s requirements.

- Under no circumstances shall the Seller be liable or responsible for any loss or damage consequential or otherwise caused directly or indirectly by any fault in design, pattern, drawing, sample or material.
- b. The Buyer will indemnify the Seller against all loss (direct, indirect or consequential) and expenses arising out of any claim (whether successful or not) for breach or infringement of any third party intellectual property rights (including but not limited to any patent rights, registered design rights, copyright or other similar or equivalent rights whether registered or not and including all applications (or rights to apply) for such rights which subsist or will subsist in any part of the world) arising from the manufacture of Goods in accordance with the Buyer's Specification.
7. Where the Seller is not the manufacturer of the Goods, the Seller will endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller.
 8. Where the Seller is the manufacturer of the Goods, the Seller warrants that (subject to the other provisions of these Terms) upon delivery, and for a period of 6 (six) months from the date of delivery, the Goods will:
 - a. be of satisfactory quality within the meaning of the Sale of Goods Act 1994; and
 - b. be reasonably fit for any particular purpose for which the Goods are being bought provided that the Buyer has notified the Seller of that purpose in its order and the Seller has expressly accepted.
 9. The Seller shall deliver the Goods to the location specified in the Buyer's purchase order ("the Delivery Location") and shall obtain a written receipt from the Buyer, signed by an authorised representative from both the Seller and the Buyer ("**the Delivery Note**"). The Delivery Note shall be conclusive as between the parties as to the delivery of the Goods and (except to the extent that any damage or discrepancy is noted on the Delivery Note) that they were received in good order and condition.
 10. The Seller shall not be liable for shortages in delivery or internal bag or pack damages unless the Buyer sends written notice to the Seller within 3 working days of the Delivery Date to the Seller setting out relevant details of the claim, including an estimate of the likely value of any such claim ("**the Notification**").
 11. The Seller shall not be liable for non-delivery unless the Buyer sends a Notification to the Seller and notifies the carrier within 10 days of the Delivery Date.
 12. All goods returned are subject to a 20% handling charge.
 13. The Seller shall not be liable for a breach of any warranties in condition 8 unless the Buyer sends a Notification to the Seller of such a claim within six months of the Delivery Date identifying the Goods in question ("**the Rejected Goods**") and setting out relevant details of the claim, including an estimate of the likely value of any such claim.
 14. In the event that the Seller receives a Notification, the Seller shall contact the Buyer to, at the Seller's option, either arrange a time to examine the Rejected Goods at the Delivery Location or to require the Buyer (at the Buyer's expense and risk) to return the Rejected Goods to a location nominated by the Seller for examination.
 15. If any of the Rejected Goods do not, in the reasonable opinion of the Seller, conform with the warranties contained within condition 8 as a result of faulty workmanship or materials, the Seller shall, free of charge, correct or at the Seller's option replace or authorise the Buyer to replace the Rejected Goods or any part of them provided that the Rejected Goods have been subject to normal use and service and are defective only due to faulty workmanship or material.
 16. The Seller shall not be liable for breach of warranty contained in condition 8 if or to the extent that
 - i. the Seller makes use of the Goods after sending the Notification;
 - ii. the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods;
 - iii. the defect arises because to the Seller's use during the manufacturing process of material which had defects in quality which would not be apparent to the Seller on a reasonable examination;
 - iv. the Buyer alters or repairs such Goods without the prior written consent of the Seller; or
 - v. the Goods have been plated, processed or treated by the Buyer or any third party following delivery of the Goods to the Buyer by the Seller.
 17. Subject to conditions 10 - 13, **the following provisions set out the entire financial liability of the Seller** (including any liability for acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of: any breach of these Terms; and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract:
 - a. Nothing in these Terms excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.
 - b. Subject to conditions 10 - 13:
 - i. the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentations or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to the contract price; and
 - ii. the Seller shall not be liable to the Buyer for any indirect or consequential loss or damage (including, without limitation, loss of profit, loss of business, depletion of goodwill and similar loss), costs, damages,

charges or expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

18. If war, strikes, accidents, non-performance by suppliers or subcontractors or any cause whatsoever and howsoever beyond the control of the Seller shall prevent, hinder or interfere with the fulfilment of the Seller's obligations or any part of them the Seller shall have the option by way of written notice to the Buyer to suspend or cancel any obligation then unperformed without prejudice to our rights to payment in respect of any Goods supplied prior to such suspension or cancellation and in such circumstances the Seller shall not be in breach of the Contract nor liable for any failure or delay in performance of its obligations.
19. A scheduled order (i.e. calling for a specific quantity of Goods for delivery over a period whether specific or not) shall constitute authority for the manufacture of that quantity and if the Buyer fails to call on that quantity within any period specified in the order ("**the Call Off Period**") the Buyer will be liable to reimburse the Seller for all loss and expenses incurred as a result of such failure. If the Scheduled Order does not specify the Call Off Period the Seller shall be entitled to require the Buyer to accept delivery of the specific quantity stated in such order within twelve months from the date of the Seller's Acknowledgement.
20. Risk or damage
- a. Risk of loss or damage to the Goods shall pass immediately on delivery to the Delivery Location and the Buyer should therefore, be insured accordingly.
 - b. The property in the Goods shall not pass to the Buyer until the Seller has received in full (cash or cleared funds) all sums due in respect of the Goods, and all other sums which are due or which become due to the Seller from the Buyer on any account. The whole of the price shall not be treated as paid until any cheque, bill of exchange or other instrument of payment given by the Buyer has been met on presentation or otherwise honoured in accordance with its terms. The Seller may sue for the whole of the price at any time after it has become payable.
 - c. Until ownership of the Goods has passed to the Buyer, the Buyer must:
 - i. hold the Goods on a fiduciary basis as the Seller's bailee;
 - ii. store the Goods (at no cost to the Seller) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;
 - iii. not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods ;
 - iv. maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and
- v. hold the proceeds of the insurance referred to in condition 19 (c) (iv) on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- d. The Buyer's right to possession of the Goods shall terminate immediately if:-
 - i. the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any Act 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 a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer (together "**an Insolvency Event**"); or
 - ii. the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - iii. the Buyer encumbers or in any way charges any of the Goods.
 - e. If this Contract is terminated in accordance with condition 20(d) above,
 - i. the Buyer shall fully indemnify the Seller for any loss, damage or expense incurred by the Seller as a result of the termination of the Contract including but not limited to the total cost of manufacture of the Goods and a reasonable proportion in respect of profit; and
 - ii. the Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of the Goods has not passed from the Seller.
 - f. The Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
 - g. Unless otherwise expressly indicated payment shall be applied to invoices in

the order in which they were issued and to Goods in the order in which they were listed in invoices.

- h. If the Buyer defaults in the payment of any sum owing to the Seller on its Due Date then the Seller shall be entitled to the immediate return of all Goods sold by the Seller to the Buyer (or the documents of title thereto) in which the property has not passed to the Buyer, and the Buyer hereby authorises the Seller to recover the Goods or documents and to enter any premises of the Buyer for that purpose. Demand for recovery of the Goods or documents by the Seller shall not of itself discharge either the Buyer's liability to pay the whole of the price and take delivery of the Goods or the Seller's rights to sue for the whole of the price.
21. Without prejudice to our other rights to claim damages, the Buyer will on termination of the Contract for any reason whatsoever or if the Buyer cancels, extends or delays or purports to cancel, extend or delay the contract or fails to take delivery of the Goods or suffers an Insolvency Event or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or ceases to trade indemnify us against any loss, damage or expense incurred by us in connection with the Contract including but not limited to the total cost of manufacture of the Goods and a proportion in respect of profit.
22. These Terms and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English Courts.
23. Documents
- a. Although great care is taken by the Seller to show accurately all particulars weights and dimensions in connection with any tender, quotation, specification, illustration, drawing etc, the Seller does not warrant that such particulars, weights and dimensions are accurate and reserve the right to alter details where necessary.
- b. Specifications, drawings, etc. prepared by the Seller for the purpose of a quotation or tender or otherwise, shall remain the property of the Seller and be returned on request. They shall not be used except for the purpose of the Contract and Buyer shall not disclose them to third parties and shall not copy, lend or use them in any way without the specific consent of the Seller.
24. 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.
25. Any failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
26. 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.
27. Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.