

# Fabricast Group Limited

## Terms and Conditions of Sale

### 1. Definitions

"Company" means Fabricast Group Limited having its principal place of business at Main Street, Hull, East Yorkshire HU2 0LF, UK including any of its trading divisions or subsidiaries.

"Customer" means any person, body of persons, firm or company (acting in its own right or through any employee or agent) with whom the Company enters into a contract for the provision of Services or sale of Goods by the Company.

"Contract" means any such contract.

"Goods" means any metal or plastic material or product to be supplied or sold to the Customer by the Company, either independently, as part of the Services or otherwise.

"Services" means any of the services undertaken by the Company to be provided to the Customer by the Company under the Contract.

### 2. These Terms and Conditions to Prevail

2.1 All Contracts between the Company and the Customer, whether made orally or in writing, are subject to these terms and conditions which shall be deemed to be incorporated into any contract or transaction between the Company and all or any of its Customers.

2.2 These terms and conditions shall supersede all prior understandings, and shall constitute the whole agreement, between the Company and the Customer and shall not be modified or varied unless specifically accepted by the Company in writing.

2.3 In the event of any conflict between these terms and conditions and any other terms and conditions, whether express or implied, incorporated or referred to in any communication from the Customer then these terms and conditions shall prevail and the Customer's terms and conditions shall be excluded in whole from the Contract.

### 3. Quotations and Acceptance of Order

3.1 A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise a quotation at any time prior to the Company's acceptance of the Customer's order. Unless otherwise stated all prices quoted shall be deemed to be withdrawn 24 hours after the date of quotation. All quotes are subject to raw material availability.

3.2 The Company's acceptance of the Customer's order (including telephone orders) shall be effective, and the Contract shall be deemed to come into existence, only where such acceptance is made on the Company's headed note paper or where the Company commences performance of the Services or production of the Goods for the Customer.

3.3 No cancellation or variation of an order by the Customer shall be accepted unless approved in writing by a Director or Senior Manager of the Company and on such terms that the Customer shall indemnify the Company in full against all and any loss (including loss of profit), costs, damages, charges and expenses incurred by the Company as a result of such cancellation or variation.

3.4 The Company reserves the right to cancel an order without liability in cases where the raw material is not available at the time. Such circumstances shall be deemed to be Force Majeure.

### 4. Specification

4.1 The description and illustrations of the Goods and Services given to the Customer, or contained in the Company's catalogues, brochures, price list and/or any other advertising materials (including, for the avoidance of doubt, websites, web-related advertising, technical information or descriptions and emails, promotional literature) are intended to present a general idea of the Goods and Services only and shall not form part of the Contract.

4.2 The Company shall not be liable for any variations in any specification or description of the Goods or Services which do not materially affect the use and operation of the Goods or the performance of the Services, or for the substitution of any materials or component parts of a quality equivalent or superior to that originally specified and the Company reserves the right to make any changes in the specification which are required to conform with any applicable safety or other statutory requirements.

4.3 The Company's employees or agents are not authorised to make any representations, warranties or undertakings concerning the Goods or Services unless confirmed in writing by a director or senior representative of the Company and, in entering into the Contract, the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations, warranties or undertakings which are not so confirmed.

4.4 The Customer shall be responsible for ensuring that the Goods are so designed as to meet all relevant legal standards. The Company takes no responsibility in that respect where the Goods are manufactured by the Company based on the Customer's specifications or written or verbal instructions.

### 5. Prices

Unless otherwise agreed in writing, all prices shall be calculated and paid in Sterling.

Unless otherwise agreed in writing, all prices are quoted exclusive of VAT or other relevant taxes.

All rates, prices and discounts quoted to the Customer and/or published in the Company's catalogues, lists and other documents or media (including websites and emails) are subject to variation at any time prior to acceptance of the Customer's order by the Company. If (1) no rate or price is quoted or published at the time of acceptance of the order by the Company, or if (2) delivery of the Goods or performance of the Services is to take place at the request of the Customer more than 30 days after the acceptance of the order by the Company, the price shall be that ruling at the date of delivery or performance, as determined solely by the Company.

5.4 The Company reserves the right, by giving notice to the Customer at any time before delivery or performance (or during delivery or performance where the Contract is being performed in stages or over a period of time), to increase the price of the Goods or Services to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, raw material prices and availability, foreign exchange fluctuations, energy costs, currency regulations, alteration of duties, significant increase in the costs of labour, material or other costs of manufacture), any change in delivery or performance dates, quantities or specifications for the Goods or Services which is requested by the Customer, or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

5.5 Unless otherwise agreed in writing by the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods or perform the Services otherwise than at the Company's premises, the Customer shall be liable to pay the Company's charges for transport, packaging, insurance, labour, overtime (where incurred at the request of the Customer) and travel and accommodation if applicable.

## 6. Customer's Responsibilities and Warranty

The Customer shall be responsible for preparing or making good the Site for the reception of the Goods or performance of the Services and shall provide, at no cost to the Company, such materials, tools, instruments, safety equipment, suitable working accommodation, and such other equipment, materials and requirements as are specified by the Company, or their employees or agents, in order to install the Goods or perform the Services at the Site or otherwise. The Customer shall also be responsible for preparing any goods on which Services are to be performed so as to allow the Company to perform the Services effectively or at all. The Company accepts no liability for any damage to such goods if they are not in an adequate serviceable state.

The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer, and for giving the Company any necessary information relating to the Goods and/or Services within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

6.3 The Customer shall fully indemnify the Company against any losses, costs, claims, damages and expenses awarded against or incurred by the Company, or its employees or agents, as a result of a claim by any third party that any product into which the Goods are installed or incorporated or any Service rendered on any goods supplied by the Customer is defective (save to the extent that any such claim results from the supply by the Company of Goods and/or Services which do not correspond with their specification for reasons for which the Company is liable).

## 7. Payment

7.1 Unless the Company confirms in writing that account facilities have been opened for the Customer, payment is due in cleared funds on a pro-forma basis.

7.2 Where the Company has confirmed in writing that account facilities have been opened for the Customer, payment of any invoice must be made in full within 30 days from the end of the month in which Goods (or goods on which the Services have been performed) are received by the Customer.

7.3 Any amount due by the Customer to the Company under the Contract shall be payable in full without any compensation, set-off or counterclaim.

7.4 Time of payment shall be of the essence of all Contracts.

7.5 Payment must be made when due, notwithstanding that property in the Goods has not passed to the Customer.

7.6 Where any account, or any part thereof, is overdue for payment the Customer shall cease to be entitled to the benefit of any discount specified in that account and the Company shall be entitled to charge interest, at the rate of 7 (seven) per centum per annum above the Bank of England base rate in force from time to time, on the amount due from the due date for payment until the actual date when payment in full, including interest, is received by the Company, and such interest shall be charged as well after as before any judgement.

7.7 If the Customer fails to make timeous payment in accordance herewith then, in addition to any other remedies available to the Company, the Company may either suspend all further deliveries of the Goods or performance of the Services under the Contract until payment is made in full or, at its option, treat the Contract as repudiated.

7.8 If the Customer repudiates the Contract for any reason, or is deemed to have repudiated the Contract in accordance with Clause 7.7, then the Company shall, in addition to any other remedy available to it, be entitled to seek damages for any loss suffered by it as a result of the Customer's repudiation.

The Company, at its sole discretion, may require full or partial payment of the price prior to delivery or performance or the provision of security for payment by the Customer, in a form acceptable to the Company.

## 8. Retention of Title and Lien

This provision shall apply to all and any Goods supplied to the Customer by or on behalf of the Company:-

Legal and beneficial ownership and title in and to the Goods shall not pass from the Company to the Customer until all monies due by the Customer (or any of its associated subsidiary or holding companies) to the Company under any Contract (and this includes the Company's terms and conditions applicable to and forming part of any such Contract) between them, including any interest and charges, have been paid in full. Until such time as property and title in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the customer and third parties and free from any lien, charge or encumbrance and properly stored, protected and insured and identified as the Company's property and shall allow (without requirement for any further written consent) the Company access to the place where the Goods are stored for the purposes of verifying that this has been done.

Until such time as property and title in the Goods passes to the Customer, the Customer shall be under strict obligation to store the Goods in a secure and safe place (clearly labelled as the property of the Company) and the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company, or its employees or agents, or, at the Company's sole discretion, forthwith to enter upon any premises or property of the Customer or any third party where the Goods are stored (with the Customer's express consent which is impliedly granted by these Terms and Conditions becoming part of the Contract) and to repossess the Goods.

The Customer shall not be entitled to pledge, or in any way charge by way of security, any of the Goods which remain the property of the Company but, if the Customer does so, all moneys owing by the Customer to the Company shall, without prejudice to any other remedy available to the Company, forthwith become due and payable.

If:-  
the Customer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or  
an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or  
the Customer ceases, or threatens to cease, to carry on business; or  
the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the customer accordingly

then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel any contract or suspend any further deliveries under any contract without any liability to the Customer, and if the Goods have been delivered but not paid for in full, the legal and beneficial title to the Goods remains with the Company and, provided the Goods are identifiable as the Company's, no receiver or liquidator of the Customer shall sell the Goods. In these circumstances, the Customer hereby accepts and consents that the Company shall be entitled to enter any premises or property where the Goods are located and repossess the Goods.

Until such time as property and title in the Goods passes to the Customer, the Customer shall not be entitled to in any way annex the Goods to any property or premises (whether his own or that of a third party) without the Company's prior express written consent.

The Company retains and reserves the legal and beneficial ownership and title in and to the Goods until the Customer has paid for all and any Goods supplied by the Company to the Customer and has repaid all other monies owed to the Company regardless of how such indebtedness arose.

If the Customer transfers property in the Goods to a third party prior to legal and beneficial ownership and title in and to the Goods passing to the Customer (as set out in Clause 8(a) above), the Customer must at the time of transfer notify the Company and the third party in writing of the fact that the Company retains title in and to the Goods. If the Customer fails to do so, he knowingly transfers property in which he has no rights of ownership. Any monies received by the Customer for the Goods are the sole property of the Company until legal and beneficial ownership and title in the Property has passed to the Customer and all such monies shall be held by the Customer (including its receiver, administrator, administrative receiver or liquidator) in a separate, clearly identifiable account designated as containing monies owed by the Company.

If the Customer transfers property in the Goods to a third party by way of a purported sale and following such transfer any of the events outlined in Clause 8 (d) above occur (the Events), then the Customer hereby acknowledges and agrees that any monies still due for payment by the third party for the Goods at the time of the occurrence of any of the Events are the exclusive property of the Company and the Customer hereby agrees that the Company is entitled to collect such monies directly from the third party. The Customer hereby agrees to immediately provide the Company on request with a written confirmation to that effect. Any monies already paid to the Customer (or its receiver, administrator, administrative receiver or liquidator) shall be held by the Customer (or its

receiver, administrator, administrative receiver or liquidator) as fiduciary agent of the Company in a separate account and shall be paid to the Company immediately on demand.

## 9. Risk

Notwithstanding that property and title in the Goods has not passed under Clause 8 hereof, the risk of loss, damage or destruction to the Goods shall pass to the Customer on delivery or performance.

## 10. Delivery/Performance

Delivery and performance dates, times or periods given by the Company (and whether orally or in writing) are estimates only and shall not be essential terms of the Contract.

Delivery of the Goods shall take place:-

(a) in the event that the Company undertakes delivery of the Goods, when the Goods are unloaded from the Company's means of transport at the station or address specified by the Customer; or

(b) in the event that the Customer undertakes to collect the Goods, when the Goods are loaded onto the Customer's carriage, lorry or other transport at the Company's premises.

10.3 Performance of the Services shall be deemed to have taken place when, in the sole opinion of the Company, the work required to be performed by the Company under the Contract has been completed.

10.4 Except as provided in Section of the Unfair Contract Terms Act 1977 (liability for death or personal injury resulting from negligence), the Company accepts no responsibility in any circumstances for any direct, indirect or consequential loss or damage, howsoever arising, which the Customer may sustain in connection with Goods supplied or Services delivered, and in the case of Goods, whether the Goods are of the Company's own manufacture or not.

10.5 Any receipt obtained by the Company from the Customer, or its employee or agent, accepting or taking delivery of the Goods or acknowledging performance of the Services (or such part thereof as is indicated by the receipt) shall be conclusive evidence of delivery in perfect condition or satisfactory performance of the Services by the Company.

10.6 The Company may elect to deliver the Goods or perform the Services in instalments and no failure by the Company in respect of any one or more instalments shall entitle the Customer to treat the Contract as a whole as repudiated.

10.7 If the Customer fails to take delivery of the Goods or accept performance of the Services (or any part(s) thereof) on the due date, or to give adequate instructions to enable the Goods to be delivered or the Services performed on the due date, the Company may issue a written notice to the Customer stating that risk in the Goods shall be deemed to have passed to the Customer on the date delivery was due or, in the case of Services, that the Customer is in breach of the Contract. Thereafter the Company may store the Goods at the Customer's expense or attempt to mitigate the Company's loss in respect of the Services but, regardless of whether or not a written notice has been given to the Customer by the Company, the Customer shall indemnify the Company in respect of all losses, costs, claims, damages, and expenses incurred by the Company arising as a result of the Customer's failure or breach.

## 11. Goods or Services not conform to Contract

11.1 The Customer shall be deemed to have examined the Goods within 48 hours of delivery thereof and within 48 hours of receipt of the goods on which the Services were performed (time being of the essence) and to have satisfied itself that they conform to Contract. A claim that Goods or Services are not in accordance with the Contract will not be accepted by the Company unless notice in writing, specifying the alleged default and stating what is required of the Company to remedy the alleged default, is received by the Company within 7 days of delivery of the Goods (or, in case of Services, the goods on which the Services were performed).

11.2 Failure to notify the Company of the non-delivery of the Goods, or any of them, or of the non-, part- or sub-standard performance of the Services within 7 days of the due date for delivery or performance will release the Company from liability for claims for non-delivery or non-, part- or substandard performance

11.3 Any Goods considered to be damaged or defective (together with their packaging materials) shall be retained, and any work performed under the Services which is considered to be sub-standard shall be left unaltered, by the Customer intact as delivered or performed for a period of 21 (twenty one) days from notification of the claim to the Company, within which time the Company or its agents shall have the right to investigate the complaint and examine the Goods or work carried out under the Services and, if possible, to remedy any defect. Any breach of this condition will release the Company from any liability for Goods or Services which are alleged not to conform to Contract.

11.4 If the Company agrees with the Customer that the Goods are damaged or defective, or that the work carried out under the Services is sub-standard, and that it is not possible to remedy any defect then the Company shall, at its sole option, replace the Goods or re-perform the Services or credit the Customer accordingly.

11.5 If the Company disagrees with the Customer that the Goods are damaged or defective, or that the work carried out under the Services was sub-standard, or disagrees in relation to how such a defect should be remedied then the dispute shall be referred to an independent third party appointed jointly by the Company and the Customer or, failing agreement within 7 days, by a party appointed, on the application of either the Company or the Customer, by the President for the time being of The Manufacturing Advisory Service. Such independent third party shall act as an expert and not as an arbiter and his decision shall be final and binding on, and his costs and expenses shall be borne equally by, the Company and the Customer.

11.6 The Company shall have no liability to the Customer in respect of damaged or defective Goods or sub-standard Services (and the Customer shall be required to pay the full contract price) where:-

any claim made by the Customer is not in accordance with these terms and conditions

damage has been sustained after delivery of the Goods to the Customer, or its agents, or after performance of the Services

defects are caused by storage, installation, handling, operation or maintenance carried out other than in accordance with any instructions supplied orally or in writing in relation to the Goods or Services or by wear and tear, accident or misuse, improper operation or neglect or if any adjustment, alteration or other work has been performed on the Goods or the work performed under the Services by any person other than the Company or its employees or agents

(d) a receipt has been obtained by the Company, duly signed by the Customer or one of its employees or agents, confirming that the Goods have been delivered in a satisfactory condition or the Services performed in a satisfactory manner.

## 12. Limitation of Liability

12.1 The Company shall be under no liability:-

(a) in respect of any defect in the Goods or Services arising from any instructions (written or verbal), drawing, design or specification supplied by the Customer

(b) where any of the circumstances referred to in Clause 11.6(a) to (d) occur

(c) to the extent that the total price for the Goods or Services has not been paid by the due date for payment

(d) where parts, materials or equipment have not been manufactured by the Company in respect of which the Customer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer of the goods to the Company

(e) for any consequential loss howsoever caused.

12.2 The Company's liability howsoever arising shall not in any event exceed the total price for the Goods or Services.

12.3 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods or Services which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

12.4 No employee or agent of the Company performing the whole or any part of the Services shall, in any circumstances whatsoever, be under any liability to the Customer for any loss, damage or delay of whatsoever kind arising or resulting, directly or indirectly, from any act, neglect or default on their part while acting in the course of, or in connection with, their employment or appointment and every exemption, limitation and condition contained in these terms and conditions to which the Company is entitled shall be applicable to any employee or agent of the Company.

12.5 Save as is provided by these Conditions and save for the Company's implied undertaking as to title, etc contained in Section 12 of the Sale of Goods Act 1979, all conditions and warranties express or implied, statutory or otherwise and, except as provided in Section 2 of the Unfair Contract Terms Act 1977 (liability for death or personal injury resulting from negligence), all other obligations and liabilities whatsoever of the Company whether in contract or in tort or otherwise are excluded to the fullest possible extent.

### **13. Confidentiality**

The Customer shall not disclose, and shall use its best endeavours to prevent the disclosure by any of its employees or agent of, any confidential information about the Company, its employees or agents, its business, the Goods or the Services which may come into its possession or knowledge as a result of the Contract.

### **14. Force Majeure**

The Company shall not be liable for any delay, or other failure to perform any part of the Contract, as a result of any factor outside the Company's control, whether an Act of God or otherwise.

### **15. Notices**

Any written notice to be given under the Contract shall be given by way of first class Recorded Delivery post or facsimile transmission or by personal delivery by the party giving it to the other, at his last known business address notified to the other, and shall be deemed to be delivered either 48 hours after posting (in the case of a letter) or immediately after receipt (in the case of facsimile transmission or personal delivery).

### **16. Indemnity**

The Customer shall fully indemnify the Company against all costs, claims, damages and expenses to which the Company may become liable if use of the Goods, or the work performed under the Services, by the Customer in any way involves an infringement of an intellectual property right enjoyed by a third party.

### **17. Determination**

If the Customer shall make default in, or commit any breach of, any of its obligations to the Company, or if any distress or execution shall be levied upon the Customer, its property or assets or if the Customer shall make or offer to make any arrangement or composition with its creditors or if any petition or receiving order in bankruptcy shall be presented or made against the Customer or, if the Customer is a limited company, any resolution or petition to wind up the Customer's business is passed or presented (otherwise than for reconstruction or amalgamation) or if a receiver is appointed to the Customer's undertaking, property or assets or any part thereof, then the Company shall have the right forthwith to determine any order then subsisting, without prejudice to any other remedies available to the Company, and all sums to be paid to the Company by the Customer shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

### **18. General**

18.1 The Customer shall not be entitled to assign or transfer, in whole or in part, the benefit or burden of the Contract without the Company's prior written consent.

The rights and remedies of the Company set out in these conditions shall be in addition, and without prejudice, to any other rights and remedies which may be available to the Company at common law or under statute.

Only those parties expressly and specifically included in any ensuing contract shall be deemed to have any rights under, or rights to enforce any provision of, such contract.

### **19. Invalidity**

If any part of these terms and conditions for any reason should be held to be invalid, such invalidity shall not affect the remaining clauses of these terms and conditions.

### **20. Assignment**

The Customer shall not be entitled to assign any of its rights or obligations under the Contract. The Company shall be entitled to so assign its rights and/or obligations.

### **21. Governing Law**

These terms and conditions shall be governed by and construed in accordance with the Law of England and except where otherwise expressly provided for herein the parties hereto hereby choose and submit to the express and exclusive jurisdiction of the English courts.