

## IT IS HEREBY AGREED AS FOLLOWS

### 1. Interpretation

- 1.1. Except where the context requires otherwise words importing the masculine shall include the feminine; words importing the singular shall include the plural; words importing natural personage shall be equally applicable to corporate personage and vice versa.
- 1.2. References to any statutory provision, authority, rule or code of practice shall be deemed to include the amended versions, replacements or successors of such.

### 2. Relationship Between the Parties

- 2.1. The Client engages Fusion Design and Fabrication Ltd. ("FDFL") for the supply and production of order ("Goods") specified in these terms and conditions and in the attached Quotation (together, "Contract").
- 2.2. No term of this Contract or course of dealings between the parties shall operate to make FDFL an employee or agent of the Client.
- 2.3. The Client shall not novate, assign or transfer any of their rights, liabilities or obligations arising under this Contract without the prior written consent of FDFL.
- 2.4 These terms and conditions will supersede all previous agreements between the parties, information appearing in any sales brochure or other documentation produced by FDFL.

### 3. The Quotation

- 3.1 The specification and price quoted for any Goods will, on receipt of confirmation of the Client's order, be confirmed in writing to the Client. FDFL's drawing, notes and specifications provided as part of the Quotation will be conclusive and once approved by the Client shall not thereafter vary without prior agreement of FDFL. Notwithstanding the foregoing, FDFL reserves the right to make changes to the Goods as it sees fit to ensure best quality of the finished product or to provide custom built equipment. As such, the drawings and specifications may differ from those given in the Quotation and FDFL shall not incur any liability whatsoever resulting from such change or difference.
- 3.2 Any price quoted will be open to acceptance by the Client for a period of 7 days. After such time FDFL reserves the right to re-quote for the Goods.
- 3.3 FDFL reserves the right to employ agent or subcontractors where necessary to do so in order to carry out its obligations under these terms and conditions.

### 4. Time and Manner of the production or delivery

- 4.1. FDFL will provide the Goods to the Client as set out in the Quotation.
- 4.2. The Goods will be provided to the Client within the timeframe if specified in the Quotation. Goods will not be delivered and are to be collected by the Client at FDFL's business premise, unless agreed otherwise in the Quotation.
- 4.3. Time frames and dates of delivery (if applicable) are provided as guidelines only and FDFL makes no guarantee that the Goods will be supplied, produced or delivered within the specified period. For the purposes of this Contract, time shall not be of the essence and FDFL shall not be liable for any loss or damage suffered by the Client as a result of the Goods being delayed or where delivery was agreed, the delivery of Goods being postponed for any reason.
- 4.4 If the Client wishes to postpone the collection or if applicable the delivery date, it will be charged for the storage costs plus at least 0.5% of the invoice amount for each month, starting one month after notification that the Goods are ready for dispatch. FDFL can set a reasonable period of grace for the Client and if this expires with no action having been taken by the Client, FDFL can declare that it is withdrawing from the Contract and/or that it is disposing the Goods in some other way.

### 5. Payments

- 5.1. The price for the Goods is set out in the Quotation, which includes details of the charges which FDFL will make for labour, materials and parts and exclusive of VAT unless otherwise notified by FDFL to the Client.
- 5.2. Notwithstanding 5.1 above, FDFL may vary the price from the amount set out in the Quotation where it has produced the Goods which are different or in addition to those set out in the Quotation either at the specific request of the Client or because it has been required to complete additional work which was not anticipated at the time the Quotation was made, or because of market fluctuations in the price of materials.
- 5.3 FDFL reserves the right to invoice the Client or require payment in interim stages in advance of the supply or production of the Goods.
- 5.4. The Client agrees:
  - a) Not to withhold or set-off any sums due to FDFL.
  - b) To settle all payments, including any deposits to be paid within the timeframe provided under the Quotation.
  - c) To pay FDFL interest at a rate of 5% over the base rate of the Bank of England on any payments which are not settled in accordance with this Section 5.
  - d) To pay FDFL such costs and expenses as it may incur in recovering payment from the Client where the Client fails to make payment in accordance with this Section 5.

### 6. Property Rights and Assumption of Risk

- 6.1 FDFL reserves ownership of and copyright in all drawings or specifications which it prepares in relation to the Goods and may not be used to obtain estimates or quotations from other third parties without its written permission.
- 6.2 Where the Goods are to be delivered, the Client shall ensure that it has secured permission and/or approval before the delivery date from all relevant persons, including delivery to the Client's premises or any other premises as directed by the Client.
- 6.3 All materials, equipment and tools, drawings, specifications and data supplied by FDFL to the Client shall, at all times, be and remain as the exclusive property of FDFL.
- 6.4 Any property rights, title or ownership in any property or materials which are used by FDFL in providing or delivering the Goods shall remain with FDFL or materials fitted in the Client's premises (or any other premises as directed by the Client) remain the property of FDFL until the Client has made payment in full in accordance with these terms and conditions.
- 6.5 On termination of Contract, howsoever caused, FDFL's rights contained in this Section 6.1-6.4 shall remain in effect.
- 6.6. Risk in and responsibility for any Goods which have been supplied shall pass from FDFL to the Client:
  - a) Where FDFL is responsible for delivering the Goods to the Client, upon delivery; or
  - b) Where FDFL is not responsible for delivery, at the moment the Goods are supplied to the Client.

### 7. The Guarantee

- 7.1 FDFL warrants that (subject to the other provisions of these terms and conditions) on supply of the Goods, and for a period of 12 months from the date of such supply, the Goods shall be of satisfactory quality;
- 7.2 FDFL shall not be liable for a breach of the warranty in Section 7.1 unless:
  - (a) the Client gives written notice of the defect to FDFL, and, if the defect is as a result of damage in transit, within 48 hours of the time when the Client discovers or ought to have discovered the defect; and
  - (b) FDFL is given a reasonable opportunity after receiving the notice of examining the Goods and the Client (if asked to do so by FDFL) returns the Goods to FDFL's place of business at its own cost for an examination to take place there.
- 7.3 FDFL shall not be liable for a breach of the warranty in condition 7.1 if:
  - (a) it is a defect not related to the manufacture of the Goods;
  - (b) Client makes any further use of the Goods after giving such notice under 7.2;
  - (c) The defect arises because the Client failed to follow FDFL's oral or written instructions as to the storage, installation, commissioning, use or maintenance of

the Goods; or

(d) The Client moves, alters or undertakes any works of installation or repair of such Goods without FDFL's written consent.

7.4 Subject to condition 7.2 and condition 7.3, if any of the Goods do not conform with the warranty in condition 7.1 FDFL shall at its option repair or replace such Goods (or the defective part). In such an event, FDFL shall have no further liability for a breach of the warranty in condition 7.1 in respect of such Goods.

7.5 Notwithstanding the above, if payment under the Contract is not received in full and in cleared funds when due under the Contract, then no warranty whatsoever is given by FDFL in respect of the Goods supplied.

## **8. Termination**

8.1 FDFL shall be entitled without prejudice to its other rights and remedies to terminate immediately in writing every Contract it has with the Client or to suspend any further production or delivery of the Goods under any or every Contract it has with the Client or to possess, recover, re-sell or dispose of the Goods if:

8.1.1 any payment is due and payable by the Client to FDFL and remains unpaid;

8.1.2 the Client has failed to provide any deposit, letter of credit, bill of exchange or any other security required by the Client;

8.1.3 the Client has rejected, returned or failed to take delivery of the Goods or part of them otherwise than in accordance with the Contract;

8.1.4 the Client becomes unable to pay its debts within the meaning of Section 124 of the UK Insolvency Act 1986;

8.1.5 the Client has:

8.1.5.1 received notice (either written or oral) 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;

8.1.5.2 received notice (either written or oral) that a petition to wind up the Client is to be or has been presented under Section 124 of the UK Insolvency Act 1986 or otherwise or a notice (either written or oral) of a proposal to pass a Resolution to wind up the Client (including any proposal by the Client so to do);

8.1.5.3 decided to make a voluntary arrangement or composition with its creditors;

8.1.5.4 become unable to pay its debts as such expression is defined by the UK Insolvency Act 1986; or

8.1.5.5 received notice (either written or oral) of anything analogous to the above under foreign law or that proceedings have been instituted under foreign law.

8.1.6 the Client being an individual or a partnership has:

8.1.6.1 become unable to pay its debts as such expression is defined in the UK Insolvency Act 1986;

8.1.6.2 suspended any payment to FDFL in whole or part;

8.1.6.3 proposed or entered into any composition or arrangement with his creditors;

8.1.6.4 had a receiving order in bankruptcy made against him; or

8.1.6.5 received notice (either written or oral) of anything analogous to the above under foreign law.

8.2 If the Client purports to cancel or postpone any Contract (without prejudice to any other rights of FDFL in connection with such purported cancellation or postponement) the Client shall indemnify FDFL for all costs, charges and expenses incurred by the FDFL, including loss of profit as a result of such cancellation or postponement.

## **9. Disclaimers and Exclusions**

9.1 Save where liability may not be excluded or limited by contract between the contracting parties FDFL shall not be liable for loss of profit, damage or for any expenditure incurred on the Goods supplied or any indirect, consequential or special loss or damage sustained by the Client by reason of any breach by FDFL arising from any act or default of FDFL howsoever arising.

9.2 Subject to clause 9.1, FDFL's liability in contract, tort (including negligence), statute or otherwise for all its acts or omissions of FDFL or its employees shall be limited to the price of the goods supplied and all other liability of FDFL in connection with the Contract between FDFL and the Client.

9.3 If the Goods supplied by FDFL to the Client's design or specification infringe or are alleged to infringe any patent, registered design right, copyright or other intellectual property right, the Client will indemnify FDFL in full against all damages and costs (including legal costs) incurred by FDFL as a result of such infringement or alleged infringement.

## **10. Force Majeure**

Neither party shall be liable for any delay or failure in performing its obligations or duties under this Contract which results from circumstances outside his reasonable control including but not limited to acts of God, pandemic, epidemic, industrial action, war, fire, threat of terrorism, civil disturbance or rioting, government or regulatory action, breakdown in plant or machinery or shortage of raw materials or supplies.

## **11. Warranty of Contractual Capacity**

Both parties and the signatories to this Contract warrant that they are authorised and permitted to enter into this Contract, and have obtained all necessary permissions and approvals.

## **12. Whole Agreement, Governing Law, Severability and Miscellaneous Provisions**

12.1. This document constitutes the entirety of the agreement between the parties. It supersedes any prior representations which may have been made, whether orally or in writing. Any modification to this Contract must be made in writing and signed by both parties.

12.2. This Contract shall be governed by the Law of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English Courts.

12.3. All clauses, sub clauses and parts thereof shall be severable and shall be read and construed independently. Should any part of this Contract be found invalid this will not affect the validity or enforceability of any other provision or of this Contract as a whole.

12.4. All terms, conditions and covenants contained in this Contract shall bind the parties and their heirs, legal representatives, successors to title and permitted assignees.

12.5. Nothing in this Contract shall incur any rights on a third party and no third party may enforce any provision of this Contract under the Contracts (Rights of Third Parties) Act.

12.6. The failure by either party to enforce any provision of this Contract shall not be deemed a waiver or limitation of that party's right to subsequently compel and require strict compliance with every provision of this Contract.