

GARDNER BTC LIMITED

TERMS AND CONDITIONS FOR THE SUPPLY OF PRODUCTS AND SERVICES

1. BASIS OF CONTRACT

- 1.1 Your purchase order or written acceptance of our quotation (**Order**) constitutes an offer by you to purchase dies, wax patterns, ceramic cores, drawings or designs or other products (**Products**) and/or design, testing, repair, modification, inspection or other services (**Services**) in accordance with these terms and conditions (**Conditions**).
- 1.2 The Order shall only be deemed to be accepted when we issue a written Order Acknowledgement (or, if earlier, when we commence work in connection with the Goods and/or Services) at which point and on which date the contract between us for the supply of Products and/or Services in accordance with these Conditions (**Contract**) shall come into existence (**Commencement Date**).
- 1.3 The Contract constitutes the entire agreement between us. You acknowledge that you have not relied on any statement, promise or representation (whether in writing or made orally) made or given by or on behalf of us which is not set out in these Conditions.
- 1.4 Any samples, drawings, descriptive matter or advertising issued by us and any descriptions of the Products or Services contained in any catalogues or brochures we may supply are issued or published for the sole purpose of giving an approximate idea of the Services and/or Products described in them. They shall not form part of the Contract or have any contractual force.
- 1.5 These Conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate (including any terms previously issued by you) or which are implied by trade, custom, practice or course of dealing.
- 1.6 Any quotation given by us shall be subject to these Conditions but shall not constitute a legally binding offer capable of acceptance by you. Any quotation is only valid for a period of 30 days from its date of issue.
- 1.7 All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.

2. SPECIFICATIONS

- 2.1 Where we manufacture Products or carry out Services in accordance with a sample, model, tooling letter, tooling manual or other specification supplied by you (**Specifications**) you shall indemnify us against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by us in connection with any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with our use of the Specifications. This clause 2.1 shall survive termination of the Contract.

2.2 We reserve the right to amend the Specifications if required by any applicable statutory or regulatory requirements.

3. DELIVERY OF PRODUCTS

3.1 We shall ensure that:

- (a) each delivery to you of Products or Serviced Goods (your goods on which we have carried out Services) is accompanied by a delivery note which shows the date of the Order, any relevant Order reference numbers and the type and quantity of the Products; and
- (b) if we require you to return any packaging material to us, that fact is clearly stated on the delivery note. You shall make any such packaging materials available for collection at such times as we shall reasonably request.

3.2 Unless we agree otherwise, delivery of the Products or Serviced Goods shall be Ex Works (INCOTERMS 2010) and you shall collect the Products or Serviced Goods from our premises (or such other location as may be advised by us before delivery) (**Delivery Location**) within seven days (any day excluding Saturdays, Sundays and public holidays in England) of us notifying you that the Products are ready.

3.3 Delivery of the Products or Serviced Goods shall be completed on the completion of their being made available to you at the Delivery Location (or where we agree other delivery terms, on their arrival at the agreed Delivery Location).

3.4 Any dates quoted for delivery of the Products or Serviced Goods are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Products or Serviced Goods that is caused by a Force Majeure Event (as defined below) or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Products or Services.

3.5 If we fail to deliver the Products or Serviced Goods and such failure is not caused by you or an event of Force Majeure then we shall have no liability to you unless we are in excess of 30 days late.

3.6 If you fail to accept or take delivery of the Products or Serviced Goods within seven days of us notifying you that the Products are ready, then except where such failure or delay is caused by our failure to comply with our obligations under the Contract in respect of the Products or Serviced Goods:

- (a) delivery of the Products or Serviced Goods shall be deemed to have been completed at 9.00 am on the second Business Day following the day on which we notified you that the Products or Serviced Goods were ready; and
- (b) we shall store the Products or Serviced Goods until actual delivery takes place, and charge you for all related costs and expenses (including insurance).

3.7 We may deliver the Products or Services by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

4. QUALITY OF PRODUCTS AND SERVICES

4.1 You acknowledge that we design and manufacture Products and perform Services strictly in accordance with Specifications provided by you.

4.2 We shall provide you with access to our premises during working hours on reasonable notice in order for you to inspect the Products or Serviced Goods and carry out any reasonable tests and measurements you reasonably consider necessary.

4.3 Where we carry out any testing and/or precision measurements of the Products to verify their conformity with the Specification (whether such testing results in the production of a Certificate of Conformity, any other measurement reports or otherwise in respect of such tests and/or measurements) you shall be deemed (in the absence of manifest error in the testing and/or measurements) to have accepted the Products.

4.4 We warrant that on delivery and for the period from the date of delivery indicated at clause 4.5 below (**Warranty Period**) the Products and any modifications or repairs made by us to Serviced Goods (**Modifications**) shall:

- (a) conform in all material respects with their description and the relevant Specification; and
- (b) be free from material defects in design, material and workmanship.

4.5 The Warranty Period shall be:

- (a) for wax patterns, 1 month; and
- (b) for all other products, 6 months.

4.6 Subject to clause 4.7, if:

- (a) you give notice in writing during the Warranty Period within 3 Business Days after your discovery of the defect (or where the defect was apparent on reasonable inspection, within 3 Business Days after delivery if earlier or immediately following any inspection carried out by you pursuant to clause 4.2 if earlier) that some or all of the Products or Modifications do not comply with the warranty set out in clause 4.4; and
- (b) we are given a reasonable opportunity of examining such Products or Serviced Goods; and
- (c) you (if asked to do so by us) return such Products or Serviced Goods to our place of business at your cost,

we shall at our option repair or replace the defective Products or refund the price of the defective Products in full or, in the case of Serviced Goods, we shall at our option repair the Serviced Goods or refund the price of the relevant Services.

4.7 We shall not be liable for the Products' or Modifications' failure to comply with the warranty in clause 4.4 if:

- (a) you make any further use of such Products or Serviced Goods after giving a notice in accordance with clause 4.6;
- (b) the defect arises because you failed to follow our oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or Serviced Goods or (if there are none) good trade practice, including (without limitation) the transportation of wax patterns in refrigerated vehicles;
- (c) the defect arises as a result of us following any drawing, design or Specification supplied or agreed by you;
- (d) you have been deemed to accept the Products in accordance with clause 4.3 above;
- (e) you alter or repair the Products or Serviced Goods without our written consent;
- (f) in the case of Serviced Goods, the defect arises (wholly or in part) as a result of a defect existing in the Serviced Goods before we carried out the Services in respect of them;
- (g) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (h) the Products or Modifications differ from the Specifications as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

4.8 Except as provided in this clause 4, we shall have no liability to you in respect of the Products' or Modifications' failure to comply with the warranty set out in clause 4.1. For the avoidance of doubt we shall have no liability whatsoever in respect of any defects in any component parts manufactured using dies, wax patterns or designs produced by us.

4.9 The terms of these Conditions shall apply to any repaired or replacement Products supplied by us under clause 4.6.

5. TITLE AND RISK

5.1 The risk in the Products or Serviced Goods shall pass to you on completion of delivery.

5.2 Title to the Products or any Modifications to Serviced Goods shall not pass to you until we have received payment in full (in cash or cleared funds) for:

- (a) the relevant Products or Services; and

- (b) any other products or services that we have supplied to you in respect of which payment has become due.
- 5.3 Until title to the Products has passed to you, you shall:
- (a) hold the Products on a fiduciary basis as our bailee;
 - (b) store the Products separately from all other products held by you so that they remain readily identifiable as our property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
 - (d) maintain the Products in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery;
 - (e) notify us immediately if you become subject to any of the events listed in clause 12.1(b) to clause 12.1(k); and
 - (f) give us such information relating to the Products as we may require from time to time,

but you may resell or use the Products in the ordinary course of your business.

- 5.4 If before title to the Products passes to you you become subject to any of the events listed in clause 12.1(b) to clause 12.1(k), or we reasonably believe that any such event is about to happen and notify you accordingly, then, provided the Products have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy we may have, we may at any time require you to deliver up the Products and, if you fail to do so promptly, enter any of your premises or of any third party where the Products are stored in order to recover them.

6. SUPPLY OF SERVICES

- 6.1 We shall provide the Services to you in accordance with the Specifications in all material respects.
- 6.2 Any performance dates for the Services agreed by us are estimates only and time shall not be of the essence for the performance of the Services.
- 6.3 We shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement or which do not materially affect the nature or quality of the Services and we shall notify you in any such event.
- 6.4 We warrant to you that the Services will be provided using reasonable care and skill.
- 6.5 If our performance of any of our obligations in respect of the Services is prevented or delayed by any act or omission by you or your failure to perform any relevant obligation **(Customer Default)**:

- (a) we shall without limiting our other rights or remedies have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations to the extent the Customer Default prevents or delays our performance of any of our obligations;
- (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 6.5; and
- (c) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

7. CUSTOMER'S OBLIGATIONS

7.1 You shall:

- (a) ensure that the terms of the Order and the Specifications are complete and accurate;
- (b) co-operate with us in all matters relating to the supply of the Products and/or Services; and
- (c) provide us with such information and materials as we may reasonably require to supply the Products and/or Services and ensure that such information is accurate in all material respects.

8. CHARGES AND PAYMENT

8.1 The price for Products and Services shall be the price set out in the Order.

8.2 The price of the Products and Services is exclusive of all costs and charges of packaging, insurance and transport of the Products or Serviced Goods and shall be paid in the currency indicated in the Order.

8.3 Where we provide separate quotes for the design stage and manufacturing stage in respect of any of the Products, the design price quoted is discounted by 75% in anticipation of our subsequent use of the design in the manufacturing process. Where we agree to provide only the design and to license you to use any relevant intellectual property rights (**IPR**) in that design for use with a third party manufacturer, we shall be entitled to charge for our design Services at full price.

8.4 We reserve the right to:

- (a) increase the price of the Products and/or Services, by giving notice to you at any time before delivery, to reflect any increase in the cost of the Products and/or Services to us that is due to:

- (i) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (ii) any request by you to change the delivery date(s) or the Specifications; or
 - (iii) any delay caused by your instructions in respect of the Products or Services or your failure to give us adequate or accurate information or instructions in respect of the Products or Services.
- 8.5 We shall invoice you on or at any time after we have notified you that the Products or Serviced Goods are ready for delivery or otherwise on completion of the Services. Where you have agreed to pay us in stages we shall invoice you on the occurrence of each agreed stage.
- 8.6 You shall pay each invoice submitted by us within 30 days of the date of the invoice in full and in cleared funds to the bank account nominated in writing by us from time to time and time of payment shall be of the essence of the Contract.
- 8.7 All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.
- 8.8 Without limiting any other right or remedy we may have, if you fail to make any payment due to us under the Contract by the due date for payment (**Due Date**), we shall have the right to charge interest on the overdue amount in accordance with the Late Payment of Commercial Debts (Interest) Act 1988 accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding monthly.
- 8.9 You shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and you shall not be entitled to assert any credit, set-off or counterclaim against us in order to justify withholding payment of any such amount in whole or in part. We may, without limiting our other rights or remedies, set off any amount owing to us by you against any amount payable by us to you.
- 9. INTELLECTUAL PROPERTY RIGHTS**
- 9.1 Except for any IPR in the Specifications, all IPR in or arising out of or in connection with the Products and Services (**Blade IPR**) shall be owned by us.
- 9.2 Upon payment in full and in cleared funds of all sums due and owing to us in respect of the Products and/or Services we grant to you a non-exclusive licence to use the relevant Blade IPR only to the extent required for you to make use of the Products and Serviced Goods.

Save as set out at clause 9.3 below, you shall not without our consent use the Blade IPR to procure the manufacture of any products similar to Products supplied by us.

- 9.3 Where the Order includes design-only Services and on payment in full and in cleared funds of the sums due and owing to us in respect of the relevant designs, we grant to you a non-exclusive licence to use the relevant Blade IPR to procure the manufacture of dies or other products.
- 9.4 In the event that any sums owing to us in respect of the supply of any other products or services to you are overdue, we shall be entitled to suspend the licence granted pursuant to clause 9.2 or clause 9.3 above until such time as those sums have been paid in full and in cleared funds.

10. CONFIDENTIALITY

Each party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, designs, inventions, processes or initiatives which are of a confidential nature (including for the avoidance of doubt the Blade IPR) and have been disclosed to the Receiving Party by the other party (**Disclosing Party**), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. The Receiving Party shall use such confidential information only in connection with the Contract. This clause 10 shall survive termination of the Contract.

11. LIMITATION OF LIABILITY

11.1 Nothing in these Conditions shall limit or exclude our liability for:

- (a) death or personal injury caused by our negligence or the negligence of our employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession).

11.2 Subject to clause 11.1:

- (a) we shall under no circumstances whatsoever be liable to you, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract ; and

- (b) our total liability to you in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price paid in respect of the Contract.
- 11.3 You shall maintain in force policies of insurance that a prudent component manufacturer would carry in respect of products produced by you using our drawings, designs, dies, wax patterns, ceramic cores and other products.
- 11.4 We shall maintain in force a product liability insurance policy. Notwithstanding and without prejudice to any other provisions in these Conditions our entire aggregate liability to you in respect of any loss falling under such insurance shall be limited to the insurance limit (the value of which is available from us on request).
- 11.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.6 This clause 11 shall survive termination of the Contract.

12. TERMINATION

- 12.1 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if:
 - (a) you commit a material breach of your obligations under these Conditions and (if such breach is remediable) fail to remedy that breach within 28 days after receipt of notice in writing of the breach;
 - (b) you suspend, or threaten to suspend, payment of your debts or are unable to pay your debts as they fall due or admit inability to pay your debts or (being a company) are deemed unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) are deemed either unable to pay your debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) have any partner to whom any of the foregoing apply;
 - (c) you commence negotiations with all or any class of your creditors with a view to rescheduling any of your debts, or you make a proposal for or enter into any compromise or arrangement with your creditors;
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with your winding up (being a company);
 - (e) any creditor or encumbrancer of yours attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of your assets and such attachment or process is not discharged within 14 days;

- (f) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over you (being a company);
 - (g) a floating charge holder over your assets (being a company) becomes entitled to appoint or has appointed an administrative receiver;
 - (h) a person becomes entitled to appoint a receiver over your assets or a receiver is appointed over your assets;
 - (i) any event occurs, or proceedings are taken, in respect of you in any jurisdiction to which the subject has an effect equivalent or similar to any of the events mentioned in clause 12.1(b) to clause 12.1(h) (inclusive);
 - (j) you suspend, threaten to suspend, cease or threaten to cease to carry on, all or substantially the whole of your business; or
 - (k) you (being an individual trading as a sole trader, partnership or any such equivalent entity in any other jurisdiction) die or, by reason of illness or incapacity (whether mental or physical), are incapable of managing your own affairs or you become a patient under any mental health legislation.
- 12.2 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under this Contract on the due date for payment.
- 12.3 Without limiting our other rights or remedies, we shall have the right to suspend the supply of Services or all further deliveries of Products under the Contract or any other contract between us if:
- (a) you fail to pay any amount due under this Contract on the due date for payment (including any staged payment pursuant to clause 8.5); or
 - (b) you become subject to any of the events listed in clause 12.1(b) to clause 12.1(k), or we reasonably believe that you are about to become subject to any of them.

13. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Products or Services supplied but for which no invoice has yet been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
- (b) you shall immediately pay to us our costs associated with part performance of the Contract including but not limited to the immediate payment of any outstanding non-recurring costs, the costs of raw materials purchased in connection with the Products and/or Services and all costs associated with part finished Products

calculated as a percentage of the relevant price which we consider appropriate in our sole discretion;

- (c) our accrued rights and remedies as at termination shall not be affected, including our right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. COMPLIANCE WITH RELEVANT REQUIREMENTS

14.1 You shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of the Contract your own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;
- (d) promptly report to us any request or demand for any undue financial or other advantage of any kind received by you in connection with the performance of the Contract;
- (e) immediately notify us (in writing) if a foreign public official becomes your officer or employee or acquires a direct or indirect interest in your business (and you warrant that you have no foreign public officials as officers, employees or direct or indirect owners at the date of the Contract);
- (f) annually certify to us in writing your compliance with this clause 14 and all persons associated with it under clause 14.2. You shall provide such supporting evidence of compliance as we may reasonably request.

14.2 You shall ensure that any person associated with you who is performing services or providing goods in connection with any relevant Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on you in this clause 14 (**Relevant Terms**). You shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to us for any breach by such persons of any of the Relevant Terms.

- 14.3 Breach of this clause 14 shall be deemed a material breach under clause 12.1(a).
- 14.4 For the purpose of this clause 14, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 14 a person associated with you includes but is not limited to your subcontractors.
- 15. GENERAL**
- 15.1 We shall not be liable to you as a result of any delay or failure to perform our obligations under any contract as a result of any event beyond our reasonable control including (without limitation) strikes, lock-outs or other industrial disputes (whether involving our employees or the employees of any other relevant party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, failure of suppliers or subcontractors, accident, breakdown of plant or machinery, fire, flood and epidemics (**Force Majeure Event**).
- 15.2 We may assign or sub-contract all or any of our rights or obligations under these Conditions or any part of them to any person, firm or company. You shall not be entitled to assign your rights or obligations under these Conditions without our prior written consent.
- 15.3 Failure or delay by us in enforcing or partially enforcing any provision of these Conditions shall not be construed as a waiver of any of our rights under these Conditions. Any waiver by us of any breach of, or any default under, any provision of these Conditions by you shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of these Conditions.
- 15.4 Unless specifically provided otherwise, rights arising under these Conditions are cumulative and do not exclude rights provided by law.
- 15.5 If any provision of these Conditions 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 these Conditions and the remainder of such provision shall continue in full force and effect.
- 15.6 Nothing in these Conditions is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between us, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 15.7 No provision of these Conditions shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to them.

- 15.8 Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by us.
- 15.9 These Conditions and any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including but not limited to any claim for an indemnity or any tortious or other non-contractual disputes or claims) shall be governed by and construed solely in accordance with English law, and save as set out at clause 15.10 below, the courts of England and Wales shall have exclusive jurisdiction to hear and decide any such dispute or claim.
- 15.10 At our option any disputes arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English.