

NENPLAS LIMITED

CONDITIONS OF SALE

1. Interpretation

1.1 In these Conditions:

“Bespoke Goods”	means Goods produced to the Customer’s Specification in respect of which the Company is providing the Services;
“Business Day”	means any day other than a Saturday, Sunday or a public holiday in England when banks in London are open for business;
“Company”	means Nenplas Limited, incorporated and registered in England and Wales with company registration number 05743422;
“Conditions”	means the terms and conditions set out in this document as amended from time to time in accordance with Condition 2.6.
“Confidential Information”	means all secret or confidential commercial, financial and technical information, know how, trade secrets, inventions, computer software and other information whatsoever and in whatever form or medium and whether disclosed orally or in writing, together with all reproductions in whatsoever form or medium and any part or parts of it;
“Contract”	means the contract made between the Company and the Customer for supply of the Goods and/or the Services which is subject to these Conditions;
“Commencement Date”	has the meaning provided to it in condition 2.4.
“Customer”	means the party with whom the Company contracts for the supply and purchase of Goods and/or Services;
“Customer Default”	has the meaning provided to it in Condition 6.2;
“Customer IPRs”	all Intellectual Property Rights of which the Customer is the owner or licensee and which are disclosed, licensed or provided to the Company pursuant to the Contract;

“Data Protection Legislation”	all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;
“Dies”	has the meaning given in Condition 11.1.2;
“Domestic Law”	the law of the United Kingdom or a part of the United Kingdom.
“Drawings”	any designs, drawings and/or other documents issued by the Company to the Customer, in respect of the Goods, requiring approval and/or other sign-off by the Customer;
“Goods”	means all or any of the goods, works and/or materials to be supplied by the Company (including where applicable Bespoke Goods) as described in the Order;
“Goods Specification”	any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by the Customer and the Company;
“Insolvency Event”	means any one or more of: • a notice being issued to propose a resolution for winding up or dissolution, or such a resolution being passed; • a petition for a winding up or an administration or bankruptcy order being presented, or such an order being made; • any steps being taken with a view to a voluntary arrangement or other assignment, composition or arrangement with all or any creditors or any moratorium, readjustment, rescheduling, forgiveness or deferral of all or any indebtedness; • suspension of payments to all or any creditors and/or ceasing business; • an encumbrancer taking possession of all or any assets of a party;

- an administrator or receiver being appointed over a party or all or any of its assets;
- any action anywhere similar or analogous to any of the foregoing;
- the other party having reasonable grounds for believing that any of the foregoing is imminent;

For the avoidance of doubt if any of the foregoing occur in relation to a partner in any of the parties hereto it shall be deemed to occur in relation to that party;

“Intellectual Property Rights”

patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

“Order”

the Customer's order for the Goods and/or Services, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Company's quotation;

“Order Acceptance”

has the meaning provided to it in Condition 2.4;

“Pre-Production Samples”

means any samples provided by the Company to the Customer for approval by the Customer;

“Services”

means any design, tooling and/or other services to be performed by the Company in performance of the Contract, as set out in the Order;

“Services Specification”	the description or specification for the Services agreed in writing between the parties;
“Specification”	means the Goods Specification and/or the Services Specification (as applicable); and
“UK GDPR”	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 1.1.1 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.1.2 Words in the singular include the plural and in the plural include the singular.
- 1.1.3 A reference to one gender includes a reference to the other gender.
- 1.1.4 Condition headings do not affect the interpretation of these conditions.
- 1.1.5 A reference to writing includes email.

2. **Basis of contract**

- 2.1 Any quotation shall remain open for a maximum period of thirty days from its date and may be withdrawn or altered by the Company at any time within such period without notice. Quotations shall not be constituted as an offer. Where Goods are quoted for supply from stock, they are quoted subject to being unsold when the Customer’s Order is accepted.
- 2.2 These Conditions shall form the terms and conditions of the Contract and shall apply to the exclusion of any terms or conditions whether put forward by, or on behalf of the Customer, in or on its order, or otherwise, or whether implied by law (insofar as the exclusion of the same is lawful). The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.3 The placing by the Customer of an Order in writing (which for the purposes of Conditions 2 and 3 shall include any agreed form of electronic communication), shall constitute an offer by the Customer to purchase Goods and/or Services described in the Order.
- 2.4 No contract shall come into existence until the Company accepts the Customer’s Order in writing (**Order Acceptance**), at which point, and on which date the Contract shall come into existence (**Commencement Date**). Any Order placed by the Customer with any of the Company’s salesmen or other employees or representatives shall be subject to the Company issuing an Order Acceptance.
- 2.5 By the act of placing the Order the Customer expressly represents and warrants to the Company that it is not insolvent and is not subject to an Insolvency Event.
- 2.6 No alteration to these Conditions shall be effective unless expressly agreed to in writing by a director of the Company.

- 2.7 Any typographical fault or other error or omission in any literature, quotation, price list, Order Acceptance, invoice or other document issued by the Company in respect of the Goods and/or Services to be provided under these Conditions shall be subject to correction without any liability on the part of the Company.
- 2.8 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.9 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

3. **Drawings and Pre-Production Samples**

- 3.1 The Customer shall be fully and solely responsible for ensuring the accuracy, completeness and sufficiency of its Order (including of any applicable Specification and/or Pre-Production Sample). The Company shall be entitled to vary the price of the Goods and/or Services (and any lead times) where:
- 3.1.1 the Customer requests an amendment to the Order and/or Specification for the Goods and/or the Services (including without limitation requests for additional testing, changes in respect of materials, design or weight (whether or not required as a legal or regulatory requirement)) and such amendment is accepted in writing by the Company; and/or
- 3.1.2 there are errors or omissions in the Customer's Order (including any applicable Specification and/or Pre-Production Sample) or any Drawings.
- 3.2 Where Pre-Production Samples and/or Drawings are to be supplied by the Company they shall be submitted to the Customer for approval and delivered at the Customer's risk and expense.
- 3.3 Risk in the Pre-Production Samples and/or Drawings shall remain with the Customer until such time as they are returned to the Company. Ownership of the Pre-Production Samples and Drawings shall at all times remain with the Company, unless otherwise agreed in writing between the parties.
- 3.4 The Customer shall as soon as reasonably practicable and in any event within 30 days after receipt of the same notify the Company in writing that the Pre-Production Samples and/or Drawings (as relevant) are in all respects satisfactory and meet the Specification, or of any respect in which the Pre-Production Samples or Drawings are not satisfactory and/or do not meet the Specification. In default of such notification the Customer shall be deemed to have given notification that the Pre-Production Samples and Drawings (as applicable) are satisfactory in all respects and the Company shall be entitled but not bound to proceed in the manufacture of the remainder of the Contract.
- 3.5 The Customer's approval of the Drawings and/or Pre-Production Samples constitutes irrevocable confirmation that the Goods manufactured in conformity with the Pre-Production Samples and/or Drawings (or differing only within normal industrial limits) will:
- 3.5.1 comply with the Specification and the Company shall have no liability to the Customer, if it is later found that the Customer-approved Pre-Production Samples and/or Drawings do not meet the Specification; and

- 3.5.2 meet the quality standards specified in Condition 10.1 except for defects which are not capable of being revealed on reasonable inspection by the Customer.

4. **Goods description**

- 4.1 Save in respect of Bespoke Goods, all descriptive and technical specifications, drawings, catalogues, illustrations and particulars of weight and dimensions supplied by the Company are approximate only and, subject always to Condition 4.2, the Company reserves the right without notice to the Customer to make alterations thereto provided that such alterations do not materially affect the characteristics of the Goods.
- 4.2 The Company reserves the right to make any changes to the specification of the Goods (including Bespoke Goods) which are required to conform with any applicable safety or other statutory requirement, provided that it shall give prior notice of such change to the Customer. Where the Company makes an alteration to the Goods in accordance with this Condition 4 it shall supply the Goods so altered in performance of the Contract.

5. **Delivery of Goods and/or performance of Services**

- 5.1 Any time quoted by the Company for delivery of all or any of the Goods and/or performance of all or any of the Services is an estimate only and time shall not be of the essence. If no dates are specified, delivery and/or performance shall be within a reasonable time from the Commencement Date. The Company shall not be liable for any failure to meet any such estimate, nor for any loss, of whatsoever nature resulting directly or indirectly therefrom.
- 5.2 The Company reserves the right to deliver all or any of the Goods and/or perform the Services in advance of the estimated date.
- 5.3 In the absence of agreement to the contrary, delivery of the Goods shall be made by the Customer collecting the Goods at the Company's premises as soon as practicable following notification from the Company that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 5.4 Where delivery is to take place otherwise than at the Company's premises, the Customer shall provide at its cost adequate and appropriate equipment and manual labour for unloading the Goods at the alternate location.
- 5.5 The Company reserves the right to deliver by instalments and each delivery shall constitute a separate contract to which these Conditions shall apply. Failure by the Company to deliver any one or more of the instalments or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 5.6 Where delivery of the Goods is to be made by the Company in bulk, the Company reserves the right to deliver up to 10 per cent more or less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered. The Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for the Goods in accordance with the quantity ordered.
- 5.7 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the

Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.

- 5.8 If the Customer fails to take delivery of or collect the Goods or fails to give the Company adequate delivery instructions after notification by the Company that the Goods are ready the Company may (without prejudice to its other rights and remedies)
- 5.8.1 store the Goods (on its own or any third party's premises) and charge the Customer for its reasonable costs (including without limitation VAT costs of storage, carriage and insurance); and/or
- 5.8.2 sell the Goods at any time and after deducting all costs and expenses account to the Customer for any excess over the price already paid under the Contract or charge the Customer for any shortfall between the Contract price and such costs and expenses.
- 5.9 In the event of short delivery (but subject to the tolerances set out in Condition 5.6), non-delivery or damage in transit:
- 5.9.1 the Customer must notify the Company of short delivery (measured by weight or number) or damage in transit in writing within 5 Business Days of the receipt of the Goods; and
- 5.9.2 the Customer must notify the Company of non-delivery must be in writing within 48 hours, from the date on which the Company notifies the Customer of despatch.
- 5.10 Following receipt of notification under Conditions 5.9.1 or 5.9.2, the Company shall at its option and as the Customer's sole remedy, either:
- 5.10.1 make good the whole or part of the price (and where relevant, as a deduction from any part of the price remaining unpaid); or
- 5.10.2 repair the damaged goods; or
- 5.10.3 replace any non-delivered Goods (subject to the tolerances set out in Condition 5.6) or damaged Goods,
- and the Company shall not be liable to the Customer for any loss, financial or otherwise resulting directly or indirectly from the non-delivery, short delivery, or damage in transit. Furthermore, in no event shall the Company be liable to the Customer in connection with any damage or loss in transit where delivery takes place at the Company's premises.
- 5.11 All returnable containers and packing materials will be charged for, but credit will be given if these are returned in condition satisfactory to the Company to the Company's works carriage paid within thirty days following delivery of the relevant Goods. In no circumstances will any cash payment be made to the Customer in respect thereof.
- 5.12 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms depending on the circumstances include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods and/or provision of the Services (even if caused by the Company's negligence).

6. **Customer's obligations**

6.1 The Customer shall:

- 6.1.1 ensure that the terms of the Order and any information it provides in either or both the Service Specification and the Goods Specification are complete and accurate;
- 6.1.2 co-operate with the Company in all matters relating to the Services;
- 6.1.3 provide the Company, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Company to provide the Services;
- 6.1.4 provide the Company with such information and materials as the Company may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
- 6.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- 6.1.6 comply with all applicable laws and regulations in respect of the performance of its obligations under the Contract and/or the use of the Goods and/or Services; including without limitation any environmental, social and governance regulations;
- 6.1.7 keep all materials, equipment, documents and other property of the Company (**Company Materials**) at the Customer's premises in safe custody at its own risk, maintain the Company Materials in good condition until returned to the Company, and not dispose of or use the Company Materials other than in accordance with the Company's written instructions or authorisation; and
- 6.1.8 comply with any additional obligations as set out in the Service Specification or the Goods Specification or both.

6.2 If the Company's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- 6.2.1 without limiting or affecting any other right or remedy available to it, the Company shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Company's performance of any of its obligations;
- 6.2.2 the Company shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Company's failure or delay to perform any of its obligations as set out in this Condition 6.2;

- 6.2.3 the Customer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Customer Default.

7. **Cancellation**

Following acceptance by the Company of the Customer's Order, no cancellation and/or suspension, either in whole or in part, may be made by the Customer other than with the prior written consent of a director of the Company and upon terms that the Customer shall indemnify the Company in full against all loss (including without limitation loss of profit) damages, costs (including without limitation the cost of all labour, manufacture and materials), expenses and other liabilities awarded against or incurred by the Company as a result of or in connection with the cancellation and/or suspension.

8. **Price and payment**

- 8.1 Unless otherwise agreed in writing any price quoted by the Company shall be the price set out in the Company's price list current as at the date of quotation. The price charged to the Customer under the Contract may be changed to take account of prices stated in the Company's price list current at the date of invoice.
- 8.2 Unless otherwise expressly stated in writing, all prices are exclusive of all costs or charges in relation to packaging, loading, unloading, carriage and insurance and VAT which shall be charged where appropriate at the rate prevailing at the relevant tax point.
- 8.3 The Company reserves the right to:
- 8.3.1 increase the price of the Services, by giving notice to the Customer at any time before performance of the Services, to reflect any increase in the cost of the Services to the Company that is due to any request by the Customer to change the performance date(s), or the Services Specification; or any delay caused by any instructions of the Customer in respect of the Services or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Services;
- 8.3.2 increase the price of the Goods, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods to the Company that is due to: (a) any factor beyond the control of the Company (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Company adequate or accurate information or instructions in respect of the Goods.
- 8.4 Subject to prior written agreement to the contrary, the Company shall be entitled to invoice the Customer for:
- 8.4.1 the price of the Goods on or at any time after the Company has notified the Customer that the Goods are ready for collection, or the Company has tendered delivery of the Goods; and
- 8.4.2 the Services, on completion of the Services.

- 8.5 Where the Customer collects the Goods at the Company's premises the Company may require the Customer to make payment in full at the time of collection, otherwise the Customer shall make payment in full without deduction or set off within thirty days following the date appearing on the Company's invoice or within such other period as may be agreed in writing by the Company notwithstanding that the delivery may not have taken place and the property in the Goods may not have passed to the Customer.
- 8.6 Time for payment shall be of the essence.
- 8.7 No payment shall be deemed to have been received until the Company has received cleared funds.
- 8.8 The Customer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.
- 8.9 If the Customer fails to pay any sum due to the Company by the due date for payment, the Company shall have the right, but not the obligation to:
- 8.9.1 charge interest at the annual rate of 4% above the Bank of England's base lending rate. Interest will be charged on a daily basis on all monies outstanding after the due date until the actual date of payment (both before and after judgment); and/or
- 8.9.2 suspend the performance of the Contract, including any further deliveries of Goods and/or performance of the Services, until such time as the Customers pays all outstanding sums due to the Company.
- 8.10 Where payment is agreed to be made by instalments, any delay or default by the Customer in making payment in respect of any one instalment shall render all the remaining instalments due forthwith, and interest will be charged in accordance with Condition 8.9 with immediate effect until the date of actual payment.
- 8.11 The Company may appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Company and the Customer) as the Company may think fit (notwithstanding any purported appropriation by the Customer).
9. **Risk and title**
- 9.1 Risk in the Goods shall pass to the Customer immediately on delivery to the Customer or into custody on the Customer's behalf whichever is the sooner.
- 9.2 Notwithstanding delivery and the passing of risk, property in and title to the Goods shall remain in the Company until the Company has received (in cash or cleared funds) payment of the full price of (a) all Goods and/or Services the subject of the Contract and (b) all other goods and/or services supplied by the Company to the Customer under any other contract whatsoever.
- 9.3 Until property in and title to the Goods passes to the Customer
- 9.3.1 the Customer shall hold the Goods on a fiduciary basis as the Company's bailee;

- 9.3.2 the Customer shall keep the Goods properly stored, protected and insured and separate from all or any other goods whether belonging to the Company the Customer or any third party at no cost to the Company; and
- 9.3.3 the Customer shall not make any modification to the Goods or their packaging or alter remove or tamper with any marks, numbers or other means of identification used on or in relation to the Goods.
- 9.4 The Customer may resell the Goods before ownership has passed to it solely on the following conditions:
 - 9.4.1 any sale shall be effected in the ordinary course of the Customer's business at full market value;
 - 9.4.2 any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale; and
 - 9.4.3 the Customer shall first dispose of the Goods that it has paid for and any payments received by the Company from the Customer shall first be appropriated to Goods disposed of by the Customer.
- 9.5 The Company shall be entitled at any time to revoke the Customer's power to use, sell and deal with the Goods.
- 9.6 Notwithstanding Condition 9.4, the Customer's power to use, sell and/or deal with the Goods shall automatically cease if the Customer shall commit or be subject to an Insolvency Event or if the Customer encumbers or in any way charges any of the Goods.
- 9.7 Upon termination of the Customer's power to deal with the Goods, the Customer shall place the Goods at the disposal of the Company and the Company and its servants and agents are hereby irrevocably authorised without the need for consent of any third party but using only such force as may be necessary, to enter upon any premises of the Customer or any third party for the purpose of removing the Goods.
- 9.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 9.9 On termination of the Contract, howsoever caused, the Company's (but not the Customer's) rights contained in this Condition 9 shall remain in effect.
- 9.10 If any of the foregoing provisions of this Condition shall be invalid or unenforceable such invalidity or unenforceability shall not affect the remaining provisions.
- 10. **Quality and Warranty**
- 10.1 The Company warrants that on delivery, and for a period of 6 months from the date of delivery (**Warranty Period**), the Goods shall:
 - 10.1.1 conform in all material respects with the Goods Specification;
 - 10.1.2 be free from material defects in design (where the design is supplied by the Company), material and workmanship;

- 10.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and
- 10.1.4 be fit for any purpose expressly held out by the Company.
- 10.2 Subject to Condition 10.3, if:
 - 10.2.1 the Customer gives notice in writing to the Company during the Warranty Period within 5 Business Days of discovery that some or all of the Goods do not comply with the warranty set out in Condition 10.1;
 - 10.2.2 the Company is given a reasonable opportunity of examining such Goods; and
 - 10.2.3 the Customer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Customer's cost,

the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full. Once the Company has complied with its obligations under this Condition, it shall have no further liability to the Customer for the rejected Goods' failure to comply with Condition 10.1.
- 10.3 The Company shall not be liable for the Goods' failure to comply with the warranty set out in Condition 10.1 if:
 - 10.3.1 the defect in the Goods arises from any drawings, design or specification supplied by the Customer or any Drawings and Pre-Productions Samples approved by the Customer;
 - 10.3.2 the Customer makes any further use of such Goods after giving notice in accordance with Condition 10.2;
 - 10.3.3 the Customer fails to give the notice required under Condition 10.2;
 - 10.3.4 the defect arises because the Customer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 10.3.5 the Customer alters or repairs such Goods without the written consent of the Company;
 - 10.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 10.3.7 the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 10.4 The Customer shall not be entitled to the benefit of the warranty under condition 10.1 until any monies due to the Company under the Contract have been paid in full.
- 10.5 The above warranty does not extend to parts, materials or equipment not manufactured by the Company in respect of which the Customer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Company and can be transferred.

11. **Services**

11.1 If the Contract is for or to include the Services to be performed by the Company, the following provisions shall apply:

- 11.1.1 the Company shall only be obliged to carry out Services during normal working hours and shall be entitled to charge for any overtime worked upon request by the Customer;
- 11.1.2 unless otherwise agreed in writing by the Company, any tool, mould or die (hereinafter together referred to as “**Dies**”) provided entirely or partly at the Company’s expense shall be and shall remain the Company’s property and shall remain in its possession at all times notwithstanding that the Customer may have made payment to the Company in respect of a proportion of the cost of such Dies. Any payment made by the Customer under this Condition 11.1.2, shall be non-refundable. For the avoidance of doubt, and unless otherwise agreed in writing between the parties, all Intellectual Property Rights in the Dies shall vest entirely in the Company, save where the Dies include any Customer IPRs, where those Customers IPRs shall remain vested in the Customer;
- 11.1.3 the Customer shall sign off and approve in writing within 10 Business Days of the Company’s request to do so all Dies made by the Company before such Dies are used to produce Goods. If the Customer fails: (a) to approve the Dies within such period; or (b) to notify the Company that the Dies are not in accordance with the Contract and the reasons for such non-compliance, the Dies shall be deemed to comply in all respects with the Contract and to be accepted by the Customer;
- 11.1.4 where the Customer has placed an order for the Services to produce Dies only and does not within the period of 10 Business Days following completion of the Services place an order for Goods the Customer shall pay the full cost of the Dies that are provided or produced by the Company in the course of the Services;
- 11.1.5 where the Customer orders a lesser quantity of Goods than is specified in the Company’s quotation or fails to take delivery of the full quantity of Goods within the period stated in such quotation, the Company may charge the Customer the full or a proportionate part of the cost of the Dies taking account of any part-payment that has already been made by the Customer in respect of the Dies;
- 11.1.6 subject to Conditions 11.1.8 and 11.1.9, the Company shall (at its cost) use all reasonable endeavours to store and maintain Dies during their normal useful life, provided that the Company shall not be liable in respect of any loss or damage thereto nor shall the Company be liable to replace any worn-out Dies;
- 11.1.7 where for any reason the Company is unable or unwilling to continue to manufacture the Goods using the Dies following the expiry or termination of the Contract, the Company may (at its option) elect to sell such Dies to the Customer, provided that:

- 11.1.7.1 the Customer has previously made a part-payment to the Company in respect of such Dies;
 - 11.1.7.2 the Customer has complied with its obligations under the Contract and any other contracts with the Company;
 - 11.1.7.3 the Customer can prove ownership of the Dies to the Company's satisfaction; and
 - 11.1.7.4 the Customer makes payment to the Company in the amount of 100% of the original part cost price paid for the Dies;
- 11.1.8 in circumstances where the Company writes to the Customer, notifying the Customer that they must collect the Dies, the Customer shall have 3 months (or such other period specified in the notification) to collect the Dies. Where the Customer fails to collect the Dies within this period, the Company may destroy the Dies without prior notification to the Customer, and without liability;
- 11.1.9 in respect of any Dies for which the Customer has not made full payment, the Company may utilise or dispose of such Dies at its discretion following the expiry or termination of the Contract;
- 11.1.10 where the Customer provides Dies to the Company:
 - 11.1.10.1 the Company accepts no responsibility or liability for the repair and maintenance thereof; and
 - 11.1.10.2 the Customer shall indemnify the Company in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred by the Company as a result of or in connection with the use of such Dies and/or a breach of a third party's Intellectual Property Rights resulting from the use of such Dies; and
 - 11.1.10.3 the Company may from time to time charge the Customer for any repair or replacement of the Dies as and when the same become necessary;
- 11.1.11 where a Die is made in accordance with the Customer's drawing or sample the Customer shall pay the full cost of any subsequent alteration that it requests or which is subsequently necessitated by any error or omission in such drawing or sample.
- 11.2 Goods and Services supplied on the site of the Customer are at all times at the sole risk of the Customer and if any part is lost or destroyed for any reason whatsoever the Company shall be entitled to charge as a variation to the Contract for the restoration of such Goods and/or Services. The Customer shall for the benefit of itself and the Company insure and keep insured with reputable insurers the full value of Goods and Services against every kind of loss, damage or destruction. The Customer shall produce the policy to the Company upon request together with the latest premium receipts and in default of effecting the same the Company shall be entitled to do so and add the cost of such insurance to the Contract price.

12. **Limitation of liability**

- 12.1 References to liability in this Condition 12 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 12.2 Nothing in these Conditions or the Contract shall limit or exclude either party's liability for:
- 12.2.1 death or personal injury caused by the negligence of that party, its servants or agents;
 - 12.2.2 fraud or fraudulent misrepresentation;
 - 12.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
 - 12.2.4 any liability that legally cannot be limited.
- 12.3 The Company shall not be liable to the Customer in contract, tort (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company its servants or agents, in a sum which is greater than the Contract price.
- 12.4 The Company shall not be liable to the Customer in contract, tort (including without limitation negligence) and/or breach of statutory duty for any:
- 12.4.1 loss of profits;
 - 12.4.2 loss of production;
 - 12.4.3 loss of sales or business;
 - 12.4.4 loss of agreements or contracts;
 - 12.4.5 loss of anticipated savings;
 - 12.4.6 loss of use or corruption of software, data or information;
 - 12.4.7 loss of or damage to goodwill; and
 - 12.4.8 any indirect or consequential (including economic) loss of any kind,
- which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company, its servants or agents.
- 12.5 The Customer shall (without prejudice to the Company's other rights and remedies) indemnify the Company in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred by the Company as a result of or in connection with:
- 12.5.1 any claim brought against the Company by a third party arising out any matter in respect of which the Company's liability to the customer is excluded under this Condition 12; and

- 12.5.2 any liability that the Company has to a third party in respect of the Goods pursuant to Part 1 of the Consumer Protection Act 1987.
- 12.6 Save as provided in these Conditions all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 12.7 This Condition 12 shall survive termination of the Contract.
13. **Intellectual property rights**
- 13.1 The Company acknowledges that the Customer IPRs are and remain the exclusive property of the Customer or, where applicable, the third-party licensor from whom the Customer derives the right to use them.
- 13.2 The Customer acknowledges that all Intellectual Property Rights used for the manufacture of the Goods and/or the provision of Drawings, Pre-Production Samples and/or Services, that originate from the Company shall remain the exclusive property of the Company or, where applicable, the third-party licensor from whom the Company derives the right to use them.
- 13.3 If the Goods are to be manufactured or any process is to be applied to the Goods or the packaging of the Goods, by the Company in accordance with a specification, design or drawing submitted by the Customer or the Customer's instructions, the Customer shall (without prejudice to the other rights and remedies of the Company) indemnify the Company in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred by the Company as a result of or in connection with
- 13.3.1 any claim for infringement of any patent, copyright, database right, design right, registered design, trade mark or other industrial or Intellectual Property Rights of any other person and/or for passing off and/or unauthorised use of Confidential Information which results from the Company's use of the Customer's specifications, drawings, designs and/or other instructions;
- 13.3.2 any other liability of any kind to any third party to the extent that it arises from the Customer's specification, drawings, designs, instructions and/ or any error or omission therein.
14. **Export terms**
- 14.1 Any term or expression which is defined in the provisions of Incoterms 2000 (or any subsequent revision thereof) shall import the respective obligations of the Customer and the Company into these Conditions, but in the event of conflict these Conditions shall prevail.
- 14.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 14 shall (subject to any special terms agreed in writing between the Company and the Customer) apply notwithstanding any other provision of these Conditions.
- 14.3 Unless otherwise agreed in writing between the Company and the Customer, the Goods shall be delivered ex-works.
- 14.4 The Customer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any

claim in respect of any defect in the Goods which would be apparent on testing or inspection and which is made after shipment, or in respect of any damage during transit.

15. **Data protection**

15.1 The following definitions apply in this Condition 15: **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

15.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Condition 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

15.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and the Company is the Processor.

15.4 Without prejudice to the generality of Condition 15.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company for the duration and purposes of the Contract.

15.5 Without prejudice to the generality of Condition 15.2, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under the Contract:

15.5.1 process that Personal Data only on the documented written instructions of the Customer unless the Company is required by Domestic Law to otherwise process that Personal Data. Where the Company is relying on Domestic Law as the basis for processing Personal Data, the Company shall promptly notify the Customer of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Company from so notifying the Customer;

15.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Customer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

15.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

15.5.4 not transfer any Personal Data outside of the UK unless the prior written consent of the Customer has been obtained and the transfer is made in accordance with the Data Protection Legislation

15.5.5 assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;

15.5.6 notify the Customer without undue delay on becoming aware of a Personal Data Breach;

- 15.5.7 at the written direction of the Customer, delete or return Personal Data and copies thereof to the Customer on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- 15.5.8 maintain complete and accurate records and information to demonstrate its compliance with this Condition 15.

16. **Termination and suspension**

- 16.1 Without prejudice to any rights and remedies available to it, the Company shall be entitled, forthwith on written notice to the Customer either to terminate the Contract wholly or in part and/or any other contract with the Customer or to withhold performance of all or any of its obligations under the Contract and/or any other contract with the Customer (and on the giving of such notice all monies outstanding from the Customer to the Company shall become immediately due and payable) if:
 - 16.1.1 any sum owing to the Company from the Customer on any account whatsoever shall be unpaid after the due date for payment (in which event the Company shall have a general lien for any such sum on all and any property of the Customer in its possession including (without limitation) any Dies); or
 - 16.1.2 an Insolvency Event shall occur in respect of the Customer; or
 - 16.1.3 the Customer shall commit any breach of any contract (including without limitation the Contract) with the Company and such breach is irremediable, or where remediable, the Customer fails to remedy the breach within 7 days of receiving notification to do so; or
 - 16.1.4 the Customer shall refuse to provide any security for credit; or
 - 16.1.5 if in its absolute discretion the Company considers the Customer's credit to be unsatisfactory.
- 16.2 On termination of the Contract:
 - 16.2.1 the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Customer immediately on receipt;
 - 16.2.2 the Customer shall return all of the Company Materials or Goods which have not been fully paid for. If the Customer fails to do so, then the Company may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 16.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 16.4 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

17. **General**

- 17.1 It shall be the responsibility of the Customer to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise howsoever, (including without limitation any relating to the importation or use of the Goods in the country of destination and for the payment of duties thereon) are duly complied with. It shall be a condition precedent to the performance by the Company of its obligations under the Contract that all necessary licences, permits and consents shall have been obtained by the Customer.
- 17.2 Without prejudice to the generality of Condition 17.1, the obtaining of any relevant exchange control consents shall be a condition precedent to the performance by the Company of any of its obligations under the Contract.
- 17.3 Neither party shall have any liability for any failure to perform or for any delay in the performance (other than as to payment) of any of its obligations under the Contract caused by any factor beyond its reasonable control.
- 17.4 The rights and remedies of the Company in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company to the Customer nor by any failure of or delay by the Company in ascertaining or exercising any such rights or remedies. Any release, waiver or compromise or any other arrangement of any kind (a release) by the Company shall not affect its rights and remedies as regards any other party nor its rights and remedies against the Customer in whose favour it is granted or made except to the extent of the express terms of the release and no such release shall have effect unless granted or made in writing. The rights and remedies in this Contract are cumulative and not exclusive of any rights and/or remedies provided by law.
- 17.5 The Contract is personal to the Customer. The Customer shall not assign, transfer or charge its rights and responsibilities under this Contract or any of them, nor appoint any sub-contractor or agent without the prior written consent of the Company not to be unreasonably withheld.
- 17.6 The provisions of the Conditions are severable and distinct from one another, and, if at any time any of the provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions shall not in any way be affected or impaired.
- 17.7 The Conditions and the Contract shall not constitute and shall not be deemed to constitute a partnership between the Company and the Customer, and the Customer shall not act nor purport to act as agent for the Company but solely as an independent contractor.
- 17.8 All notices under this Contract shall be in writing and may be served by post or email addressed to the other party at the address given in this Contract or at such other address as a party shall from time to time by notice in writing give to the other party for the purpose of service of notices under this Contract and every such notice shall be deemed to have been served by post at the expiration of 3 days after despatch of the same, or if sent by email at ten hours local time on the next normal Business Day of the recipient following despatch and in proving service it shall be sufficient to show in the case of a letter that the same was duly addressed prepaid and posted in the manner provided and in the case of a facsimile transmission a transmission report that it was transmitted to the correct telephone number. Saturdays, Sundays and Bank Holidays shall not in any event be treated as days on which

service is effected, and service shall be deemed to take place on the next normal Business Day of the recipient.

- 17.9 Neither party shall be in breach of the Contract or otherwise liable for any failure or delay in the performance of its obligations if such delay or failure results from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 8 weeks, the party not affected may terminate the Contract by giving 14 days' written notice to the affected party.
- 17.10 For the avoidance of doubt nothing in these Conditions shall confer on any third party any benefit or the right to enforce any provision of these Conditions.
- 17.11 The Contract constitutes the entire agreement between the Company and the Customer in relation to its subject matter and supersedes all prior agreements, understandings, negotiations, representations and arrangements, whether written or oral. The Contract comprises these Conditions, together with the Drawings and the Order Acceptance, all of which shall form part of the Contract.
- 17.12 The Contract shall be governed in accordance with the laws of England and Wales. Any dispute arising under this Contract shall be subject to the exclusive jurisdiction of the English courts and the parties waive any objection to proceedings in such courts on the grounds of venue or on the grounds that proceedings have been brought in an inappropriate forum. In the case of a Customer who has no assets within the jurisdiction of the English Courts and who is established in a country which will not enforce the judgement of the English Courts the Company may if it chooses refer any disputes arising out of the Contract to arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, such arbitration to take place in London.