

# TERMS AND CONDITIONS OF SUPPLY OF GOODS



This supply of goods contract, dated as per the date of the Order Acknowledgement (the “**Contract**”), is entered into by and between:

- (1) **SAS International Inc**, a New York corporation having its principal place of business at The Yard, Suite 426, 246 5<sup>th</sup> Avenue, New York, NY 10001 (the “**Company**”); and
- (2) the individual or entity specified as the customer in the Order Acknowledgement (the “**Customer**”), individually a “**Party**” and together, the “**Parties**”.

In consideration of the mutual covenants, terms and conditions set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## 1. Definitions

1.1 In these Terms:

“**Business Day**” means a day (other than Saturday, Sunday or public holiday) when banks in New York City are open for business;

“**Company**” means SAS International Inc., a corporation incorporated in the State of New York, (with DOS ID # 5450857) whose office address is at The Yard, Suite 426, 246 5<sup>th</sup> Avenue, New York, NY 10001;

“**Confidential Information**” has the meaning given to that term in Clause 13.1;

“**Contract**” means the contract between the Customer and the Company for the supply of the Goods by the Company to the Customer, incorporating the Terms and the Order Acknowledgment;

“**Delivery Data**” has the meaning given to that term in Clause 4.1;

“**Delivery Date**” means the date(s) on or by which the Company shall endeavor to deliver the Goods to the Delivery Location, with such date(s) being specified in the Order Acknowledgment;

“**Delivery Location**” means the place at which the Company shall deliver the Goods to the Customer, as specified in the Order Acknowledgment;

“**Drawings**” means any samples, drawings, descriptive matter and advertising produced by the Company and any descriptions or illustrations contained in the Company’s catalogues, brochures and/or on its website(s) or otherwise provided to the Customer;

“**Force Majeure Event**” means an event or circumstances beyond the Company’s reasonable control;

“**Goods**” means the products to be supplied by the Company to the Customer, as specified in the Order Acknowledgment;

“**Order**” means the Customer’s order for the Goods, as specified in a Quotation;

“**Order Acknowledgment**” means the Company’s offer to supply the Goods, setting out the Quotation and Specification (if applicable), issued by the Company in the form set out in Schedule 1 and signed by the Customer;

“**Quotation**” means the Company’s quotation setting out the indicative terms on which it is prepared to supply the Goods to the Customer;

“**Specification**” means the specification for the Goods, including any related Drawings, as set out in the Order Acknowledgment;

“**Terms**” means the standard terms and conditions of supply of goods by the Company, as set out in this document including the Schedule 1;

“**Warranty**” has the meaning given to that term in Clause 5.1; and

“**Warranty Period**” has the meaning given to that term in Clause 5.1.

- 1.2. A reference to a statute or statutory provision is a reference to such a statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.3. Any phrase introduced by the terms “including”, “include”, “in particular” or other similar expression shall be construed as illustrative only and shall not limit the sense of the words preceding those terms.
- 1.4. A reference to “writing” or “written” includes emails.
- 1.5. Clause headings are inserted for ease of reference and shall not affect interpretation.
- 1.6. Words suggesting a gender shall include all other genders and words denoting the singular shall include the plural and vice versa.

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- 1.7. Persons includes natural persons, firms, partnerships, companies, corporations and that person's personal representatives, successors and permitted assigns.
- 1.8. The Parties agree that the terms of this Contract result from negotiations between them and that the Contract will not be construed in favor of or against either Party by reason of authorship.

### **2. Basis of Contract**

- 2.1. The Terms apply to the Contract to the exclusion of all other terms that the Customer may seek to impose, or which are implied by trade, custom, practice or course of dealing. No variation to the Terms and/or the Contract shall be binding unless agreed in writing between the Customer and the Company in accordance with Clause 14.3. 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 which are inconsistent with the Terms.
- 2.2. The Customer shall provide to the Company any and all information which the Company reasonably requests in order to enable the Company to compile a Quotation. It is the Customer's responsibility to ensure that the information it provides to the Company is accurate, up to date and complete as this data shall form the basis on which the Company will prepare the Quotation. A Quotation shall not constitute an offer and shall only be valid (subject to any earlier revocation of the Quotation by the Company) for a period of 90 days from its date of issue unless otherwise expressly stated to the contrary by the Company on the face of the Quotation. Any request from the Customer to change any details relating to the supply of the Goods as set out within the Quotation shall result in either a revised Quotation being issued by the Company or the Company shall set out in writing in an email to the Customer the revised details and amendments to its Quotation, as a supplement to the Quotation.
- 2.3. An unsigned Order Acknowledgement constitutes an offer by the Company to supply the Goods for the Quotation in accordance with the Terms. The Customer acknowledges and agrees that it is responsible for and has ensured that the terms of the Order Acknowledgement and the Specification are complete, accurate and meet its requirements and that the Goods are fit for the Customer's purpose and the environment in which the Goods are to be utilized and/or installed (whether or not such information is made available to the Company). If the Customer identifies an issue within the Order Acknowledgement and/or Specification, it must promptly notify the Company and (subject always to Clause 7.4) the Company shall revise the documentation accordingly. Any and all guidance given by the Company and its representatives during the contracting process relating to the Goods is simply for the Customer's information purposes only. This guidance and information may not be relied upon by the Customer; it shall not form part of the Contract and it shall not detract or affect the obligation on the Customer to ensure that the Goods meet its requirements.
- 2.4. Subject to the validity period set out in Clause 2.1, the Order Acknowledgement shall only be deemed to be accepted by the Company and Customer as and when the Customer signs and returns the Order Acknowledgement to the Company, at which point the Contract comes into existence.
- 2.5. If there is any conflict between the documents which form the Contract, they shall take priority in the following order to the extent of the conflict: (i) the Order Acknowledgement; and (ii) the Terms.
- 2.6. No agent of the Company has any authority to bind the Company.
- 2.7. Drawings are produced for the sole purpose of giving an approximate idea of the Goods and are intended for use as product reference material by architects, engineers, other design professionals, contractors and other competent construction industry trade professionals who have an interest in the selection, specification and use of products supplied by the Company. Drawings are intended solely as technical support incidental to the sale of the Goods and are not intended to be a substitute for the design review and approval of licensed design professionals. The Drawings do not form part of the Contract, nor do they have any contractual force. All Drawings (including any intellectual property rights which may exist in the same) shall remain the property of the Company. The Customer may only utilize, reproduce or disclose any such Drawings to a third party with the prior written consent of the Company and the Customer shall return the same to the Company on request.
- 2.8. None of the Company's employees, agents, contractors and/or other representatives are entitled to make any representations about the Goods unless those representations are subsequently confirmed in writing to the Customer. In entering into the Contract, the Customer confirms that it has not, and does not, rely on such a representation which has not been confirmed in writing by the Company.
- 2.9. The Company may make changes to the Terms from time to time and such changed Terms shall apply to any and all contracts entered into by the Parties after the date of the variation. The Customer is advised to keep the Terms under review.

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### 3. The Goods

- 3.1. The Goods to be supplied shall be as specified in the Order Acknowledgment and shall, subject to the Terms, comply with the Specification in all material respects.
- 3.2. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer and/or the Customer provides information, data and other materials to the Company in order to enable the performance of the Contract:
  - 3.2.1. the Customer grants to the Company a non-exclusive royalty free license (with the right to grant sub-licenses) to use the Specification and any and all information, data and other materials provided by or on behalf of the Customer solely in order to perform the Contract; and
  - 3.2.2. the Customer shall indemnify and keep indemnified the Company 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 reasonable professional costs and expenses) suffered or incurred by the Company in connection with any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights and/or confidential information arising out of or in connection with the Company's use of the Specification and/or any other information, data and/or materials provided by or on behalf of the Customer. This Clause shall survive the termination or expiry of the Contract.
- 3.3. The Company reserves the right to amend the Specification (whether supplied by the Customer or the Company) and the Goods at any time, including if required by applicable statutory or regulatory requirements.
- 3.4. Details of the Goods to be delivered are set out in the Order Acknowledgement. Any changes requested by the Customer to the nature of the Goods; the quantity of the Goods; the timelines for delivery of the Goods and/or the delivery requirements shall be a variation to the Contract (to be carried out in accordance with Clause 14.3) and shall entitle the Company to revise its pricing (including as a result of changes in batch sizes), delivery lead times and any other terms of the Contract (such changes to be agreed as part of the relevant Contract variation).
- 3.5. Irrespective of the Specification, all Goods are manufactured to the manufacturing, paint and finish tolerances of the Company in force from time to time and the manufacture of the Goods within these tolerances shall not be a breach of the Contract.
- 3.6. The Company makes no representations or warranties concerning, and it shall be the Customer's obligation to ensure, that the Goods comply with local laws, regulations, and legal requirements, including without limitation, applicable customs requirements. The Customer shall pay all costs associated with ensuring the Goods comply with local laws, regulations, and other legal requirements, including, without limitation, customs requirements. If labelling, packaging, or other modifications are necessary for compliance with local customs or any other requirements, the Customer shall notify the Company as to such requirements with reasonable advance notice and shall pay all costs associated with such labeling, packaging or other modifications in advance of shipment; otherwise, it shall be presumed that the Goods and the Company's standard labeling and packaging will comply with local customs and other requirements.

### 4. Delivery

- 4.1. Unless otherwise expressly agreed by the Parties in writing, the Company shall select the method of shipment of and the carrier for the Goods. If the Company is to deliver the Goods to a location other than the Company's own premises, or a Company nominated third party warehouse provider, the Customer shall be responsible for providing to the Company, prior to the placement of an Order and so as to enable the Company to build such data into its Quotation, details of the relevant delivery site, its access restrictions and requirements and any specific packaging requirements for the Goods, to enable the Company to calculate the costs of delivering the Goods and to set the delivery dates and times ("**Delivery Data**"). The Order Acknowledgement issued by the Company shall be based on the Delivery Data notified to it by the Customer prior to that point. If there is any change to the Delivery Data, the Customer must promptly inform the Company in accordance with Clause 4.2 below.
- 4.2. The Customer shall be responsible for the accuracy and completeness of the Delivery Data. If any of the Delivery Data proves to be incomplete, inaccurate and/or out of date:
  - 4.2.1. prior to the Company issuing to the Customer an Order Acknowledgement, the Customer shall promptly notify the Company of the changed Delivery Data and the Company shall reflect the revised data in its pricing within the relevant Quotation and/or Order Acknowledgement or otherwise inform the Customer of the impact of the revised data on the proposed contract terms;
  - 4.2.2. after the Company has issued its Order Acknowledgement, the Customer shall promptly inform the Company of the correct details and the Company shall be entitled to vary the price and contract terms as a consequence of the revised data in accordance with Clause 7.2;

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- 4.2.3. the Company shall be entitled to charge the Customer for any additional costs and expenses which the Company incurs in delivering the Goods to the Customer as a result of the incomplete, inaccurate and/or out of date Delivery Data; and
- 4.2.4. the Company shall not be in breach of the Contract and/or have any liability to the Customer under or in respect of the Contract as a result of any failure on the part of the Company to deliver the Goods to the Customer in accordance with the terms of the Contract if such failure is as a result of the inaccurate, incomplete and/or out of date Delivery Data.
- 4.3. The Company shall ensure that each delivery of the Goods is accompanied by a delivery slip that shows the Contract number and date and the type and quantity of the delivered Goods.
- 4.4. All Goods shall be delivered to the Customer in boxes and/or pallets. Any Goods which are of a non-standard configuration shall be packed in non-returnable, fully enclosed palletized wooden boxes, suitable for vertical forklift truck stacking. The Company shall endeavor to meet any specific packaging requirements of the Customer which are notified to the Company as part of the Delivery Data.
- 4.5. The Company shall use reasonable endeavors to deliver the Goods to the Customer at the Delivery Location on or by the Delivery Date(s). All Delivery Dates specified in an Order Acknowledgement are approximate and non-binding. The Customer understands and agrees that the Company will use reasonable efforts to ship the Goods approximately on the Delivery Date. The Company shall notify the Customer of any anticipated delays but shall not be responsible for any delays in shipment beyond the Company's reasonable control. It is expressly understood that the Company may delay release of the Goods to the Customer or the Customer's agents until such time as payments due, have been received by the Company. All deliveries shall be made in normal daytime working hours. Time is not of the essence for delivery.
- 4.6. If the Delivery Location is the Company's premises or the Company's nominated third party warehouse provider:
  - 4.6.1. the Company shall notify the Customer as and when the Goods are ready and/or will be ready for collection by the Customer;
  - 4.6.2. the Customer shall agree a collection date and time with the Company, with all collections to be made within normal daytime working hours; and
  - 4.6.3. if the Customer does not collect the Goods from the Delivery Location within 10 Business Days of the agreed date of collection and/or the Customer has not arranged a date for collection of the Goods within 10 Business Days of the date on which the Company notifies the Customer that the Goods are (or will be) ready for collection then Clause 4.9 shall apply.
- 4.7. Subject always to Clause 9.2, if the Company fails to deliver the Goods (whether on time or otherwise), its liability shall be limited to the reasonable costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.
- 4.8. The Company shall not be liable for any delay in the delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Delivery Data; to update the Delivery Data and/or to give any other instructions relevant to the supply of the Goods.
- 4.9. If the Customer fails to take delivery of the Goods within 10 Business Days of:
  - 4.9.1. if the Company is delivering the Goods to a Delivery Location: the date of delivery set out in the Order Acknowledgement; or
  - 4.9.2. if the Customer is collecting the Goods: the date on which the Company notifies the Customer that the Goods are ready for collection at the Delivery Location or the date on which the Parties agreed that the Customer would collect the Goods,  
(collectively the "**Intended Delivery Date**") then, except where the failure or delay is caused by the Company's failure to comply with its obligations under the Contract:
- 4.9.3. delivery of the Goods shall be deemed to have taken place at 9am on the 10th Business Day after the Intended Delivery Date; and
- 4.9.4. the Company may (without prejudice to any other rights and/or remedies it may have):
  - (i) charge the Customer the Company's costs of storing and insuring the Goods for every day after the 10 Business Day period referred to above, including the transportation costs incurred in moving the affected Goods to a storage area and any additional costs incurred in delivering the Goods to the Customer; and
  - (ii) invoice the Customer for the Goods in accordance with Clause 7; and
  - (iii) if the Customer has not taken delivery of the Goods within 20 Business Days of the Intended Delivery Date, resell or otherwise dispose of the Goods (in whole or in part) and, after deducting reasonable storage, insurance and disposal costs, charge the Customer for any shortfall below the agreed price of the Goods (or account to the Customer for any excess over and above the price the Goods (to the extent that the Customer has paid for the same in full and cleared funds)).

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- 4.10. The Company has the right to deliver the Goods in instalments and each instalment shall be paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment or relieve the Customer from its obligation to accept remaining deliveries.
- 4.11. Subject to Clause 4.9.3, delivery of the Goods is deemed complete as and when the Goods are delivered by or on behalf of the Company to the Delivery Location.
- 4.12. The Customer shall:
  - 4.12.1. unless otherwise expressly agreed with the Company as part of the Contract, be responsible for the safe offloading of the Goods from the delivery vehicle (including the provision of equipment and labor);
  - 4.12.2. check the Goods against the delivery note;
  - 4.12.3. procure that one of its representatives signs the Company's proof of delivery note at the date and time of delivery to confirm receipt of the Goods. Whilst the Company will endeavor to procure that the proof of delivery is signed by the Customer's specific representative as notified to the Company, the Company may arrange for another individual at the Delivery Location to sign the proof of delivery. Any and all persons who sign the proof of delivery are deemed to be authorized to do so by and on behalf of the Customer; and
  - 4.12.4. notify the Company of any shortages or damage to the Goods delivered within 72 hours of delivery (and in the case of damage, to the extent that the Customer can identify the damage without unpacking the Goods). The Company shall promptly investigate any reported shortages and/or damage to the Goods and the Customer shall allow the Company access to the Goods to investigate the reported issues at the Company's request. The Company shall replace any damaged Goods and/or make up any shortages as soon as reasonably practicable and this shall be the sole remedy of the Customer in respect of the same. All other issues relating to the Goods shall be addressed by way of the Warranty. If the Customer fails to provide notice of any shortages in accordance with this Clause 4.12.4 the Goods shall be deemed to confirm to the terms of an accepted order, and the Customer shall be deemed to have accepted the Goods.

## 5. Quality

- 5.1. The Company warrants that, on delivery of the Goods, and for a period of 12 months thereafter ("**Warranty Period**") the Goods shall:
  - 5.1.1. conform in all material respects with the Specification; and
  - 5.1.2. be free from material defects in material and workmanship.Sections 5.1.1 and 5.1.2 shall, together, be referred to as the "**Warranty**".
- 5.2. Subject to Clause 5.3, provided that:
  - 5.2.1. the Customer gives notice to the Company in writing during the Warranty Period within 7 days of discovery that some or all of the Goods do not comply with the Warranty; and
  - 5.2.2. the Company is given a reasonable opportunity to examine the Goods and the Customer provides to the Company (on request) any and all information, data and other materials required by the Company in order to assess the warranty claim; and
  - 5.2.3. the Customer (if asked to do so by the Company) returns such Goods to the Company (with the costs of the return to be borne by the Company if the Goods are subsequently found to be defective and in breach of the Warranty); the Company shall, at its option, repair or replace the defective Goods or refund the price paid by the Customer for the defective Goods.
- 5.3. The Company shall not be liable for the failure of the Goods to comply with the Warranty if:
  - 5.3.1. the Customer makes any further use of the Goods after giving notice in accordance with Clause 5.2;
  - 5.3.2. the Customer has installed the Goods with knowledge of the defect;
  - 5.3.3. the defect arises because the Customer failed to follow the Company's instructions as to the storage, commissioning, installation, use and/or maintenance of the Goods or (if there are none) good trade practice;
  - 5.3.4. the defect arises as a result of the combination and/or use of the Goods with products which have not been approved by the Company, including any fixing brackets;
  - 5.3.5. the defect arises as a result of the Company following any drawing, design, data, information or specification provide by the Customer;
  - 5.3.6. the Customer alters or repairs the Goods without the prior written consent of the Company;
  - 5.3.7. the defect arises as a result of fair wear and tear, willful damage, negligence, or abnormal storage and/or working conditions; and/or
  - 5.3.8. the Goods differ from the Specification as a result of changes made to ensure that the Goods comply with applicable laws and regulatory requirements and/or as a result of the application of the manufacturing tolerances referred to in Clause 3.5.

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- 5.4. Except as provided in this Clause 5, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the Warranty.
- 5.5. The foregoing Warranty is in lieu of all other warranties, express or implied by law, custom and/or trade practice, including but not limited to any warranties of merchantability, fitness of any particular purpose, or non-infringement, all of which are hereby expressly disclaimed to the fullest extent permitted by law.
- 5.6. The Warranty shall apply to any repaired and/or replaced Goods but only for the unexpired portion of the Warranty which was given by the Company in respect of the Goods initially supplied.
- 5.7. Any and all other terms and conditions which may be implied by law, custom and/or trade practice into the Contract are hereby excluded to the fullest extent permitted by law.

### **6. Title and Risk**

- 6.1. Risk in the Goods shall pass to the Customer upon the Company's tender of the Goods at the Delivery Location.
- 6.2. Title in the Goods shall not pass to the Customer until the earlier of:
  - 6.2.1. the Company receiving payment in full and in cleared funds for the Goods (including any interest and other sums payable by the Customer to the Company in respect of the Goods in question), in which case title shall pass at the time of payment;
  - 6.2.2. the Customer resells and/or installs the Goods, in which case title shall pass to the Customer at the point identified in Clause 6.4 below; and
  - 6.2.3. the Company notifying the Customer in writing that it passes title in the Goods to the Customer.
- 6.3. Until title in the Goods passes to the Customer, the Customer shall:
  - 6.3.1. store the Goods separately from all other goods held by the Customer so that they remain identifiable as the Company's property;
  - 6.3.2. not remove, deface or obscure any identifying marks or packaging on or relating to the Goods;
  - 6.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 6.3.4. immediately notify the Company if it becomes subject to any of the events listed in Clauses 8.1.2 to 8.1.5; and
  - 6.3.5. give the Company such information relating to the Goods as the Company may require from time to time.
- 6.4. Subject to the provisions of this Clause 6, the Customer may resell or use the Goods in the ordinary course of its business before the Company receives payment for the same. However, if the Customer resells or uses the Goods before that point, it does so as principal and not as an agent of the Company and title in the Goods shall pass from the Company to the Customer immediately before the time at which the resale and/or use occurs.
- 6.5. The Company may at any time require the Customer to deliver up all Goods in its possession and/or under its control which have not been resold, irrevocably incorporated into another product and/or installed. If the Customer fails to do so promptly, the Company may enter the premises of the Customer or any third party where the Goods are stored to recover them (and the Customer shall procure the right of access for the Company to do the same).

### **7. Price and Payment**

- 7.1. The price for the supply of the Goods is set out in the Order Acknowledgement, and subject to variation in accordance with these Terms.
- 7.2. Except as specified in the Order Acknowledgement, the price for the supply of the Goods does not include any transportation, crating, special packaging accommodations, insurance, tariffs or other governmental charges which the Company may be required to pay or collect under any existing or future law with respect of sale, transportation, delivery, storage, installation or use of any Goods sold by the Company. The price of the Goods is exclusive of all city, state and federal excise taxes, including without limitation, taxes on manufacture, sales, receipt gross income, occupation, use and similar taxes. Wherever applicable, any tax or taxes will be added to the invoice as a separate charge.
- 7.3. The Customer assumes all responsibility for payment of freight, and all costs associated therewith, which freight charges and other costs may not be reflected in the prices quoted by the Company. The Company may, at its option, prepay freight and seek reimbursement from the Customer. Unless requested in writing by the Customer, the Company will not insure the Goods against loss during transit. If the Company insures any Goods, the cost of insurance shall be the responsibility of the Customer.
- 7.4. The Company may increase the price for the supply of the Goods by giving notice to the Customer at any time before delivery to reflect:
  - 7.4.1. any factor beyond the Company's control (including foreign exchange fluctuations; increases in taxes and duties and increase in labor and material costs);

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- 7.4.2. any request by the Customer to change the delivery dates; quantities, type of Goods and/or the Specification for the Goods and, more generally, any provisions of the Order Acknowledgement. The Company will charge the Customer for any and all costs and expenses which the Company has incurred and/or will incur if a Customer cancels the whole or any part of a Contract; or
- 7.4.3. any delay caused by the instructions of the Customer and/or the failure of the Customer to give the Company accurate and/or adequate information or instructions, including the Delivery Data.
- 7.5. The Company may from time to time demand different terms of payment from those specified herein whenever it reasonably appears that the Customer's financial condition indicates such change is warranted, and may demand assurance of the Customer's ability to pay or otherwise perform the Customer's obligations whenever it reasonably appears that such ability is in doubt. Such demand shall be in writing and the Company may, upon making of such demand, suspend shipments and performance of its obligations under the Contract. If within the period stated in such demand, the Customer fails or refuses such different terms of payment, or fails or refuses to give adequate assurance of its ability to pay or otherwise perform its obligations, the Company may at the Company's option treat such failure or refusal as a repudiation of any portion of an accepted order that has not been fully performed and the Company shall have no further obligation with regard to such order. In all events, time shall be of the essence with regard to the Customer's payment obligations to the Company under the Contract.
- 7.6. The Company may invoice the Customer for the Goods at any time on or after the dispatch of the Goods for delivery (if delivered by the Company) or notification to the Customer that the Goods are ready for collection by the Customer.
- 7.7. The Customer shall pay the invoice in full and in cleared funds by the end of the month following the month in which the invoice was dated. The Customer shall make payment to the bank account nominated by the Company and in US dollars. Time for payment is of the essence. Payments will be applied by the Company to the oldest invoice outstanding.
- 7.8. If the Customer fails to make any payment when due to the Company, then the Customer shall pay interest on the overdue sum at the rate of 4% per annum above the base rate from time to time of the Company's bank. Such interest shall accrue on a daily basis from the due date until the actual date of payment of the overdue amount, whether before or after judgment.
- 7.9. The Customer shall pay all amounts due under the Contract in full and without set off, deduction, withholding or counterclaim (except for any deduction or withholding required by law). The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.
- 7.10. To secure the Customer's prompt and complete payment and performance of any and all present and future indebtedness, obligations and liabilities of the Customer to the Company, the Customer hereby grants to the Company a first priority security interest, with priority over all other liens, claims and encumbrances, in all inventory of goods purchased under the Contract by the Customer from the Company, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modification thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The Customer acknowledges that the security interest is a purchase money security interest under New York law. The Company may file a financing statement for such security interest and the Customer shall execute such statements or other documentation necessary to perfect the Company's security interest in such Goods. The Customer also authorizes the Company to execute, on the Customer's behalf, such statements or other documentation necessary to perfect the Company's security interest in such Goods. The Company shall be entitled to all applicable rights and remedies of a secured party under applicable law.

### **8. Termination**

- 8.1. Without prejudice to any other rights and remedies it may have, the Company may terminate a Contract with immediate effect by giving notice in writing to the Customer if:
  - 8.1.1. the Customer commits a material breach of the Contract and (if such breach is remediable) fails to remedy that breach within fourteen (14) days of the Customer being notified in writing to do so;
  - 8.1.2. the Customer takes (or a third party takes) any step or action in connection with its entering administration, provisional liquidation or composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business; (if the Customer is an individual) is declared bankrupt or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - 8.1.3. the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
  - 8.1.4. the Customer's financial position deteriorates to such an extent that in the Company's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and/or
  - 8.1.5. the Customer is unable to pay its debts when due and/or otherwise indicates that it may be unable to do so.

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- 8.2. Without limiting any other rights and remedies it may have, the Company may suspend the provision of the Goods under the Contract or any other contract between the Customer and the Company if the Customer becomes subject to any of the events listed in Clauses 8.1.2 to 8.1.5, or the Company reasonably believes that the Customer is about to become subject to any of them.
- 8.3. Without limiting any other rights and remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on or by the due date for payment.
- 8.4. The Company may, without any liability to the Customer as a result, terminate the Contract at any time prior to dispatch of the Goods by giving to the Customer at least 5 Business Days' notice in writing.
- 8.5. The Customer may terminate the Contract at any time prior to dispatch of the Goods by giving to the Company at least three (3) Business Days' notice in writing. In such cases:
  - 8.5.1. the Customer shall reimburse the Company for any and all costs and expenses incurred by the Company in respect of the performance of the Contract up to the point of the termination of the Contract, including any and all costs and expenses for all materials purchased for the manufacture of the Goods and for all parts which are fully or partially manufactured as at the date of termination; and
  - 8.5.2. if the Customer fails to make payment of the costs and expenses referred to in Clause 8.5.1, the Company may deliver the Goods to the Customer and invoice the Customer for payment.

The Customer must note that the manufacture of the Goods may commence immediately upon the issue of the Order Acknowledgement and costs are likely to be incurred from such time in the performance of the Contract which shall be recoverable by the Company from the Customer under this Clause.
- 8.6. The Customer may, at the discretion (and with the agreement) of the Company, return any delivered Goods to the Company for re-sale, provided that:
  - 8.6.1. the Customer pays to the Company 40% of the price for those Goods as a re-stocking charge for the returned Goods;
  - 8.6.2. the Goods in question are fast moving items and current stock of the Company;
  - 8.6.3. the Goods are returned to the Company at the Customer's cost; and
  - 8.6.4. any cartons of Goods are full and unopened and the Goods are undamaged (and therefore suitable for resale).
- 8.7. On termination of the Contract, the Customer shall pay to the Company all of the Company's outstanding unpaid invoices and interest, as well as for any costs and expenses incurred by the Company prior to the date of the termination of the Contract in the performance of the Contract (up to the price under the Contract).
- 8.8. Termination of the Contract shall not affect any of the Parties' rights and remedies that have accrued as at termination. Any provision of the Contract that expressly or by implication is intended to come into force on or after termination shall remain in force and effect.

### 9. Liability

- 9.1. Nothing in the Terms shall limit or exclude the Company's liability for:
  - 9.1.1. death or personal injury due to its negligence, or the negligence of its employees, agents or sub-contractors;
  - 9.1.2. fraud or fraudulent misrepresentation; and/or
  - 9.1.3. any matter in which it would be unlawful for the Company to exclude or restrict its liability.
- 9.2. Subject always to Clause 9.1:
  - 9.2.1. the Company shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any:
    - (i) loss of profits or revenues or diminution in value;
    - (ii) loss of business, loss of contracts and/or business opportunity;
    - (iii) loss of anticipated savings;
    - (iv) economic loss;
    - (v) damage to goodwill and/or reputation; and/or
    - (vi) any consequential, indirect, incidental, special, exemplary, punitive or enhanced damages, arising under or in connection with the Contract;



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- 9.2.2. the Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, without limitation, in contract, tort (including negligence), breach of warranty, breach of statutory duty or otherwise shall in no event exceed the price of the Goods under the Contract. The Customer acknowledges that, except as expressly provided otherwise, the remedies provided under the Contract are exclusive and in lieu of all other remedies.
- 9.3. If the Company's performance of the Contract is prevented or delayed as a result of any act and/or omission of the Customer and/or its representatives, the Company shall have no liability for any breach of the Contract arising as a result and the Customer shall reimburse the Customer on demand for any and all costs and expenses which the Company incurs as a result of the Customer's and/or its representatives' actions and/or omissions.

### 10. Insurance Obligations

- 10.1. The Customer shall, for a period of 5 years from the Delivery Date, at its own expense, maintain and carry in full force and effect, commercial general liability (including product liability) in a sum no less than five \$5 million with financial sound and reputable insurers, and upon the Company's request, shall provide the Company with a certificate of insurance evidencing the insurance coverage specified in this Clause. The certificate of insurance shall name the Company as an additional insured.

### 11. Custom Designed Goods

- 11.1. If any Goods are manufactured and/or sold, or any service performed, by the Company, pursuant to specifications or requirements of the Customer ("Custom Designed Goods"), unless specifically agreed in writing to the contrary, (a) the Customer agrees to defend, protect and save harmless the Company against all suits at law and equity and from all damages, claims and demands including attorney's fees and costs, for actual or alleged infringement of any United States or foreign patent, copyright, trademark, or any other intellectual property: and (b) the Customer agrees to indemnify and hold harmless the Company from and against all damages, claims, suits, actions, and demands including attorney's fees and costs which may be brought against the Company because of alleged or actual unfitness of such Custom Designed Goods in their later application and use.
- 11.2. The Customer acknowledges and agrees that it is exclusively liable for any drawings, designs and other specifications provided to the Company for the purpose of fabrication of the Goods and that the Company is under no obligation to correct or review any such drawings, design and other specifications for errors. The Customer warrants that it holds adequate professional indemnity insurance covering the Customer for any loss or damage resulting from any negligent acts, errors or omissions made in respect of such drawings, designs and specifications.

### 11. Custom Designed Goods

- 11.1. If any Goods are manufactured and/or sold, or any service performed, by the Company, pursuant to specifications or requirements of the Customer ("Custom Designed Goods"), unless specifically agreed in writing to the contrary, (a) the Customer agrees to defend, protect and save harmless the Company against all suits at law and equity and from all damages, claims and demands including attorney's fees and costs, for actual or alleged infringement of any United States or foreign patent, copyright, trademark, or any other intellectual property: and (b) the Customer agrees to indemnify and hold harmless the Company from and against all damages, claims, suits, actions, and demands including attorney's fees and costs which may be brought against the Company because of alleged or actual unfitness of such Custom Designed Goods in their later application and use.
- 11.2. The Customer acknowledges and agrees that it is exclusively liable for any drawings, designs and other specifications provided to the Company for the purpose of fabrication of the Goods and that the Company is under no obligation to correct or review any such drawings, design and other specifications for errors. The Customer warrants that it holds adequate professional indemnity insurance covering the Customer for any loss or damage resulting from any negligent acts, errors or omissions made in respect of such drawings, designs and specifications.

### 12. Force Majeure Event

The Company shall not be in breach of the Contract nor liable for any delay in performing (or failure to perform) any of its obligations under the Contract if such delay or failure is as a result of a Force Majeure Event. If the period of delay or non-performance continues for more than 90 days, either Party may terminate the Contract by giving 5 Business Days' notice in writing to the other Party. For the purposes of this Clause, a Force Majeure Event shall include delays caused by adverse weather conditions, traffic delays and/or breakdowns of any carrier transport.

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### 13. Confidentiality:

- 13.1. The Customer undertakes that it shall not at any time disclose to any person any information concerning this Contract and the business, affairs, customers, clients or suppliers of the Company (“**Confidential Information**”), except as permitted by this Clause 13.
- 13.2. All specifications, Drawings, molds, dies, other tooling, models, , designs, technical information or data, written, oral or otherwise furnished by or on behalf of the Company shall remain the property of the Company, whether paid for by the Customer or not, and shall be returned (together with all copies) promptly upon the Company’s request. Such information shall be treated as confidential, and shall not be used, reproduced or disclosed by the Customer.
- 13.3. The Customer may disclose Confidential Information to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Customer’s obligations under the Contract. The Customer shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the Company’s confidential information comply with this Clause 13; and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. The Customer shall only use the Company’s confidential information to perform its obligations under the Contract.
- 13.4. The Customer’s obligations of confidentiality with respect to each item of Confidential Information shall extend for a period of three (3) years from the date of the Company’s acceptance of the last order to which the items of Confidential Information in question relates; provided, however, that the Customer’s obligations of confidentiality with respect to any such items of information which rise to the level of a trade secret (as defined under applicable law) shall remain in full force and effect for so long as such information remains a trade secret under applicable law.
- 13.5. The Parties acknowledge that the rights of the Company hereunder are in addition to those rights that the Company may have under common law or applicable statutes for the protection of trade secrets.

### 14. General

- 14.1. **Assignment:** The Company may at any time assign, transfer, mortgage, charge, sub-contract or deal in any manner with all or any of its rights and obligations under the Contract. The Customer may not assign, transfer, mortgage, charge, sub-contract or otherwise deal in any manner with all or any of its rights and obligations under the Contract without the prior written consent of the Company.
- 14.2. **Entire Agreement:** The Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each Party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each Party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 14.3. **Variation:** Subject to any clause to the contrary in the Terms, no variation of the Contract shall be effective unless it is in writing and signed by the Parties.
- 14.4. **Waiver:** No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 14.5. **Severance:** If any provision or part provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part provision under this Clause shall not affect the validity and enforceability of the rest of the Contract.
- 14.6. **Notices:**
  - 14.6.1. Any notice given to a Party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or such other address as that Party shall specify as a replacement address in writing in accordance with this Clause or sent by fax to its main fax number.
  - 14.6.2. Any notice shall be deemed to have been received: (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address if a Business Day; and (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and (iii) if sent by fax, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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- 14.6.3. This Clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 14.7. **Publicity:** The Customer grants to the Company a limited, non-exclusive, non-transferable, non-royalty bearing license to use the trademarks and logos of the Customer in connection with marketing and promoting the Company and the services provided by the Company, including using Customer's name as a reference.
- 14.8. **Third Party Rights:** No one other than a Party to the Contract (and their permitted assigns) shall have any right to enforce it.
- 14.9. **Governing Law:** The Contract, any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed and construed in accordance with the laws of the State of New York and of the United States of America without regard to principles of conflict of laws, and the Company. The United Nations Convention on the International Sale of Goods shall not apply to any transactions between the Company and the Customer.
- 14.10. **Dispute Resolution:** All disputes, controversies or claims arising out of or relating to this Contract shall be resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (the "**Rules**") by one or more arbitrators appointed in accordance with the Rules. The seat of arbitration shall be in New York County, New York and the arbitration shall be conducted in English. Any award or decision rendered in such arbitration shall be final and binding on the Parties, and judgement maybe entered thereon in any court of competent jurisdiction. Each Party shall pay any and all expenses incurred by such Party in connection with such arbitration proceeding, unless otherwise determined by the arbitrator, who shall have authority to award attorney's fees and costs of arbitration to the prevailing Party. To the fullest extent permitted by law, notwithstanding any arbitration rule or procedure, (a) no controversy or claim arising out of relating to the Contract shall be consolidated or joined with any other person's claim and no class action or representative arbitration shall be permitted under the Contract, and (b) if any class or representative action cannot be waived under applicable law, the parties agree that such action shall be arbitrated.