

Haywood Roto Moulding Ltd T/A Francis Ward Terms and Conditions for the Supply of Goods

1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Conditions	these terms and conditions as amended from time to time in accordance with clause 15.8.
Contract	the contract between the Supplier and the Customer for the supply of Goods in accordance with these Conditions.
Customer	the person or firm who purchases the Goods from the Supplier .
Customer Data	has the meaning given to it in clause 3.5.
Force Majeure Event	has the meaning given to it in clause 14.
Goods	the goods supplied to the Customer by the Supplier under any Contract.
Specification	any technical specification for the Goods as set out in the Supplier's quotation or as otherwise agreed in writing by the Customer and the Supplier .
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, 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 supply of Goods, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier 's quotation, as the case may be.

The Supplier	Haywood Roto Moulding Ltd T/A Francis Ward registered in England and Wales with company number 03748468 whose registered office is at Knowles Ind Est, Buxton Road, Furness Vale High Peak, Derbyshire, SK23 7PH
Services	any services which may be provided by the Supplier to the Customer in connection with the supply of Goods.
Warranty Period	has the meaning given in clause 5.1.

Interpretation:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its personal representatives, successors and permitted assigns.

A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

A reference to **writing** or **written** includes email.

2. BASIS OF CONTRACT

- 2.1 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any descriptions of the Goods contained in the Supplier's marketing materials are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue unless stated otherwise in writing.

3. GOODS

- 3.1 The Goods are described in the applicable Specification.
- 3.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.
- 3.3 It is the Customer's responsibility to:

- 3.3.1 ensure that the Goods listed in the Order and their Specification fully meet the Customers' requirements; and
- 3.3.2 ensure that the Goods and their Specification are fit for purpose, suitable for their intended application and otherwise meet the Customer's requirement and in compliance with the Customer's legal obligations under any relevant law and with any Health and Safety requirements applicable to the Customer.
- 3.4 The Customer shall supply the Supplier with such information relating to the Goods and any relevant requirements as is necessary for the manufacture or supply of the Goods by the Supplier .
- 3.5 The Customer shall be responsible for the accuracy of any advice, information, data, design, plans, drawings or specifications it supplies to The Supplier in relation to the Goods, including the information supplied pursuant to clause 3.4 ("**Customer Data**").
- 3.6 The Supplier shall have no liability for any discrepancies, errors or omissions in any drawing, design or specification it prepares by utilising or incorporating Customer Data or any part of it if such discrepancies, errors or omissions were caused by any inaccuracies in the Customer Data.
- 3.7 the Supplier shall be entitled to amend its quotation at any time before delivery of the Goods if required due to any inaccuracies in the Customer Data.
- 3.8 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer or in accordance with a Specification prepared by utilising or incorporating Customer Data or any part of it, the Customer shall indemnify the Supplier 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 Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of any such Specification if supplied by the Customer or caused by any inaccuracies in the Customer Data. This Clause 3.8 shall survive termination of the Contract.

4. DELIVERY OF GOODS

- 4.1 Unless otherwise set out in the Supplier's quotation or otherwise agreed in writing, delivery shall be made in accordance with the terms set out in the Supplier's quotation and, unless otherwise set out in the quotation, shall be made available by the Supplier for collection by the Customer at the Supplier's premises or other location as may be notified by the Supplier within the agreed lead times.
- 4.2 If the Supplier agrees to deliver the Goods to the Customer:
 - 4.2.1 The Supplier shall be entitled to nominate a carrier; and
 - 4.2.2 the Customer shall acknowledge receipt of the Goods by signing the appropriate delivery note and forward the signed delivery note to the Supplier as indicated on the relevant invoice.
- 4.3 Any dates and lead times quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. Without prejudice to the preceding sentence, the Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure

Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.4 In the event that delivery of Goods is delayed at the Customer's request or as a result of any acts or omissions of the Customer, then, except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Goods, the Supplier shall be entitled to charge the Customer all related costs and expenses (including insurance and storage costs).
- 4.5 If the Customer fails to accept or take delivery of the Goods within fifteen (15) Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery, without prejudice to any other rights or remedies it may have, the Supplier may resell or otherwise dispose of part or all of the Goods as it sees fit and charge the Customer reasonable storage and selling costs.
- 4.6 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 4.7 The Customer shall examine the Goods as soon as reasonably practicable after delivery. The Customer shall notify the Supplier in writing within seven (7) days of delivery, (which the Customer agrees is a reasonable time) of any incomplete or failed delivery and of any loss or damage during carriage, failing which the Customer shall be treated as having waived all claims connected with such incomplete or failed delivery and all claims connected with such loss or damage.

5. QUALITY OF GOODS

- 5.1 The Supplier warrants that on delivery, and, unless a different period is stated by the Supplier in writing, for a period of six (6) months from the date of delivery (**Warranty Period**), the Goods shall conform in all material respects with the Specification.
- 5.2 The Customer acknowledges that certain processes used as part of the manufacture of the Goods, including without limitation galvanisation and painting, may cause residual marks and other aesthetic and textural imperfections and agrees that the existence of any such imperfections in the Goods shall not be a breach of the warranty set out in clause 5.1.
- 5.3 Subject to clause 5.4, if:
 - 5.3.1 the Customer gives notice in writing to the Supplier during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - 5.3.2 The Supplier is given a reasonable opportunity of examining such Goods; and
 - 5.3.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,The Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

- 5.4.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.3;
 - 5.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.4.3 the defect arises as a result of the Supplier following a Specification supplied by the Customer or a Specification prepared by utilising or incorporating Customer Data or any part of it if such defect was caused by any inaccuracies in the Customer Data;
 - 5.4.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
 - 5.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - 5.4.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

6. TITLE AND RISK

- 6.1 The risk in the Goods shall pass to the Customer on delivery.
- 6.2 Title to the Goods shall not pass to the Customer until the earlier of:
 - 6.2.1 The Supplier receives payment in full (in cash or cleared funds) for the Goods and any other Goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of such sums; and
 - 6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.
- 6.3 Until title to the Goods has passed 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 readily identifiable as the Supplier's property;
 - 6.3.2 not remove, deface or obscure any identifying mark 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 on the Supplier's behalf from the date of delivery;
 - 6.3.4 notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4; and
 - 6.3.5 give the Supplier such information as the Supplier may reasonably require from time to time relating to:
 - 6.3.5.1 the Goods; and
 - 6.3.5.2 the ongoing financial position of the Customer.

- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1 it does so as principal and not as the Supplier's agent; and
 - 6.4.2 title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 At any time before title to the Goods passes to the Customer, the Supplier may:
- 6.5.1 by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
 - 6.5.2 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. SERVICES

- 7.1 If and to the extent that the Supplier provides any Services to the Customer in connection with the supply of Goods, the Supplier shall provide the Services using reasonable care and skill, but gives the Supplier other warranties in respect of the Services.
- 7.2 The Customer shall cooperate with the Supplier in all matters relating to the Services.

8. PRICE AND PAYMENT

- 8.1 The price for Goods:
- 8.1.1 shall be the price set out in the Supplier's quotation or, if no price is quoted, the price set out in the Supplier's price list as at the date of the order; and
 - 8.1.2 unless otherwise set out in the Supplier's quotation, shall be exclusive of all costs and charges of packaging, insurance, transport and delivery of the Goods, which shall be invoiced to the Customer.
- 8.2 The Supplier reserves the right to:
- 8.2.1 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 Supplier that is due to:
 - 8.2.1.1 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 8.2.1.2 any delay caused by any instructions of the Customer in respect of the Goods or failure of the Customer to give the Supplier adequate or accurate Customer Data or other information or instructions in respect of the Goods.
- 8.3 In respect of the Goods, the Supplier may invoice the Customer before, on or after delivery.

- 8.4 The Customer shall pay each invoice submitted by the Supplier:
- 8.4.1 within 30 days following the end of the month in which the Supplier receives a valid invoice or in accordance with any other credit terms agreed by the Supplier and confirmed in writing to the Customer; and
 - 8.4.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 8.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax (**VAT**) and any other applicable taxes or duties chargeable from time to time.
- 8.6 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 12, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 8.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 8.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

9. INTELLECTUAL PROPERTY

- 9.1 Unless otherwise agreed between the parties in writing, all Intellectual Property Rights in or arising out of or in connection with the supply of Goods (other than Intellectual Property Rights in any Customer Data), shall be owned by the Supplier or its licensors.

10. CONFIDENTIALITY

- 10.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 10.2.
- 10.2 Each party may disclose the other party's confidential information:
- 10.2.1 to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 10; and
 - 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 10.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

- 11.1 The restrictions on liability in this clause 11 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 11.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - 11.2.1 death or personal injury caused by negligence;
 - 11.2.2 fraud or fraudulent misrepresentation; and
 - 11.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979.
- 11.3 Subject to clause 11.2, the Supplier's total aggregate liability to the Customer in connection with the supply of Goods under any Contract shall not exceed 125% of the total amount paid or payable by the Customer in respect of the Goods supplied under the relevant Order in respect of which the liability arose.
- 11.4 Subject to clause 11.2, the Supplier shall not be liable to the Customer for:
 - 11.4.1 loss of profits;
 - 11.4.2 loss of sales or business;
 - 11.4.3 loss of agreements or contracts;
 - 11.4.4 loss of anticipated savings;
 - 11.4.5 loss of use or corruption of software, data or information;
 - 11.4.6 loss of or damage to goodwill; and
 - 11.4.7 indirect or consequential loss.
- 11.5 Subject to clause 11.2, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1 except as set out in clause 5, and all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.6 This clause 11 shall survive termination of the Contract.

12. TERMINATION

- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 12.1.1 the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 60 days after receipt of notice in writing to do so;
 - 12.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, 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 or, if the step or action is taken in another jurisdiction,

in connection with any analogous procedure in the relevant jurisdiction;

12.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

12.1.4 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

12.2 Without affecting any other right or remedy available to it, the Supplier may suspend all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

13. CONSEQUENCES OF TERMINATION

13.1 On termination of the Contract the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.

13.2 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.

13.3 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.

14. FORCE MAJEURE

14.1 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 three (3) months, the party not affected may terminate the Contract by giving 20 days' written notice to the affected party.

14.2 If due a Force Majeure Event the Supplier has insufficient stocks to meet all its commitments, the Supplier may apportion available stocks between its customers at its sole discretion.

15. GENERAL

15.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

15.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.

- 15.3 The Contract, together with any documents referred to in it, constitutes the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract.
- 15.4 Both parties acknowledge that, in entering into the Contract it does not rely on any statement, representation, assurance or warranty of any person (whether a party to the Contract or not) other than as expressly set out in the Contract.
- 15.5 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties.
- 15.6 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 15.7 Failure or delay by a party in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 15.8 Except as set out in the Contract, no variation of the Contract shall be effective unless it is in writing and signed by the parties.
- 15.9 The parties to this agreement do not intend that any term of this agreement shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 15.10 The formation, existence, construction, performance, validity and all aspects of the Contract and any and all matters relating to it shall be governed by English law and the parties submit to the exclusive jurisdiction of the courts of England and Wales.