

Formaplex Ltd Terms and Conditions of Sale

1. Definitions

In these conditions the following words have the following meanings:

"Authorised Representative"	a sales manager or director of the Company;
"Company"	Formaplex Machining Limited (Company No: 04138909);
"Contract"	any contract between the Company and the Customer incorporating these conditions;
"Customer"	the purchaser of Products and/or Services from the Company as set out in the Company's quotation;
"Deliverables"	any Materials to be supplied to the Customer by the Company as set out in the Company's quotation;
"IPR"	any and all intellectual property rights (including patents, copyright, design rights (whether registered or unregistered), trade marks (whether registered or unregistered) skill, process and/or know-how and other similar rights, whether existing now and/or in the future, wherever existing in the world together with the right to apply for protection of the same;
"Liability"	liability for damages, claims, proceedings, actions, awards, expenses, costs (including administration and legal costs) and any other losses and/or liabilities;
"Materials"	any specifications, materials, data, drawings, designs, details, information, or documents (in whatever format) in relation to the Products, the Services and/or this Contract;
"Order Confirmation"	confirmation given in accordance with paragraph 3.2;
"Products"	the items and/or goods to be supplied to the Customer by the Company including Deliverables, components, parts, patterns and/or tooling as set out in the Company's quotation; and
"Services"	the services and/or work to be performed by the Company for the Customer including tooling inspection and/or assembly as set out in the Company's quotation.

2. Basis Of Contract

- 2.1 All Contracts include these terms and conditions to the exclusion of any terms or conditions endorsed on, delivered with or contained in the Customer's purchase order, confirmation of order, specification or other document. All quotations and offers are made and all orders are accepted subject to these terms and conditions and to the exclusion of any other terms, conditions or warranties unless expressly accepted in writing signed by an Authorised Representative of the Company.
- 2.2 These conditions supersede all previous terms and conditions and replace any terms and conditions previously notified to the Customer.
- 2.3 No variation to these conditions shall be binding on the Company unless contained in a quotation, or agreed in writing signed by an Authorised Representative of the Company.
- 2.4 The Customer acknowledges that it does not rely on any representation and/or warranty which is not set out in or made in accordance with these conditions. No representation or warranty (oral or otherwise) concerning the Products and/or Services will bind the Company unless set out in these conditions or given in writing signed by an Authorised Representative of the Company.

3. Quotations and Orders

- 3.1 "Quotations" are only valid for a period of 30 days from their date. Quotations may be withdrawn by the Company at any time by oral or written notice. Quotations are mere estimates which are not binding on the Company. If the Customer approves a quotation it must place an order for Products and/or Services incorporating these conditions. Any purported acceptance of a quotation shall be deemed to be an order placed for the Products and/or Services referred to in the quotation.
- 3.2 The Customer shall be responsible for the accuracy of any order placed for Products and/or Services. The Company may at its sole discretion (but shall not be obliged to) accept any order placed by the Customer for Products and/or Services which shall only become a binding Contract after the Company's acceptance thereof or confirmation in writing signed by an Authorised Representative of the Company thereof (whichever is sooner).

4. Cancellation and Postponement

- The Company may at its sole discretion (but shall not be obliged to) agree to a Customer's request to cancel or postpone delivery or collection of Products and/or performance of Services. Such agreement shall only be effective if given in writing signed by an Authorised Representative of the Company and shall be conditional on:
- 4.1 the Customer paying to the Company (on a full indemnity basis) an amount equal to not less than 50% of the price of the Products and/or Services or if greater than 50% of the price of the Products and/or Services the total value of the work undertaken by the Company in relation to the Contract (whether Products and/or Services are completed or otherwise) up until the period finishing 24 normal working hours after Company agrees in writing signed by an Authorised Representative of the Company to the Customer's request less any sums already paid by the Customer to the Company under this Contract; and
 - 4.2 for the duration of any postponement, the Customer paying all costs and expenses of the Company and Liability incurred by the Company as a result including reasonable charges for storage, transportation and insurance; and
 - 4.3 the Company having no Liability to the Customer in relation to any cancelled and/or postponed Contract.

5. Delivery and Performance

- 5.1 Any dates and times for delivery, collection and/or performance are estimates only and time is not of the essence in relation to such dates and times.
- 5.2 The Company will use reasonable endeavours to ensure delivery, collection and/or performance on the dates and at the times specified in the Order Confirmation.
- 5.3 Where Products are to be delivered or collected in instalments or Services are to be performed in stages, each delivery or collection or stage shall constitute a separate and distinct contract and failure by the Company to deliver or make available for collection or perform, or any claim by the Customer in respect of, any instalment or stage shall not entitle the Customer to repudiate and/or terminate this Contract as a whole.
- 5.4 The Company shall not be required to fulfil orders placed for Products and/or Services by the Customer in the sequence in which they are placed or accepted.
- 5.5 The Company shall deliver the Products to the Customer's place of business at the time the Company issues its quotation unless otherwise agreed in writing.
- 5.6 The Customer is responsible at its own cost for unloading Products when delivered to the Customer and loading Products when collected by the Customer.
- 5.7 Delivery will be made during normal working hours on working days unless agreed otherwise in writing and the Customer shall procure that the Company has free right of access to the address for delivery for the purpose of delivering the Products.
- 5.8 If the parties agree that Products are to be collected by the Customer then the Customer shall collect or arrange collection of the Products by the date and time specified in the Order Confirmation, failing which the Company may charge for storage and insurance of the same.
- 5.9 If the Customer refuses to take delivery (or re-delivery) of or to collect any Products and/or to allow performance of the Services, then the Company shall be entitled to:
 - 5.9.1 withhold delivery and/or performance of any other Products and/or Services;

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5.9.2 deliver the Products to the Customer, store the Products until delivery or collection, or dispose of the Products at the Customer's expense; and/or

5.9.3 treat this Contract as repudiated by the Customer and have the right to rescind this Contract.

5.10 The Customer shall pay (on a full indemnity basis) for any and all costs and Liability incurred by the Company in relation to the Customer's refusal to take delivery of the Products and/or to allow performance of the Services and/or the Customer's failure to collect Products ready for collection.

5.11 The Company will (at its sole option) either refund the price of or replace free of charge any Products damaged or missing from a delivery made by on behalf of the Company provided that the event is notified to the Company within 5 normal working days of delivery or the date of anticipated delivery. The Company shall have no Liability whatsoever for Products damaged or missing not so notified.

6. Price and Payment

6.1 The price of the Products and/or the Services shall be as quoted to the Customer unless the parties agree otherwise.

6.2 Unless the Company's quotation specifies otherwise, prices are exclusive of the Company's charges for transport, packaging, packing materials and/or insurance (if any) and of any applicable VAT for which the Customer shall additionally be liable.

6.3 Unless the parties agree otherwise, the Company may invoice the price as follows:

6.3.1 50% on the Customer accepting a quotation or placing an order (whichever is earlier); and

6.3.2 50% within 7 days of the commencement of delivery or collection of the Products or performance of the Services as the case may be (unless the same are rejected in accordance with these conditions).

6.4 The Company's terms of payment are 30 days end of month from the date of invoice unless the parties agree otherwise in writing.

6.5 If payment in full is not made to the Company when due then: the Company may withhold or suspend future or current deliveries of the Products and/or performance of the Services and delivery and/or performance under any other Contract with the Customer; and the Company may charge reasonable administration costs and/or interest (both before and after judgment) on the amount unpaid at the rate of 4% above the base rate from time to time of the Company's bank from time to time.

6.6 The Customer shall pay all sums due to the Company under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies. Payment shall not be deemed to be made until the Company has received either cash or cleared funds in respect of the full amount outstanding.

7. Specification and Acceptance

7.1 The quantity, quality and description for the Products, Services and/or Deliverables shall be as set out in the Company's quotation unless the Company agrees otherwise in writing signed by an Authorised Representative of the Company.

7.2 The specification for the Products, Services and/or Deliverables shall be that supplied by the Customer or supplied by the Company as the case may be, and for which the Customer has been quoted, unless otherwise agreed in writing signed by an Authorised Representative of the Company.

7.3 The Customer shall be responsible for providing the Company with all Materials and all raw materials (unless the Company is to prepare or source these under the Contract) and/or access to premises, necessary for the Company to perform the Contract, and the Company shall have no Liability for any delay or non-performance pending receipt of the same.

7.4 The Customer shall satisfy itself that any specification or Materials supplied by the Customer and any Deliverables based thereon are accurate and that any Products and/or Services contemplated by them are adequate and fit for the purpose for which the Customer intends to use them.

7.5 The Company shall have no Liability whatsoever for any specification or Materials supplied by the Customer or any Deliverables, Products and/or Services (as the case may be) based thereon and/or approved by the Customer, and the Customer agrees to indemnify and keep indemnified the Company against any and all Liability arising out of the Company's use of them.

7.6 The Company may submit a sample or test work or Deliverables to the Customer for approval before finishing a Contract in which case the Company shall have no Liability for any delay or non-performance pending receipt of such approval, which shall be deemed given if the Customer fails to notify the Company otherwise in writing within 5 days after of submission of the sample or test work or Deliverables as the case may be or, if earlier, when received by the Company in writing. All samples and test work will be carried out at the Customer's cost

7.7 The Products and/or Services shall be deemed to have been accepted by the Customer as conforming with the Contract on delivery, collection or performance as the case may be if:

7.7.1 the Products and/or Services materially conform with the relevant specification;

7.7.2 the Products and/or Services are used by or on behalf of the Customer in any way and for any purpose whatsoever;

7.7.3 the Customer has approved any sample or test work and the Products and/or Services are of materially the same description, specification and quality as the sample or test work as the case may be; and/or

7.7.4 the Customer has approved any Deliverables and the Products and/or Services are of materially the same description, specification and quality as the Products and/or Services as the case may be contemplated by those Deliverables;

and the Customer waives absolutely any right to reject, or claim in respect of, them. Otherwise, unless the Customer notifies the Company in writing within 7 days of delivery, collection or performance as the case may be that the Customer rejects the same the Products and/or Services shall be deemed to have been accepted.

8. Intellectual Property Rights And Confidentiality

8.1 Subject to payment in full of all moneys due to the Company from the Customer, such right title and interest as the Company may have in any IPR in the Products (or any part of them), any Deliverables and/or arising from the Services, that are used and/or developed exclusively for the Customer, shall vest in the Customer absolutely.

8.2 The Company shall be free to utilise for the benefit of its other customers any skill, process and/or know-how that it may develop or acquire in the production of the Products and/or performance of the Services.

8.3 The Customer warrants that the Company is entitled to use any specification, raw materials and Materials supplied to the Company for the purposes of this Contract and that no IPR or other rights of any third party will be infringed by the Company using the same.

8.4 Each party agrees with the other that it will keep all confidential business information regarding the other party confidential and not disclose or use such information which may be disclosed to it or which it may learn except where such information is public knowledge, it is required to be disclosed by law or it is required for the proper performance of this Contract.

9. Property And Risk

9.1 Risk in the Products shall pass to the Customer at the time of delivery. Delivery shall be deemed to occur:

9.1.1 at the time when the Products arrive at the place of delivery if the Company delivers the Products by its own transport or arranges transport in accordance with a specific contractual obligation;

9.1.2 as soon as the date and time for collection specified in the Order Confirmation have passed if the Customer fails to collect Products that are available for collection; or

9.1.3 otherwise, when the Products leave the Company's premises.

9.2 The Company retains all title and ownership in the Products until it has received payment of all sums due and/or owing for all Products and/or Services supplied to the Customer by the Company under this Contract and any other agreement between the Company and the Customer. Until title in the Products has passed to the Customer, the Products must be stored

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separately from any products or goods belonging to the Customer or any third party and must be clearly marked and identified as being the Company's property. The Customer agrees that the Company shall be entitled to enter the Customer's premises to check compliance with this condition and/or take possession of the Products.

- 9.3 Until title in the Products has passed to the Customer, the Customer shall keep the Products insured for the price at which the Products were sold to the Customer against all normal risks and shall procure that the Company's interest is noted on such policy of insurance account to the Company for any proceeds of such policy of insurance in relation to the Products upon receipt of the same. Any monies received from the Customer by the Company in accordance with this condition shall not discharge the Customer's liability to pay the price for the goods plus interest accrued in accordance with condition 6.5 but shall be set off against any such liability.
- 9.4 The Company shall be under no obligation to insure and shall have no Liability for loss of or damage to any:
- 9.4.1 work in progress, and any equipment or machinery used and/or developed solely and exclusively to produce the Products, retained by the Company after completion, termination, postponement or cancellation of a Contract;
- 9.4.2 Materials and raw materials supplied by the Customer; and
- 9.4.3 Products of which the Customer refuses delivery or which the Customer fails to collect.
10. **Default**
- 10.1 If the Customer:
- 10.1.1 fails to make any payment to the Company when due;
- 10.1.2 breaches the terms of this Contract and, if the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;
- 10.1.3 persistently breaches any one or more terms of this Contract;
- 10.1.4 goes into liquidation or has an administrator appointed, becomes insolvent (including without limitation being unable to pay its debts within the meaning of s123 Insolvency Act 1986 (as amended from time to time) or makes a composition or arrangement with its creditors; or has an administrative receiver or a receiver appointed over all or any part of its assets or undertaking; or ceases to carry on business; or anything analogous shall occur in relation to the Customer or the Customer appears reasonably to the Company to be financially inadequate to meet its obligations under the Contract; and/or
- 10.1.5 it appears to the Company (acting reasonably) that the Customer is about to suffer any of the above events;
- then the Company shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in condition 10.2.
- 10.2 If any of the events set out in condition 10.1 occurs in relation to the Customer then:
- 10.2.1 the Company may enter, without prior notice, any premises of the Customer (or premises of third parties with their consent) where Products owned by the Company may be and repossess and dispose of or sell any Products found which are owned by the Company so as to discharge any sums due to the Company under this Contract or any other agreement with the Customer;
- 10.2.2 the Customer automatically is no longer entitled to sell, use or part with the possession of any Products owned by the Company until the Customer has paid in full all sums due to the Company under this Contract and any other agreement with the Customer unless the Company gives its express written agreement to such use and/or disposal of the Products;
- 10.2.3 the Company may withhold any undelivered or uncollected Products and stop any Products in transit;
- 10.2.4 the Company may withhold the performance of any Services and cease any Services in progress;
- 10.2.5 the Company may cancel, terminate and/or suspend without Liability to the Customer any contract with the Customer; and/or
- 10.2.6 all monies owed by the Customer to the Company shall immediately become due and payable.
- 10.3 The Company shall have a lien over all property or goods belonging to the Customer and Materials which are in the Company's possession in respect of all sums due to the Company.
- 10.4 If any monies due to the Company from the Customer have not been paid within 14 days of the due date the Company may sell any Materials, property or goods over which it has a lien (and the Customer agrees that the Company may give good title for such property and/or goods) and shall apply the proceeds of sale firstly in discharging any costs or expenses of sale, secondly in repaying any interest owed by the Customer to the Company, thirdly in payment of any principal sums owed to the Company and fourthly the Company shall account to the Customer for the remainder (if any).
- 10.5 If this Contract is terminated before completion of the Products and/or Services (other than due to the Company's default), the Customer must pay (on a full indemnity basis) to the Company an amount equal to 50% of the price of the Products and/or Services or the total value of the work undertaken by the Company under the Contract up to the period finishing 24 working hours after termination (whichever is greater) less any sums paid to the Company under this Contract.
11. **Guarantees**
- 11.1 Subject to these conditions, Products (including tooling) supplied by the Company are guaranteed for (3) three months from the date of delivery to substantially conform to the specifications of the Customer and be substantially free from defects in material and workmanship. In addition where the Product supplied is tooling for the guarantee to be valid the Customer must ensure and prove to the Company that the tooling is and has been (at the Customer's sole cost):
- 11.1.1 housed, cleaned and maintained properly; and
- 11.1.2 installed, set-up, sequenced and operated correctly
- 11.2 Subject to these conditions, the Products (specifically including tooling) and/or Services will at the date of completion of the performance of the Services and/or of delivery or collection of the Products as the case may be free from material defects in materials and/or workmanship and:
- 11.2.1 where samples and test work are approved by the Customer, be the same in all material respects as the samples or test work as the case may be; or
- 11.2.2 where Deliverables are approved by the Customer, be the same in all material respects as the Products and/or Services contemplated by the Deliverables; or
- 11.2.3 where no samples, test work and/or Deliverables are approved by the Customer, conform in all material respects with the relevant specification(s).
- 11.3 The Company shall have no Liability whatsoever in respect of:
- 11.3.1 any defect whatsoever in the Products and/or Services arising from any specification and/or Materials supplied by the Customer;
- 11.3.2 any defect whatsoever in the Products and/or Services arising from any raw materials and/or other items supplied by the Customer or sourced by the Company from a specified supplier at the Customer's direction;
- 11.3.3 the Products and/or Services not being fit for purpose and/or of satisfactory quality on account of raw materials and/or other items used at the Customer's direction;
- 11.3.4 any fault arising after risk in the Products has passed which are caused by any subsequent mechanical, chemical, electrolytic or other damage not due to a defect in the Products and/or Services as appropriate;
- 11.3.5 any fault or defect arising or caused after risk in the Products has passed by wilful damage, failure to follow the Company's instructions, misuse, alteration or repair of Products and/or Services without the Company's approval, improper maintenance or negligence on the part of the Customer or a third party.

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- 11.4 If any Products and/or Services are not compliant with conditions 11.1 and/or 11.2 and/or prove to be defective, and are covered by the guarantees in conditions 11.1 and/or 11.2, then the Company shall at its sole option either repair, replace, refund or re-perform such Products and/or Services. Provided the Company complies with this condition the repair, replacement, refund or re-performance shall be the Customer's sole remedy in respect of claims under such guarantees.
- 11.5 Any work carried out by the Company which is not covered by the guarantees in conditions 11.1 and/or 11.2 will be charged for.
- 11.6 The Company shall have no Liability to the Customer under the guarantees in conditions 11.1 and/or 11.2 unless any non-compliance or defect is notified to the Company within 5 normal working days of the non-compliance and/or defect becoming apparent or suspected or when it should reasonably have become apparent to or suspected by the Customer.
- 11.7 The guarantees in conditions 11.1 and/or 11.2 will not apply if the Customer has not paid in full for the relevant Products and/or Services on the due date for payment.
- 11.8 The Company, if it requests, shall have the right to inspect any allegedly non-compliant and/or defective Products and/or the subject-matter of any allegedly non-compliant and/or defective Services at a mutually convenient time, and the Company will not have any Liability for non-compliant and/or defective Products and/or Services until it has been allowed to make such inspection.
- 11.9 The guarantees in conditions 11.1 and/or 11.2 will not apply if repairs and or servicing of the Products (and specifically tooling) is carried out by any third party not approved by the Company in writing.
12. **Limitations On Liability**
- 12.1 The Company shall have no Liability:
- 12.1.1 to the extent that such Liability has been caused or contributed to by the Customer;
- 12.1.2 where the Company is unable to perform its obligations pursuant to the Contract by reason of the Company being unable (for whatever reason) to use Materials supplied by the Customer.
- 12.2 The Company shall have no Liability to the Customer if the price for the Products and/or the Services has not been paid in full by the due date for payment.
- 12.3 The Company shall have no Liability for damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Products and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
- 12.4 The Customer must give the Company a reasonable opportunity to remedy any matter for which the Company is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Company shall have no Liability to the Customer for that matter.
- 12.5 The Customer shall produce to the Company written evidence of any claims for which it is alleged that the Company is liable together with written details of how the loss was caused by the Company and the steps the Customer has taken to mitigate the loss before the Company shall have any Liability for the claim by the Customer.
- 12.6 The Company shall have no Liability to the Customer to the extent that the Customer is covered by any policy of insurance and the Customer shall ensure that the Customer's insurers waive all rights of subrogation against the Company.
- 12.7 The Company shall have no Liability for any delay in performance of this Contract to the extent that such delay is due to any event(s) outside the Company's reasonable control (including acts of God, war, flood, fire, labour disputes, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions, accident, theft and any other similar events). If the Company is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
- 12.8 The Company shall have no Liability to the Customer for any:
- 12.8.1 consequential losses;
- 12.8.2 loss of profits and/or damage to goodwill;
- 12.8.3 economic and/or other similar losses;
- 12.8.4 special damages and indirect losses; and/or
- 12.8.5 business interruption, loss of business, contracts, opportunity and/or production.
- 12.9 The Customer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer.
- 12.10 The Company's total Liability to the Customer shall not exceed the 125% of the price of the Products and/or Services under this Contract. To the extent that any Liability of the Company to the Customer would be met by any insurance of the Company then the Liability of the Company shall be extended to the extent that such Liability is met by such insurance.
- 12.11 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
- 12.11.1 Liability for breach of contract and/or under this Contract;
- 12.11.2 Liability in tort (including negligence);
- 12.11.3 Liability for breach of statutory duty; and
- 12.11.4 Liability for breach of Common Law
- except condition 12.10 which shall apply once only in respect of all the said types of Liability.
- 12.12 Nothing in this Contract shall exclude or limit the Liability of the Company for death or personal injury due to its negligence or any Liability which is due to the Company's fraud or any other liability which cannot be excluded or limited as a matter of law.
- 12.13 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
13. **General**
- 13.1 The Customer shall indemnify and keep indemnified the Company against any and all Liability (on a full indemnity basis) suffered by the Company arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Customer.
- 13.2 No waiver by the Company of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
- 13.3 If any provision of this Contract is held to be invalid or unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
- 13.4 The Company may assign, charge, sub-contract, delegate, transfer, place in trust or dispose of this Contract and/or any of its rights or obligations under it without the prior written consent of the Customer and any references to the Company in this Contract shall include any sub-contractor, carrier, employee, representative or agent of the Company as appropriate. The Customer shall not assign its interest in the Contract (or any part) without the written consent of the Company.
- 13.5 All third party rights are excluded and no third party shall have any right to enforce this Contract.
- 13.6 This Contract is governed by and interpreted in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.
- 13.7 Where in this Contract a list of items follows the word "including" or "includes" then such list is not to be interpreted as being an exhaustive list. Any such list shall not be treated as excluding any item which might have been included in such list having regard to the context of the contractual term in question. The ejusdem generis principle is not to be applied when interpreting this Contract.