



STANDARD TERMS AND CONDITIONS

THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THE PROVISIONS OF CLAUSE 12 (LIMITATION OF LIABILITY).

1. Interpretation

The following definitions and rules of interpretation apply in this agreement.

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.

Commencement Date: has the meaning given in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 16.8.

Contract: the contract between MDJ and the Customer for the supply of Goods and/or Services in accordance with these Conditions.

Control: shall be as defined in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.

Customer: the person or firm who purchases the Goods and/or Services from MDJ.

Deliverables: the deliverables set out in the Order produced by MDJ for the Customer.

Delivery Location: has the meaning given in clause 4.2.

Force Majeure Event: has the meaning given to it in clause 15.

Goods: the goods (or any part of them) set out in the Order.

Goods Specification: any specification for the Goods, including any relevant plans or drawings that is agreed in writing by the Customer and MDJ.

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

Order: the Customer's order for the supply of Goods and/or Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of MDJ's quotation, or overleaf, as the case may be.

MDJ: MDJ MANUFACTURING LTD registered in England and Wales with company number 07042405.

MDJ Services: the services, including the Deliverables, supplied by MDJ to the Customer as set out in the Service Specification.

1.2 Interpretation:

- (a) A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (e) A reference to writing or written includes fax and email.

2. Basis of contract

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when MDJ issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.3 Any samples, drawings, descriptive matter or advertising issued by MDJ and any descriptions of the Goods or illustrations or descriptions of the Services contained in MDJ's catalogues or brochures or online on any websites are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force. This is not a sale by sample.

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 trade, custom, practice or course of dealing.

2.5 Any quotation given by MDJ shall not constitute an offer, and is only valid for a period of 20 Business Days from its date of issue.

2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

3. Goods

3.1 The Goods are described in MDJ's catalogue, brochure, online or as modified by any applicable Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by the Customer, the Customer shall indemnify MDJ against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation



STANDARD TERMS AND CONDITIONS

and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by MDJ arising out of or in connection with any claim made against MDJ for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with MDJ's use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 MDJ reserves the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and MDJ shall notify the Customer in any such event.

4. Delivery of Goods

4.1 MDJ shall ensure that:

(a) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and MDJ reference numbers, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

(b) it states clearly on the delivery note any requirement for the Customer to return any packaging material to MDJ. The Customer shall make any such packaging materials available for collection at such times as MDJ shall reasonably request. Returns of packaging materials shall be at MDJ's expense.

4.2 MDJ shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after MDJ notifies the Customer that the Goods are ready.

4.3 Delivery of the Goods shall be completed on the completion of loading of the Goods at the Delivery Location.

4.4 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. MDJ 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 MDJ with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If MDJ fails to deliver the Goods, its liability shall be limited to the 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. MDJ shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide MDJ with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods within three Business Days of MDJ notifying the Customer that the Goods are ready, then except where such failure or delay is caused by a Force Majeure Event or by MDJ's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which MDJ notified the Customer that the Goods were ready; and

(b) MDJ shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

(c) If ten Business Days after MDJ notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, MDJ may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.7 MDJ 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.

5. Quality of Goods

5.1 MDJ warrants that on delivery, the Goods shall:

(a) conform in all material respects with their description and any applicable Goods Specification;

(b) be free from material defects in design, material and workmanship;

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979); and

(d) be fit for any purpose held out by MDJ.

5.2 Subject to clause 5.3, MDJ shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full if:

(a) the Customer gives notice in writing 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;

(b) MDJ is given a reasonable opportunity of examining such Goods; and

(c) the Customer (if asked to do so by MDJ) returns such Goods to MDJ's place of business at MDJ's cost.

5.3 MDJ shall not be liable for the Goods' failure to comply with the warranty in clause 5.1 if:

(a) the Customer makes any further use of such Goods after giving a notice in accordance with clause 5.2;



STANDARD TERMS AND CONDITIONS

- (b) the defect arises because the Customer failed to follow MDJ'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;
 - (c) the defect arises as a result of MDJ following any drawing, design or Goods Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of MDJ;
 - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
 - (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4 Except as provided in this clause 5, MDJ shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by MDJ.
- 6. Title and risk**
- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until MDJ receives payment in full (in cash or cleared funds): -
- (a) MDJ for the Goods;
 - (b) and any other goods that MDJ has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- (a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as MDJ's property;
 - (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on MDJ's behalf from the date of delivery;
 - (d) notify MDJ immediately if it becomes subject to any of the events listed in clause 13.2(b) to clause 14.2(d); and
 - (e) give MDJ such information relating to the Goods as MDJ may require from time to time.
- 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 MDJ receives payment for the Goods. However, if the Customer resells the Goods before that time:
- (a) it does so as principal and not as MDJ's agent; and
 - (b) title to the Goods shall pass from MDJ to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 13.2(b) to clause 14.2(d), then, without limiting any other right or remedy MDJ may have:
- (a) the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and
 - (b) MDJ may at any time:
 - (i) require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
 - (ii) 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. Supply of Services (if applicable)**
- 7.1 MDJ shall supply the Services to the Customer in accordance with the Service Specification in all material respects.
- 7.2 MDJ shall use reasonable endeavours to meet any performance dates for the Services but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3 MDJ reserves the right to amend the Service Specification if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and MDJ shall notify the Customer in any such event.
- 7.4 MDJ warrants to the Customer that the Services will be provided using reasonable care and skill.
- 8. Customer's obligations**
- 8.1 The Customer shall:
- (a) ensure that the terms of the Order and any information it provides in the Goods Specification are complete and accurate;
 - (b) co-operate with MDJ in all matters relating to the Services;
 - (c) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
 - (d) comply with all applicable laws, including health and safety laws; and
 - (e) comply with any additional obligations as set out in the Goods Specification.
- 8.2 If MDJ's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):



STANDARD TERMS AND CONDITIONS

- (a) without limiting or affecting any other right or remedy available to it, MDJ shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays MDJ's performance of any of its obligations;
- (b) MDJ shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from MDJ's failure or delay to perform any of its obligations as set out in this clause 8.2; and
- (c) the Customer shall reimburse MDJ on written demand for any costs or losses sustained or incurred by MDJ arising directly or indirectly from the Customer Default.

9. Charges and payment

9.1 The price for Goods:

- (a) shall be the price set out in the Order or, if no price is quoted, the price set out in MDJ's published price list as at the date of the order; and
- (b) shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to the Customer.

9.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of MDJ in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the charges shall include every cost and expense of MDJ directly or indirectly incurred in connection with the performance of the Services.

9.3 In respect of Goods, MDJ shall invoice the Customer on or at any time after completion of delivery. In respect of Services, MDJ shall invoice the Customer on a monthly basis in arrears.

9.4 The Customer shall pay each invoice submitted by MDJ:

- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by MDJ and confirmed in writing to the Customer; and
- (b) in full and in cleared funds to a bank account nominated in writing by MDJ, and

time for payment shall be of the essence of the Contract.

9.5 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by MDJ to the Customer, the Customer shall, on receipt of a valid VAT invoice from MDJ, pay to MDJ such additional amounts in respect of VAT as are

chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

9.6 If the Customer fails to make a payment due to MDJ under the Contract by the due date, then, without limiting MDJ's remedies under clause 13 (Termination), the Customer shall pay interest and compensation on the overdue sum in accordance with the Late Payment of Commercial Debts Act 1998 (and all associated legislation).

9.7 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).

10. Intellectual property rights

10.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by MDJ.

10.2 MDJ grants to the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding materials provided by the Customer) for the purpose of receiving and using the Services and the Deliverables in its business.

10.3 The Customer shall not sub-license, assign or otherwise transfer the rights granted by clause 10.2.

10.4 The Customer grants MDJ a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Customer to MDJ for the term of the Contract for the purpose of providing the Services to the Customer.

11. Confidentiality

11.1 Each party undertakes that it shall not at any time, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.2.

11.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.



STANDARD TERMS AND CONDITIONS

12. Limitation of liability: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE.

12.1 Nothing in these Conditions shall limit or exclude MDJ's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
- (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
- (e) defective products under the Consumer Protection Act 1987.

12.2 Subject to clause 12.1, MDJ shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

- (a) loss of profits;
- (b) loss of sales or business;
- (c) loss of agreements or contracts;
- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) any indirect or consequential loss.

12.3 Subject to clause 12.1, MDJ's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, arising under or in connection with the Contract, shall be limited to 100% of the total charges paid under the Contract.

12.4 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

12.5 This clause 12 shall survive termination of the Contract.

13. Termination

13.1 Without affecting any other right or remedy available to it, either party may terminate the Contract by giving the other party not less than 1 months' written notice.

13.2 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:

- (a) 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 10 days after receipt of notice in writing to do so;
- (b) 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), 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;

- (c) 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
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

13.3 Without affecting any other right or remedy available to it, MDJ 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 the due date for payment.

13.4 Without affecting any other right or remedy available to it, MDJ may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between the Customer and MDJ 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 13.2(b) to clause 14.2(d), or MDJ reasonably believes that the Customer is about to become subject to any of them.

14. Consequences of termination

14.1 On termination of the Contract:

- (a) the Customer shall immediately pay to MDJ all of MDJ's outstanding unpaid invoices and interest and, in respect of Services and Goods supplied but for which no invoice has been submitted, MDJ shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the Customer shall return all of MDJ Materials and any Deliverables or Goods which have not been fully paid for. If the Customer fails to do so, then MDJ may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

14.2 Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

14.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.



STANDARD TERMS AND CONDITIONS

15. Force majeure

15.1 Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.

16. General

16.1 Assignment and other dealings

- (a) MDJ 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.
- (b) The Customer shall not assign, transfer, mortgage, charge, subcontract, 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 MDJ.

16.2 Notices

- (a) Any notice or other communication 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 sent by fax to its main fax number or sent by email to sales@mdjmanufacturing.co.uk.
- (b) Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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; or, if sent by fax or email, at 9.00 am on the next Business Day after transmission.
- (c) 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.

16.3 **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 shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

16.4 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a

waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

16.6 Entire agreement.

- (a) 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.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and 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 based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

16.7 **Third parties rights.** The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

16.8 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

16.9 **Governing law.** The Contract and 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 by and construed in accordance with the law of England and Wales.

16.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.