

Frederick Cooper (Birmingham) Limited - Standard Terms and Conditions for the supply of Services ("Terms")

1. Introduction

1.1 In these Terms a reference to:

- "Contract" means the contract between *Frederick Cooper* and *You* for the supply of *Services* in accordance with these *Terms*;
- "Components" shall mean the materials supplied by *You* to *Frederick Cooper* and upon which the *Services* are to be performed;
- "*Frederick Cooper*" means *Frederick Cooper* (Birmingham) Limited;
- "*Order*" means *Your* order for *Services* as set out in the *Purchase Order*;
- "*Processed Component*" means *Components* on which *Frederick Cooper* has performed the *Services*;
- *Purchase Order* means the method by which *You* communicate the *Services* *You* require from *Frederick Cooper* from time to time;
- "*Services*" means any services to be supplied by *Frederick Cooper* under the *Contract*;
- "*Unit Price*" means *Frederick Cooper's* charge per *Processed Component*, as set out in the *Order*; and
- "*You*" or "*Your*" means the person or firm who purchases the *Services* from *Frederick Cooper*.

1.2 These *Terms* apply to all *Orders* to the exclusion of any other terms, including any which may be implied by course of dealing. *Your* terms and conditions of contracting are expressly excluded unless there is a specific contract between *You* and *Frederick Cooper* governing this *Order*. Where there is a specific contract it will apply in conjunction with these *Terms* to the extent that they are consistent with that contract.

1.3 No variation, and no additional terms and conditions to this *Order*, will be valid unless accepted in writing and signed by *Frederick Cooper*.

2. The Contract

2.1 The *Order* constitutes an offer by *You* to purchase *Services* from *Frederick Cooper* in accordance with these *Terms*.

2.2 The *Order* shall only be deemed to be accepted when *Frederick Cooper* issues a written acceptance of the *Order* or upon *Frederick Cooper's* commencement of the *Services* ("Order Acceptance"), whichever is earlier, at which point the *Contract* shall come into existence, as set out in any *Order Acceptance* form sent by *Frederick Cooper* in relation to *Your Purchase Order* and these *Terms* ("Contract Documents").

2.3 The *Contract* constitutes the entire agreement between *You* and *Frederick Cooper*. *You* acknowledge *You* have not relied on any statement made by *Frederick Cooper* which is not set out in the *Contract Documents*.

2.4 Should it become necessary to amend any detail of the *Order* following the issue of the *Order Acceptance*, this variation will only become part of the *Contract* when agreed in writing by *Frederick Cooper*.

3. Performance

3.1 *Frederick Cooper* will provide the *Services* to *You* in accordance in all material respects with any specification *You* have supplied and that has been included in the *Order Acceptance*.

3.2 Where no specification has been supplied by *You*:-

3.2.1 *Frederick Cooper* will provide the *Services* based on the information *You* have supplied and use all reasonable endeavours to ensure the *Services* meet the purpose for which they are required.

3.2.2 *Frederick Cooper* will not be liable if the *Services* do not meet the particular level of performance that they are required for.

3.3 Where *Frederick Cooper* provides advice on specification, *You* remain responsible for ensuring that the specification is adequate for the purposes *You* require.

4. Delivery

4.1 *Frederick Cooper* will use all reasonable endeavours to meet any delivery dates specified by *You*, but any such dates are estimates only and time shall not be of the essence for the performance of the *Services* unless specifically agreed in writing by *Frederick Cooper*.

4.2 *Frederick Cooper* will not be liable for any failure or delay in performance of any obligations under the *Contract* due to anything beyond its reasonable control, such as adverse weather, industrial dispute or failure of a utility service. Where such events occur, *Frederick Cooper* will use reasonable endeavours to provide the *Services*. However, where the circumstances prevent the provision of all or part of the *Services* for more than 14 days, *Frederick Cooper* will discuss progress with *You* and reserves the right to terminate the *Contract*.

5. Your Obligations

You will:

5.1 Ensure the details of the *Order* and any information provided regarding a specification are complete and accurate.

5.2 Ensure that any specification requested by *You* or proposed by *Frederick Cooper* is sufficient to ensure that the end product of the *Services* is fit for the purpose required by *You*.

5.3 Provide *Frederick Cooper* with such information and *Components* as it may reasonably require in order to supply the *Services*.

5.4 Ensure that any *Components* supplied by *You* are:

- 5.4.1 of merchantable quality;
- 5.4.2 fit for the purpose you require;
- 5.4.3 made of the correct material;
- 5.4.4 suitable for *Frederick Cooper's* processes detailed on the *Order Acceptance*;
- 5.4.5 free of potential and actual contaminants including (but not limited to) silicon, excessive mould release or alloy die-release on the surface of the components; and
- 5.4.6 free of problems relating to oxidation, porosity or the use of incorrect materials in the manufacture of the *Components* and not correctly described in the specification.

5.5 Indemnify *Frederick Cooper* in full against any costs, expenses, damages and losses (direct or indirect) that may be caused due to the discovery and correction of defects in the *Components* supplied by *You* in connection with the *Contract* which were present prior to performance of the *Services*.

5.6 Notify *Frederick Cooper* of any defect in the *Services* within 14 days of delivery.

5.7 Insure to the full replacement value any *Components* which are in the possession of *Frederick Cooper* for the performance of the *Services*.

6. Payment

6.1 *You* will pay *Frederick Cooper* the price for the *Services* stated in the *Order* plus VAT within 30 days from the date of the invoice. Where the *Order Acceptance* sets out payment terms inconsistent with this Clause 6.1, the *Order Acceptance* terms will apply.

6.2 Where payment is not received by the due date for payment, *Frederick Cooper* has the right to charge interest at a rate of 4 percent per annum above the current lending rate ofBank PLC or 6% per annum, whichever ever is the higher.

6.3 Time for payment is of the essence of the *Contract*.

6.4 If *Services* are ordered by *You* and then the quantity of *Components* required are not received by *Frederick Cooper* as detailed in the *Order*, *You* are liable to pay for any left-over raw material stocks (e.g. paint, powder, masks or bought in raw components etc) purchased by *Frederick Cooper* to fulfil the *Order*.

6.5 Lien

Frederick Cooper shall have a lien on all *Components* delivered by *You* to *Frederick Cooper* for the *Services* until payment for the price of the *Services* has been made in full. In the event that payment for the price of the *Services* has not been received by *Frederick Cooper* within 30 days of the date of invoice *Frederick Cooper* shall be entitled to sell the *Components* at the best reasonably achievable price.

7. Liability

YOUR PARTICULAR ATTENTION IS DRAWN TO THIS CLAUSE

7.1 Nothing in these *Terms* excludes or limits *Frederick Cooper's* liability for death or personal injury caused by negligence, or for fraud or fraudulent misrepresentation.

7.2 *Frederick Cooper* warrants that the *Services* will be free from any defects in material or workmanship for a period of one year after the date of delivery to *You* of the *Processed Components*.

7.3 *Frederick Cooper* will not be liable to *You*, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any loss of profit, or any indirect or consequential loss arising under or in connection with the *Contract*.

7.4 *Frederick Cooper* shall have no liability for defective *Services* unless the *Processed Component* shall be first returned to *Frederick Cooper* for inspection.

7.5 *Frederick Cooper's* total liability to *You* in respect of any other loss arising under or in connection with this *Order* is limited for each defective *Processed Component* to a maximum of three times the *Unit Price*, to a maximum of the total price for the *Services* set out in the *Order*.

7.6 *Frederick Cooper* shall use all reasonable endeavours to rectify defects in the *Services* provided that the defective *Processed Components* are made available to *Frederick Cooper* in the same condition as they were supplied i.e. are not contaminated or otherwise damaged in handling during return transit. If reject *Processed Components* are deemed contaminated or damaged on receipt by *Frederick Cooper*, *Frederick Cooper* shall not be liable for making good the *Processed Components*, crediting the value of the *Services* or otherwise re-performing the *Services* on replacement parts.

7.7 *Frederick Cooper* will package *Processed Components* in accordance with the agreed packaging specification referred to or detailed in the *Order Acceptance*. *Frederick Cooper* shall not be liable for any handling or transit damaged *Processed Components* packed to the agreed specification unless the pallets in question have been mis-handled on *Frederick Cooper's* own transport.

7.8 This Clause 7 shall survive termination of the *Contract*.

8. General

8.1 This *Contract* does not confer rights on any person under the Contracts (Rights of Third Parties) Act 1999.

8.2 If *Frederick Cooper's* performance of its obligations under the *Contract* is delayed or prevented as a result of an act or omission by *You*, *Frederick Cooper* will not be liable for any costs or losses sustained by *You* and *You* will reimburse *Frederick Cooper* for any costs or losses it sustains as a result of the delay.

8.3 Except as set out in these *Terms*, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the *Contract*.

9. Termination

9.1 Without limiting its other rights or remedies, each party has the right to terminate the *Contract* by giving 3 months' written notice.

9.2 If the *Contract* is terminated by *You* without 3 months' notice being given *You* are liable to pay for any leftover raw material stocks (e.g. paint, powder, masks or bought in raw components etc) which have been purchased by *Frederick Cooper* in relation to the ongoing *Contract* (in the case of paint, powder and masks this is unlikely to exceed 15% of the 3 month *Contract* value).

9.3 Either party may terminate this *Contract* with immediate effect by giving written notice to the other party if they have committed a material breach of the *Contract* which has not been remedied satisfactorily within 7 days of written notice.

10. Notices

10.1 All notices or other communications in connection with the *Contract* must be in writing and shall be validly served if:

- delivered to the other party personally; or
- sent by prepaid first-class post or recorded delivery to its registered office (if a company) or principal address.

11. Waiver

11.1 Any waiver of any right under the *Contract* is only effective if it is in writing and it applies only to the party to whom it is addressed and to the circumstances for which it is given. No failure or delay in exercising any right or remedy under the *Contract* or by law constitutes a waiver of such right or remedy, nor shall it prevent or restrict any future exercise or enforcement of such right or remedy.

13. Governing Law

This *Contract* shall be governed by English law and the parties shall submit to the exclusive jurisdiction of the English courts.

14. Severability

Illegality or unenforceability of any part of the *Contract* shall not affect the enforceability or legality of the remainder of the *Contract*.