

Manufacturing Service Solutions Ltd – Terms Conditions of Supply of Goods and/or Services

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1. Definitions

In these terms and conditions:

- "Buyer" means any company, firm or individual or agent thereof to which the Company supplies goods or services
- "Company" means Manufacturing Service Solutions Ltd (MSS Ltd), including all divisions and businesses and any subsidiary undertaking thereof, as defined in Section 1162 companies Act 2006 (as the same may be amended from time to time)
- "Contract" means the contract between the Company and the Buyer for the supply of goods and/or services, formed in acceptance with clause 2 below.
- "Goods" means the products (including any parts or accessories) and/or materials or any of them to be supplied by the Company in accordance with the Buyers order.
- "IPR" means all intellectual and industrial property rights, including without limitation patents, know-how, trademarks (registered or not), registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, copyrights and database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions thereof.
- "Order" means the order placed by the Buyer on the Company for the supply of Goods and/or Services, whether or not by way of acceptance of the Company's quotation.
- "Services" means the services to be supplied by the company in accordance with the Buyer's Order.
- "Taxes" means every description of tax, duty or levy, where direct or indirect, payable at anytime , and any related interest, penalty, fine or other amount

2. Formation of Contract

- Each order or acceptance of a quotation for Goods and/or Services will be deemed to be an offer by the Buyer to purchase such goods and/or Services in accordance with these Terms & Conditions (as the same may be varied or modified in accordance with clause 2.3 below) and the Contract will be formed when the Order is accepted by the company by way of a written acknowledgement. These Terms & Conditions shall govern relations between the Buyer and the Company to the exclusion of any other Terms & Conditions (including, without limitation, an contained in an Order) which purport to provide that the Buyers own Terms & Conditions shall prevail.
- Except in the case of fraud, the Company shall incur no liability to the Buyer for misrepresentation by virtue of any statement made by or on behalf of the Company prior to the Contract, whether orally or in any document, including any sales literature
- No variation or modification of these Terms & Conditions or of any Contract pursuant thereto shall be valid unless agreed in writing by the Company.
- The Company shall be entitled to sub-contract all or any of its obligations under any Contract.

3. Quotations

The Company's quotations are given without commitment and no Contract between the Company and the Buyer shall arise unless and until the Company has accepted in writing an Order. Quotations shall be valid for a period of 30 days from the date of issue or (if different) the period specified with the quotation itself.

4. Prices

- Prices contained in any quotation or in any price list, catalogue or similar shall be those prevailing at the date thereof and are for guidance only. Unless otherwise agreed, the prices of Goods and/or Services to be supplied under any Contract shall be those current at the date of delivery of the Goods and/or performance of the Services, as the case may be.
- Prices do not include Taxes, which will be chargeable in addition at the rate or rates prevailing at whatever is the legally relevant time in respect of Goods or Services, as the case may be.

5. Despatch and Delivery

- Delivery shall be deemed to occur and the risk of loss of or damage to any Goods shall pass to the Buyer
On whichever of the following events occurs earlier:
 - 5.1.1 collection from the Company's premises by or on behalf of the Buyer or by a carrier (whether or not such carrier is the Company's agent or servant) for despatch to the Buyer or to a location nominated by the Buyer; or
 - 5.1.2 14 days from the date of a notice given by the Company that the Goods are ready for collection or despatch from its premises.
- For the purpose of international sales of Goods the foregoing description of the transfer of risk means that any Goods will be delivered on an "Ex Works" basis, as that term is defined in incoterms 2000. Where any such sale would be eligible for exemption from United Kingdom value added tax ("VAT") it is the Buyer's duty to comply with the necessary conditions, such as furnishing the Company with its national VAT registration number and/or proof of export from the United Kingdom. If it does not comply with such conditions the Company will charge VAT in addition, in accordance with clause 4.2.
- In the event that the Company shall at the specific request of the Buyer store the Goods or arrange for the Goods to be despatched or dealt with otherwise than by collection by the Buyer then the Buyer shall pay the Company such reasonable charges as the Company may request on account thereof. Without prejudice to the foregoing, if any of the Services are to be provided by a carrier or other third party or the Goods are delivered wholly or partly by a party other than the Company, the Company shall, in arranging for the provision of the same, act as the agent of the Buyer and the Buyer shall indemnify the Company against any costs, charges or expenses thereby incurred by the Company.

6. Rejection of Goods

- The Buyer shall carefully examine the Goods on receipt of the same and shall, by written notice to be received by the Company within seven (7) days after receipt, notify the Company of any short delivery or over-delivery and/or of any defects discovered therein.
- If the Buyer neglects to serve notice under clause 6.1 then, subject only to its warranty obligations under clause 11, the Company shall be discharged from all liability in respect of such defects.
- If the Buyer neglects to serve notice under clause 6.1 of any over-delivery then the Company may at its option either Repossess the excess Goods or invoice the Buyer for them at the price ruling at the date of entry.

7. Time for and Form of Delivery

- The Company will use reasonable endeavours to deliver the Goods and/or perform the Services in accordance with any time(s) stated in the Contract but time of delivery or performance shall not be of the essence of the Contract. Any such time(s) are provided by way of general information only and in the event of failure to despatch or deliver or perform within such time(s) for any cause, whether within or outside the Company's reasonable control, the same shall not be a breach. Repudiation of the Contract nor shall the Company have any liability to the Buyer on account thereof, save that the Buyer will be entitled to give 60 days' written notice to the Company requiring delivery of the Goods to be made or performance of the Services to be completed and if the Company has not delivered the Goods or completed the Services within that time the Buyer may then cancel the Order and the Company will refund to the Buyer any sums paid to the Company in respect of that cancelled Order.
- Unless otherwise agreed, the Company shall be entitled to deliver Goods and/or perform the Services by a single delivery or by instalments at its option and each instalment shall be deemed to be the subject of a separate contract subject to these Terms & Conditions and, without prejudice to clause 7.1, non-delivery or delay in delivery shall not affect the balance of the Contract nor entitle the Buyer to terminate the same.
- In the event that the Goods shall not have been collected by or on behalf of the Buyer or by a carrier for despatch to the Buyer within 14 days of the Company's written notice pursuant to clause 5.1.2 hereof then the Company may at any time Thereafter send to the Buyer a further notice informing the Buyer of the Company's intention to sell the same after the expiration of a period of not less than 7 days from the date of the notice and any such sale by the Company may be on a forced sale basis. The Buyer shall be liable for the Company's loss, damages, costs and expenses incurred in the sale and the storage of the Goods (which shall be at the risk of the Buyer) and for any shortfall below the contract price.

8. Force Majeure

The Company shall not be liable for any delay or failure in carrying out its obligations hereunder which is caused wholly or partly by any circumstances beyond its reasonable control, including without limitation act of God, delay in transportation, labour disputes, fire, flood, war, accident, action of any government, or inability to obtain adequate labour or materials or manufacturing facilities or energy, and if the delay or failure has continued for a period of 3 months then either party may give notice in writing to the other terminating the Contract and on such termination the Company shall refund to the Buyer such portion of the price of the Goods and/or the Services as may exceed the amount due to the Company and already paid

9. Payment

- Unless expressly agreed in writing, payment shall be made in sterling in cleared funds without any deduction, set-off, restriction, condition or deferment on account of any disputes or cross-claims or present or future Taxes whatsoever (unless and to the extent that the Buyer is required by law to make such deduction) on or before the last day of the month following the Company's invoice for the Goods and/or the Services. If full payment is not received by the due date, interest shall accrue on the sum outstanding at the rate of 3% per annum above the base rate of Lloyds TSB Bank plc (as varied from time to time) calculated on a daily basis, but without prejudice to the Company's rights under clause 16 below.
- Time for payment shall be of the essence and in the event of any delay or default in any payment exceeding 7 days the Company shall be entitled to suspend delivery of the relevant Goods and/or performance of the relevant Services (and any other Goods and/or Services the subject of any agreed Order) and/or treat the Contract (and any other contract between the Company and the Buyer) as repudiated and/or re-sell any of the Goods in its possession, and be indemnified by the Buyer for any loss, damage costs or expenses incurred by reason of any of the foregoing.

10. Property in the Goods

- The Company shall retain absolute ownership of the property in the Goods which shall not pass to the Buyer, and the Buyer shall keep and retain the Goods as bailee for and on behalf of the Company and shall deliver up the Goods to the Company at the Company's request, until the Company has received full payment of the price of the Goods and of any other sums whatsoever which are then due and owing from the Buyer to the Company and until such time the Buyer shall:
 - 10.1.1 fully insure the Goods in their full reinstatement value against the usual risks with an insurance office of repute and, whenever requested by the Company, produce a copy of the policy of insurance;
 - 10.1.2 store the Goods separately or in some other way ensure that the Goods are readily identifiable as the property of the Company;
 - 10.1.3 irrevocably authorise the representatives of the Company at any time in circumstances where the provisions of clause 16 may apply to enter the Buyer's premises where the Goods are or are thought by the Company to be stored for the purpose of repossessing the Goods; and
 - 10.1.4 keep and retain the Goods free from any charge, lien or other encumbrance thereon.
- If the Buyer incorporates any Goods within other equipment or products then, provided that the Goods remain readily identifiable and a removable part of such other equipment or products, the provisions of clause 10.1 shall continue to apply.
- The Company shall be entitled to exercise a general lien or right of retention over all Goods or any parts thereof in the Company's possessions which are the Buyer's property for any sums whatsoever due to the Company and pursuant to such lien or right the Company shall be entitled without notice to the Buyer to sell all or any part of such Goods privately or by auction or otherwise and to keep the proceeds of sale in diminution of such sums and of all costs and expenses incurred in the Company in effecting the said sales.

11. Warranty

- Subject to clause 11.2, the Company warrants that the Goods will be of good material and workmanship and in performing the Services it will use reasonable skill and care so that, upon the Buyer giving written notice to the Company that the Goods have not been supplied and/or the Services have not been performed as aforesaid, if the same be established the Company will at its own expense (and at its sole option) either replace or repair such defective Goods or remedy such defaults in the Services. This warranty obligation shall not apply where the Goods have been tampered with, improperly altered, repaired or maintained, installed or connected or subjected to misuse (in each case otherwise than as a result of the Company's own acts or omissions). The Buyer shall at its own cost return the Goods to the Company for inspection.
- The Company's warranty shall apply in respect of matters whereof the Buyer gives written notice within 12 months after delivery of the Goods (as defined in clause 5.1) or performance of the Services or 6 months after installation of the Goods (whichever is the shorter period), and any repaired or replacement Goods or re-performed Services will be covered by the same warranty for the unexpired portion of the original 12- or 6-month period, whichever is applicable, after which any claim in respect thereof shall be absolutely barred.
- Except as set out in this clause 11, the Company excludes to the fullest extent permissible by law all conditions, warranties and stipulations, express (other than 7 Edition Jan. 2009 those set out in the Contract) or implied, statutory, customary or otherwise which, but for such exclusion, would or might subsist in favour of the Buyer.

12. Exclusion of Liability

- The Company does not purport to limit or exclude its liability (if any) to the Buyer:
 - 12.1.1 for breach of the Company's obligations arising under Section 12 Sale of Goods Act 1979 or Section 2 Supply of Goods and Services Act 1982;
 - 12.1.2 for personal injury or death resulting from the Company's negligence;
 - 12.1.3 under Section 2(3) Consumer Protection Act 1987;
 - 12.1.4 for any matter in respect of which it would be illegal for the Company to limit or exclude its liability; or
 - 12.1.5 for fraud.
- Except as provided in clause 12.1, the Company will be under no liability to the Buyer whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any injury, death, damage or direct, indirect or consequential loss (all three of which latter terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and the like loss) arising out of or in connection with:
 - 12.2.1 any of the Goods, or the manufacture or sale or supply, or failure or delay in supply, of the Goods or performance or failure or delay in performance of the Services by the Company or on the part of the Company's employees, agents or sub-contractors;
 - 12.2.2 any breach by the Company of any of the express or implied terms of the Contract;
 - 12.2.3 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - 12.2.4 any statement made or not made, or advice given or not given, by or on behalf of the Company.
- Without prejudice to the foregoing, if called upon so to do by the Buyer in writing the Company shall use its reasonable endeavours (but without spending undue time and cost and only where practicable) to assign to the Buyer the benefits of any warranty, guarantee, indemnity, claim, privilege or other rights which the Company may have from or against manufacturers or suppliers of any goods incorporated in the Goods in relation to the quality, condition or description of such goods.
- Drawings, Specifications etc.**
 - 13.1 All descriptions, drawings, illustrations, particulars of weights and measures, ratings, standards, statements or details or specifications or other descriptive matter, whether or not contained in the Contract, are approximate only. The Goods will be in accordance with the Company's specifications at the time of manufacture and any earlier specifications, drawings, descriptions, illustrations, particulars as to weights and measures, ratings, standards, statements or details shall not form part of the description of the Goods or Services supplied or to be supplied so that the Company shall not be under any liability in respect thereof.
 - 13.2 Where Goods are supplied by the Company to the Buyer in accordance with the Buyer's design or specification or where the Company shall design items not within its standard range of products at the Buyer's request no warranty shall be given or implied as to the suitability of such Goods unless the Buyer has made known to the Company the particular purpose for which the Buyer is proposing to use the Goods, in which case the Company's warranty in clause 11 shall apply.

13. Inspection and Testing

The Company inspects all Goods prior to delivery and where practicable submits them to standard tests at the Company's premises. Special tests or standard tests in the presence of the Buyer or his representative may be undertaken by the Company at the request and expense of the Buyer, where agreed in advance with the Company, and unless otherwise agreed such tests shall be conducted at the Company's premises.

15. IPR

- All IPR subsisting in any material and information whatsoever given to the Buyer by the Company in connection with the supply of the Goods and/or the Services by the Company to the Buyer or otherwise are vested in the Company. The Buyer will not, whether by itself, its officers, servants, agents or any of them or otherwise howsoever, copy or reproduce any such material or information in whole or in part nor will it disclose any such material or information in whole or in part to any third party. Further, the Company shall be entitled to the ownership of all IPR subsisting in any material or information generated by the Company for the Buyer pursuant to the Contract.
- The Buyer shall not, at any time or for any reason whatsoever, disclose or permit to be disclosed to any person or persons whatsoever or otherwise make use of or permit to be made use of any trade secrets or other confidential information relating to the products, technology, business, affairs or finances of the Company or relating to the Company's agents, distributors, licensees or other customers or in respect of any of their dealings or transactions.
- The Buyer shall not apply or attempt to apply to register in its own name any of the Company's IPR and in particular those subsisting in or relating to the Goods and/or the Services or any part thereof nor shall it represent in any way that it has any right or title to the ownership of any such IPR nor shall it do any act or thing which might be contrary to the interest of the Company in such IPR or, in particular, challenge the ownership or validity of such IPR.
- The Buyer at its own expense shall do all such acts and things and shall sign and execute all such deeds and documents as the Company in its sole discretion may require in connection with any steps or proceedings taken by the Company with a view to preventing the infringement of its IPR.
- The Buyer undertakes and agrees that all material and information supplied by it, and the use thereof by the Company when manufacturing and supplying the Goods and/or performing the Services (including any design undertaken by the Company at the Buyer's request), will not infringe any IPR of a third party and shall indemnify the Company in respect of any such infringement or alleged infringement.
- The Buyer shall not alter or remove any trade mark of the Company which has been applied to the Goods nor apply any other trade mark to the Goods nor make any alteration to their packaging or get-up.
- The provisions of this clause 15 shall survive the expiry or termination of any Contract for whatever reason.

16. Termination

- If:
 - 16.1 the Buyer shall make default in or commit a breach of the Contract or of any of his obligations to the Company; or
 - 16.2 any distress or execution shall be levied upon the Buyer's property or assets; or
 - 16.3 the Buyer shall make or offer to make any arrangement or composition with his creditors or commit any act of bankruptcy; or
 - 16.4 any petition or receiving order in bankruptcy shall be presented or made against the Buyer; or
 - 16.5 the Buyer is a limited company and any resolution or petition to wind up such company's business (otherwise than for the purpose of a solvent amalgamation or reconstruction) shall be passed or presented; or
 - 16.6 a receiver of the Buyer's undertaking, property or assets or any part thereof shall be appointed; or
 - 16.7 the Buyer being a foreign company, any arrangements or events occur under the laws of its country of domicile which have a similar effect to those hereinbefore described, the Company being given the right forthwith to terminate the Contract then subsisting and upon written notice of such termination being shall to the Buyer any subsisting Contracts shall be deemed to have been terminated and the Company shall be entitled to recover from the Buyer all loss, damages, costs and expenses thereby arising, including but not limited to those under clause 17 hereof.

17. Partial Completion

In the case of partial completion of an Order by reason of any of the events referred to in clauses 8 or 16 the Company shall be entitled to payment by way of a *quantum meruit* for all work done by it, without prejudice to its rights should non-completion be occasioned by the Buyer.

18. Notices

Unless otherwise provided in writing, any written communication or notice under a Contract shall be made or given by sending the same by ordinary prepaid first class letter post, in the case of the Company to its current address and in the case of the Buyer to its last known address, and if so sent such communication or notice shall be deemed to be made or given two days after the date when posted.

19. Waiver

Any failure by the Company to enforce any or all of its rights provided herein shall not be construed as a waiver of such rights.

20. Contracts (Rights of Third Parties) Act 1999

None of these Terms & Conditions nor any of the terms of a Contract formed pursuant hereto will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any third party.

21. Law and Jurisdiction

These Terms & Conditions and any Contract formed pursuant hereto shall be governed by English law and any dispute arising out of or in connection with the same shall be subject to the non-exclusive jurisdiction of the English courts. If any of these Terms & Conditions or any part thereof is rendered void or unenforceable by any legislation to which it is subject or by any rule of law it shall be void or unenforceable only to that extent and no further.