

Standard Terms of Sale

1 Definitions and Interpretation

1.1 In these terms and conditions:-

"Agreement" means, subject to Clause 1.2, the Quotation and these terms and conditions;

"Customer" means the legal entity identified as the customer in the Quotation;

"Arrktd" means Arrk Tooling Development Limited, company registration number 02802702 England, whose registered office is situated at The Hyde, Langrish, Petersfield, Hampshire GU32 1RL;

"Drawings" means the two dimension drawings and/or three dimensional CAD files to be supplied by the Customer;

"Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world and Intellectual Property Right means any one of the Intellectual Property Rights

"Tool" means (as applicable) the tool described and specified in the Quotation to be manufactured by Arrktd or the tool supplied by the Customer;

"Order" means the Customer's order for the Services as set out in the Customer's written acceptance of the Quotation;

"Price" means the monetary sum specified in the Quotation as the price and unless otherwise stated is "ex-works" and exclusive of delivery charges, Specialist Process charges, VAT and all other taxes;

"Quotation" means the document printed on the reverse of these terms and conditions containing details of this transaction;

"Specialist Processes" means those specialist processes stated in the Quotation, to be provided by third parties;

"Specification" means the specification provided to Arrktd by the Customer for the design, modification, machining, repair, refurbishment and/or manufacturing services to be supplied by Arrktd in respect of the Tool.

1.2 Attachments to this Agreement shall have effect as part of this Agreement.

1.3 The headings contained in this Agreement are inserted for convenience only and shall not affect the interpretation or construction of this Agreement.

2 Quotation and Acceptance

2.1 The terms and conditions in this Agreement shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate including, without limitation, the Customer's standard terms and conditions contained in any order forms, delivery notes, receipts or other documentation used by the Customer, and any other terms which are implied by trade, custom, practice or course of dealing.

2.2 The Quotation is an invitation to treat and is valid for thirty (30) days from its date of issue unless withdrawn earlier by Arrktd or expressly extended in writing by Arrktd.

2.3 The Order constitutes an offer by the Customer to purchase the Services in accordance with these terms and conditions. The Customer shall ensure that the terms of the Order and any relevant Specification are complete and accurate.

2.4 No Order placed by the Customer with Arrktd shall create any binding contract until Arrktd has accepted such Order in writing, at which point the Agreement shall come into existence.

2.5 Upon acceptance of an Order and in consideration of payment of the Price, Arrktd shall: if the Tool is to be manufactured for the Customer sell the Tool to the Customer and the Customer shall purchase the same; and as required by the Specification (save for Specialist Processes), provide design, modification, machining, repair, refurbishment and/or manufacturing services (the "Services") in respect of the Tool in accordance with the Specification; and such transaction shall be subject to the terms of this Agreement.

3 Design, Plans and Manufacture

3.1 If Arrktd has agreed to manufacture the Tool or if designs are required for performance of the Services, Arrktd shall prepare designs (the "Plans") for the Tool from the Drawings which shall incorporate the Specification and shall submit the Plans to the Customer for approval. The Customer shall be responsible for approving such Plans and shall do so in writing and, until the Customer has given its approval, Arrktd shall not be obliged to allocate any materials to this Agreement or commence manufacture of the Tool.

3.2 Save for Special Processes, Arrktd shall manufacture the Tool in conformance with the Specification and the Plans (as approved pursuant to Clause 3.1 or if no such Plans in conformance with such plans provided by the Customer) including an allowance for the shrinkage factor advised by the Customer.

3.3 Notwithstanding Clauses 2.2 and 3.2, Arrktd shall not be obliged to apply any Specialist Processes to the Tool.

3.4 If the Tool requires the application of Specialist Processes, Arrktd (acting as the Customer's agent) shall arrange and contract on behalf of the Customer with such third parties for such Specialist Processes to be applied to the Tool in conformance with the Specification. Arrktd shall have no responsibility or liability for the performance of such Specialist Processes.

4 Variation

- 4.1** The Customer may only vary the Specification (and/or the Plans after they have been approved) with the prior written consent of Arrktd. Arrktd may vary the Price and any delivery dates as a consequence of any variation.
- 4.2** If at the time Arrktd acquires goods and materials from a third party for allocation to this Agreement for performance of the Services or for the manufacture of the Tool the cost of those goods and materials has increased due to currency fluctuations or some other reason since the date of the Quotation, Arrktd shall be entitled to vary the Price to account for those cost increases and shall do so by giving notice of such price variation to the Customer at least fourteen (14) days prior to delivery.
- 4.3** Save as aforesaid, no variation of this Agreement shall be effective unless it is made in writing and signed by each of the parties to this Agreement.
- 4.4** If there is inconsistency between the Quotation, any attachment and these terms and conditions, these terms and conditions shall prevail to the extent of such inconsistency.

5 Price, Terms of Payment and Factoring

- 5.1** In consideration of performance of the Services and/or the manufacture and sale of the Tool, the Customer shall pay the Price to Arrktd in accordance with terms of payment set out in the Quotation.
- 5.2** Notwithstanding the terms of payment stated in the Quotation, if the Tool is manufactured for or delivered to the Customer or the Services are performed in instalments Arrktd shall be entitled to invoice the Customer for work done in respect of each instalment. Notwithstanding the foregoing, all unpaid instalments payable under this Agreement, whether due for payment now or in the future, shall become immediately due and payable upon the late payment or failure to pay any instalment in accordance with the terms of this Agreement or the failure of the Customer to take delivery of the Tool under this Agreement.
- 5.3** Notwithstanding Clause 5.1, any cost, expense or fees incurred by Arrktd payable to third parties for components, parts, goods, materials and services and any other materials supplied or consumed in the performance of this Agreement and not included in the Price shall be charged to the Customer at cost price.
- 5.4** If Arrktd terminates this Agreement pursuant to Clause 11.1(c)(iii), the Customer shall indemnify Arrktd against all costs, expenses, damages and liabilities incurred and profits lost by Arrktd by reason of such termination.
- 5.5** All invoices shall be paid in accordance with the terms of payment set out in the Quotation and shall be payable without abatement, set-off, deduction, withholding payment or counterclaim.
- 5.6** If the Customer is late in making payment or fails to make payment of any sum due under this Agreement or is otherwise in breach of a term of this Agreement, Arrktd shall be entitled, without prejudice to its other rights, to:
- (a) suspend performance of this Agreement; and/or
 - (b) to charge the Customer interest on any unpaid sums at 4% per annum above NatWest Bank Plc base rate for the time being (or where applicable and if greater at the statutory rate otherwise provided for pursuant to the Late Payment of Commercial Debts (Interest) Act 1998) until such sums are paid. Payment of interest shall be made when invoiced.
- 5.7** Arrktd shall be entitled to factor any sum payable under this Agreement.

6 Delivery and Storage

- 6.1** For the avoidance of doubt, time for delivery of the Tool shall not commence to run until the Customer has approved the Plans. Arrktd shall endeavour to deliver the Tool at an address and by the delivery date agreed with Customer at the time of acceptance of the Order or, if no date is agreed, then within a reasonable time of acceptance of the Order. If no address for delivery of the Tool is agreed, delivery shall take place at Arrktd's Langrish premises. Notwithstanding the foregoing any agreed delivery date shall be an estimated date only and time of performance of this Agreement shall not be of the essence and Arrktd shall have no liability for any loss or damage caused by any delay in delivering the Tool.
- 6.2** Arrktd shall be entitled to make delivery by instalments.
- 6.3** The Customer shall provide all such facilities which in the opinion of Arrktd are required for the Customer to safely receive and unload the Tool at the address for delivery and in the absence of such facilities; Arrktd shall be entitled to refuse to make delivery of the Tool.
- 6.4** If the Customer fails to take delivery or Arrktd is unable to make delivery because of inadequate facilities of the type referred to in Clause 6.3, Arrktd shall be entitled (at its sole discretion) to:
- (a) store the Tool until actual delivery and charge the Customer for the reasonable costs of storage (including insurance costs) plus an administration charge equivalent to the lesser of £200 or an amount equal to 15% of the cost of storage; and/or
 - (b) sell the Tool at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the Price.

7 Risk, Title & Lien

- 7.1** Where Arrktd has agreed to manufacture and sell the Tool to the Customer, risk of loss of or damage to the Tool shall pass to the Customer at the time Arrktd tenders the Tool for delivery to the Customer. In all other cases risk of loss and/or damage to the Tool shall be the Customer's risk notwithstanding that Arrktd has possession and/or control of the Tool.
- 7.2** Notwithstanding delivery and the passing of risk in the Tool, or any other provision of this Agreement title to and property in the Tool shall not pass to the Customer until Arrktd has received in cash or cleared funds as unconditional payment in full of:
- 7.2.1** the Price including VAT thereon of the Tool and all other goods or services agreed to be sold by Arrktd to the Customer for which payment is then due; and
 - 7.2.2** any other sums due from the Customer to Arrktd.
- 7.3** Until such time as title and property in the Tool passes to the Customer, the Customer shall: (a) store the Tool separately from all other goods held by the Customer so that they remain readily identifiable as Arrktd's

property; (b) not remove, deface or obscure any identifying mark or packaging on or relating to such Tool; (c) maintain such Tool in satisfactory condition and keep it insured on Arrktd's behalf for its full price against all risks with an insurer that is reasonably acceptable to Arrktd and allow Arrktd on request to inspect the Tool and the insurance policy; and (d) hold the Tool as bailee for Arrktd and keep it readily identifiable as the property of Arrktd but the Customer shall be entitled to resell or use the Tool as the fiduciary agent of Arrktd in the ordinary course of its business but shall on demand account to Arrktd for the proceeds of sale of the Tool which is equivalent to the Price at which the Tool was invoiced by Arrktd to the Customer whether tangible or intangible including without limitation, and shall keep all such proceeds separate from all monies or property of the Customer and third parties (and shall not pay any such monies into any overdrawn bank account and shall ensure that at all times such monies are identified as Arrktd's money) and, in the case of tangible proceeds, properly stored, protected and insured provided that the Customer's right to resell or use the Tools:

(i) may be revoked by service by Arrktd of notice in writing at any time;

(ii) shall automatically cease if a receiver, manager or administrator is appointed over the assets, undertaking or property of the Customer, or a winding up or administration order against the Customer is made or petitioned, or any petition or order in bankruptcy against the Customer is presented or made, or the Customer goes into voluntary liquidation (other than for the purposes of reconstruction or amalgamation while solvent) or calls a meeting of, or makes arrangements or compositions with, creditors.

7.4 Upon failure of the Customer to pay any sum due for payment under this Agreement Arrktd shall be entitled at any time to require the Customer to deliver up the Tool (which has not ceased to be in existence or resold) to Arrktd and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Tool is stored and repossess the Tool without prejudice to Arrktd's right to payment of the Price of the Tool (or the balance of it) and the Customer shall pay to Arrktd the proceeds then held by the Customer as trustee for Arrktd in accordance with Clause 7.3.

7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness the Tool whilst it remains the property of Arrktd, but if the Customer does so all monies owing by the Customer to Arrktd shall (without prejudice to any other right or remedy of Arrktd) become due and payable forthwith.

7.6 Arrktd shall be entitled to recover the price of the Tool (plus VAT) in accordance with the terms of this Agreement, notwithstanding that property in the Tool shall not have passed to the Customer.

If the Tool is incorporated in or used as a component for other goods or equipment before full payment of all amounts due has been made, title to and property in such goods or equipment shall be conclusively deemed to be, or to include, the Tool which is the property of Arrktd until such payment has been made, and Arrktd's rights to the Tool under this Agreement shall extend to such other goods or such part thereof as Arrktd shall at its discretion nominate as its property.

Arrktd shall have a particular and general lien on any Tool, equipment or material supplied by the Customer in its possession for all sums due at any time from the Customer whether under or in connection with this Agreement or any other contract between Arrktd and the Customer. In the event of non payment of the Price within twenty-one (21) days after the due date for payment Arrktd shall be entitled to sell or otherwise dispose of the Tool, equipment and/or materials and apply the proceeds towards the payment of such sums

8 Claim

8.1 In the absence of receipt by Arrktd of a notice setting out full particulars of a claim in respect of the Tool, the Services and their conformance with this Agreement from the Customer within three (3) days of delivery of the Tool to the Customer or completion of the Services, the Customer shall be deemed to have inspected and accepted the Tool delivered and/or Services performed.

8.2 If the Customer rejects the Tool and/or the Services then the Customer will be entitled to require Arrktd to repair or replace the rejected Tool and/or repeat the Services. Once Arrktd has complied with the Customer's request, it shall have no further liability to the Customer in respect of the rejected Tool and/or Services.

8.3 The terms of this Agreement shall apply to any repaired Tools and/or repeated Services.

9 Customer's Responsibilities

9.1 The Customer shall:

(a) supply, (i) a Specification and accurately dimensioned Drawings with sufficient detail to allow Arrktd to prepare Plans and then (if agreed) manufacture the Tool, (ii) a Tool if required for performance of the Services, (iii) any materials stated in the Quotation, (iv) a shrinkage factor in respect of the Tool and, (v) such other information or materials reasonably required or requested by Arrktd for purposes of performing its obligations under this Agreement.

(b) be responsible for testing the Tool prior to putting the Tool into production.

10 Warranties and Liability

10.1 The Customer warrants that:

(a) the Specification and Drawings are free from errors and defects in design;

(b) all information supplied by the Customer to Arrktd is true and correct and can be relied on by Arrktd;

(c) Arrktd is entitled to use the Specification and Drawings for the purposes provided for in this Agreement and that in doing so Arrktd will not infringe the Intellectual Property Rights of any third party;

(d) any materials supplied by the Customer will be fit for their intended purpose and be of a satisfactory quality.

10.2 Arrktd warrants that:

(a) (if the Tool is to be manufactured by Arrktd) it has free unencumbered title to the Tool and/or the right to sell the Tool;

(b) the Services provided under this Agreement will be provided with reasonable care and skill; and

(c) for a period of three (3) months from the date of actual delivery of the Tool to the Customer that the Tool will substantially conform to the Specification and the Plans and be substantially free from defects in materials and

workmanship provided that (i) the Customer installs, sets up, sequences and uses the Tool correctly and frequently cleans, maintains and services the Tool and (ii) this warranty will be voidable by Arrktd if repairs and servicing of the Tool is carried out by any third party not approved by Arrktd in writing.

10.3 Arrktd shall (at its discretion) pass on to the Customer the benefit of any warranties given by the suppliers of any goods or materials used in the manufacture of the Tool.

10.4 Save as set out in this Agreement, all other express or implied terms, conditions and warranties (whether statutory or otherwise) on the part of Arrktd relating to the Tool and any services performed under this Agreement are hereby excluded to the fullest extent permitted by law.

10.5 Notwithstanding any other provision of this Agreement, save for Clause 10.7, Arrktd's liability arising out of or in connection with the Plans, the Tool, the Services and this Agreement (including any indemnities expressed within it), howsoever caused, shall not exceed an amount equal to the Price or, if greater, the amount recovered by Arrktd in respect of and to the extent attributable to such liability under such insurance policies Arrktd carries in the course of its business.

10.6 Arrktd shall not be liable to the Customer or any other person under or in connection with this Agreement or in connection with the Plans, the Tool and the Services howsoever caused, for any indirect or consequential loss or damage or for any loss or damage to profit, revenue, turnover, savings, use, opportunity, contract, goodwill or business.

10.7 Nothing in this Agreement shall limit or exclude Arrktd's liability for fraud, fraudulent misrepresentation, death or personal injury or any other liability that cannot lawfully be excluded.

10.8 In this Clause 10, the expression "howsoever caused" includes by delay or failure to perform or supply, misrepresentation (whether made prior to or during this Agreement) negligence, other tort or breach of statutory duty or breach of contract wilful or otherwise however fundamental the result.

10.9 Any claim by the Customer against Arrktd under or in connection with this Agreement shall be fully barred and unenforceable unless written notice of such claim (including reasonable details of the claim including the amount thereof) shall have been given to Arrktd no later than six (6) months following the date that the circumstances giving rise to a claim occurred, or in any event no later than six (6) months following the date of actual delivery of the Tool to the Customer or completion of the Services for whatever cause.

10.10 Arrktd shall not be liable to the Customer for any delay or non-performance of its obligations under this Agreement arising from any cause or causes beyond its reasonable control including, without limitation, any of the following: act of god, governmental act, war, fire, explosion, civil commotion or protest, strike, lock-out or other industrial action, compliance with any law, accident, failure or breakdown of plant, equipment and machinery or inability to source any goods and/or materials required for the manufacture of the Tool or performance of the Services.

10.11 The Customer shall indemnify, defend and hold Arrktd harmless from and against any claim, court proceedings, out of court settlement, loss, cost, damage, liability or expense (including reasonable legal fees) in respect of any actual or alleged loss or damage arising out of the design, construction, manufacture, supply or delivery of the Tool and/or the provision of the Services, sustained, or alleged to have been sustained, by the Customer or by any third party, howsoever caused, after the Customer has received the Plans and/or the Tool (or any part thereof).

10.12 Each employee, agent and sub-contractor of Arrktd and its other group companies ("Third Parties") shall be entitled, pursuant to the Contracts (Rights of Third Parties) Act 1999 ("TP Act"), in its own right to the benefit of and to enforce the provisions of this Clause 10, subject to and in accordance with the provisions of this Agreement and the TP Act save that the parties to this Agreement shall not be required to obtain a consent of any Third Party in order to rescind or vary this Agreement or any provision thereof. The aggregate liability of all Third Parties and Arrktd collectively shall be no greater than the liability of Arrktd alone, as set out in this Agreement.

11 Termination

11.1 This Agreement may be terminated upon written notice forthwith:

(a) by either party if (i) the other party commits a breach of a material term of this Agreement (other than a failure to pay) and which (in the case of a breach capable of remedy) shall not have been remedied within thirty (30) days of a written request by the other party to do so and which written request makes reference to this Clause and the terminating party's intention to terminate; or, (ii) an administration order or winding up order or similar process is presented against the other party or an administrative receiver or receiver is appointed in respect of the business or part of the assets of that party;

(b) by the Customer provided the Customer indemnifies Arrktd against all costs, expenses, damages and liabilities incurred and profits lost by Arrktd by reason of such termination;

(c) by Arrktd, without liability to the Customer, if (i) at the time Arrktd seeks materials for the manufacture of the Tool or performance of the Services, those materials are no longer available or not available in the quantities required by this Agreement; or (ii) the Customer fails to pay any sum due under this Agreement within twenty-one (21) days after the due date for payment; or (iii) the Customer fails to approve the Plans within a reasonable time of submission of the Plans for such approval, or, (iv) if there is a change of control of the Customer (as defined in section 574 of the Capital Allowances Act 2001).

11.2 On termination of this Agreement for any reason: (a) the Customer shall immediately pay to Arrktd all outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Arrktd may submit an invoice, which shall be payable immediately on receipt; and (b) the Customer shall return all Arrktd equipment including the Plans. If the Customer fails to do so, then Arrktd may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping.

The termination of this Agreement shall not affect accrued rights or liabilities or the continuance in force of any provisions which expressly or by implication are intended to continue in force.

12 Intellectual Property Rights

12.1 Unless otherwise agreed, Arrktd and all concerned third parties shall retain ownership of Intellectual Property Rights, title and interest to or in their respective portions of the Plans, the Specification and the Tool.

12.2 The Customer shall indemnify, defend and hold Arrktd harmless from and against any claim, court proceeding, out of court settlement, loss, cost, damage, liability or expense (including reasonable legal fees) suffered or incurred by Arrktd in connection with or arising out of a breach of Clause 10.1(c) and the infringement or alleged infringement of any Intellectual Property Rights under this Agreement. Further, Arrktd shall be entitled to terminate this Agreement and the Customer shall indemnify Arrktd against all costs, expenses, liabilities and damages incurred and profits lost by Arrktd by reason of such termination.

13 Confidential Information

13.1 The Customer shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Customer by Arrktd, its employees, agents, consultants or subcontractors and any other confidential information concerning Arrktd's business or its products which the Customer may obtain.

13.2 The Customer may disclose such information: (a) to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out the Customer's obligations under this Agreement; and (b) as may be required by law, court order or any governmental or regulatory authority.

13.3 The Customer shall ensure that its employees, officers, representatives, advisers, agents or subcontractors to whom it discloses such information comply with this clause 13.

13.4 The Customer shall not use any such information for any purpose other than to perform its obligations under this Agreement.

13.5 All materials, equipment and tools, drawings, specifications and data supplied by Arrktd to the Customer (including the Plans) shall, at all times, be and remain the exclusive property of Arrktd, but shall be held by the Customer in safe custody at its own risk and maintained and kept in good condition by the Customer until returned to Arrktd, and shall not be disposed of or used other than in accordance with Arrktd's written instructions or authorisation.

14 General

14.1 Any failure or delay by Arrktd in exercising a right or remedy arising in connection with this Agreement or by law shall not constitute a waiver of such right or remedy or any other such rights or remedies. A waiver on the part of Arrktd shall only be effective if it is in writing signed by Arrktd or its authorised representative.

14.2 The Customer shall not assign this Agreement without the prior written consent of Arrktd. Arrktd shall be entitled at any time to assign, delegate or sub-contract its obligations under this Agreement.

14.3 All notices to be given under this Agreement shall be in writing and signed by or on behalf of the party giving it. Save for legal processes, Arrktd may give notice under this Agreement to the Customer at its address stated in the Quotation by post, or by fax and such notices shall be deemed to be given (i) if delivered personally when left at that address, or, (ii) if sent by post, 3 days after posting to that address, or, (iii) if sent by fax upon receipt of confirmation of a successful transmission to that fax number.

14.4 If any provision of this Agreement (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

13.5 Nothing in this Agreement is intended to, or shall operate to, create a partnership between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

14.5 This Agreement constitutes the entire agreement and understanding of the parties in relation to its subject matter and supersedes all prior or written agreements, understandings or arrangements relating thereto.

14.6 The validity, construction and performance of this Agreement shall be governed by the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English Courts.