

INDUSTRIAL TOOLING CORPORATION LIMITED

TERMS AND CONDITIONS OF SALE

The Buyer's attention is in particular drawn to the provisions of condition 10.4.

- Interpretation**
 - The definitions and rules of interpretation in this condition apply in these conditions.**
 - "Buyer"** the person, firm or company who purchases the Goods from ITC;
 - "ITC"** Industrial Tooling Corporation Limited (Company No. 273537), the registered office of which is at Cyber House, Unit 1 Kepler, Lichfield Road Industrial Estate, Tamworth, B79 7XE;
 - "Contract"** any contract between ITC and the Buyer for the sale and purchase of the Goods, incorporating these conditions;
 - "Delivery Point"** the place where delivery of the Goods is to take place under condition 4;
 - "Goods"** any goods agreed in the Contract to be supplied to the Buyer by ITC (including any part or parts of them);
 - "Intellectual Property"** any copyrights, letters, patents, know how, inventions, utility models, registered and unregistered designs, trade and service marks, trade names, logos, patent applications, rights in the nature of copyrights and all other similar rights in the Goods and/or the Services and any services agreed in the Contract to be supplied to the Buyer by ITC.
 - A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
 - Words in the singular include the plural and in the plural include the singular.
 - A reference to one gender includes a reference to the other gender.
 - Condition headings do not affect the interpretation of these conditions.
- Application of law**
 - Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
 - No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
 - These conditions apply to all ITC's sales and any variation to these conditions and any representations about the Goods or the Services shall have no effect unless expressly agreed in writing and signed by a director of ITC. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of ITC which is not set out in the Contract. Nothing in this condition shall exclude or limit ITC's liability for fraudulent misrepresentation.
 - Each order or acceptance of a quotation for Goods or Services by the Buyer from ITC shall be deemed to be an offer by the Buyer to buy Goods and/or Services subject to these conditions. The Buyer shall ensure that the minimum value of its order is not less than the sum set out in clause 7.2.
 - No order placed by the Buyer shall be deemed to be accepted by ITC until a written acknowledgement of order is issued by ITC or (if earlier) ITC delivers the Goods to the Buyer or provides the Services to the Buyer.
 - The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
 - Any quotation is given on the basis that no Contract shall come into existence until ITC despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 60 days only from its date, provided that ITC has not previously withdrawn it.
 - Acceptance of delivery of the Goods or performance of the Services shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
 - Any typographical, clerical or other error or omission in any sales literature, quotation, acceptance of offer, invoice or other document or information issued by ITC shall be subject to correction without any liability on the part of ITC.
 - Description**
 - The quantity and description of the Goods or the Services to be performed shall be as set out in ITC's quotation or acknowledgement of order.
 - All samples, drawings, descriptive matter, specifications and advertising issued by ITC and any descriptions or illustrations contained in ITC's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
 - If the Goods are to be manufactured or as part of the Services any process is to be applied to the Goods by ITC; or if the Goods or Services are to be provided in accordance with a specification or any other document, data information or materials submitted by the Buyer, the Buyer shall indemnify ITC against all loss, damages, costs and expenses awarded against or incurred by ITC in connection with or paid or agreed to be paid by ITC in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from ITC's use of the Buyer's information.
 - ITC reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EC requirements or, where the Goods are to be supplied to ITC's specification, which do not materially affect their quality or performance.
 - No order which has been accepted by ITC may be cancelled by the Buyer except with the agreement in writing of ITC and on terms that the Buyer shall indemnify ITC in full against all loss (including without prejudice to the generality of the foregoing loss of profit), costs (including without prejudice to the generality of the foregoing the cost of all labour and materials ordered, whether used or un-used), damages, charges and expenses incurred by ITC as a result of cancellation.
 - Delivery**
 - Unless otherwise agreed in writing by ITC, delivery of the Goods shall take place at ITC's place of business.
 - The Buyer shall take delivery of the Goods within 7 days of ITC giving it notice that the Goods are ready for delivery.
 - Any dates specified by ITC for delivery of the Goods or the performance of the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery and performance shall be within a reasonable time.
 - Subject to the other provisions of this condition and subject to the Buyer being liable for any direct, indirect or consequential loss (all three of which include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or the performance of the Services (even if caused by ITC's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
 - If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or ITC is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
 - risk in the Goods shall pass to the Buyer;
 - the Goods shall be deemed to have been delivered;
 - ITC may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance); and
 - sell the Goods at the best price readily attainable and (after deducting any costs for storage and other selling expenses) account to the Buyer for the excess over the price or charge the Buyer for any shortfall below the price under the Contract.
 - The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
 - If ITC delivers to the Buyer a quantity of Goods (being bespoke, non-stock items) of up to 10% more or less than the quantity accepted by ITC, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
 - ITC may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
 - Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
 - Non-delivery**
 - The quantity of any consignment of Goods as recorded by ITC on despatch from ITC's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
 - ITC shall not be liable for any non-delivery of Goods (even if caused by ITC's negligence) unless the Buyer gives written notice to ITC of the non-delivery within 3 days of the date when the Goods would have been in the ordinary course of events have been received.
 - Any liability of ITC for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
 - Risk/titlle**
 - Time of damage to or loss of the Goods shall pass to the Buyer:**
 - in the case of Goods to be delivered at ITC's premises, at the time when ITC notifies the Buyer that the Goods are available for collection; or
 - in the case of Goods to be delivered otherwise than at ITC's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when ITC has tendered delivery of the Goods.
 - in respect of deliveries made in accordance with clause 6.1(b) above and notwithstanding any other provision contained in these Conditions, a transportation insurance policy shall be taken only at the Buyer's written request and at the Buyer's expense.
 - Ownership of the Goods shall not pass to the Buyer until ITC has received in full (in cash or cleared funds) all sums due to it in respect of:**
 - the Goods; and
 - all other sums which are or which become due to ITC from the Buyer on any account.
 - Until ownership of the Goods has passed to the Buyer, the Buyer shall:**
 - hold the Goods on a fiduciary basis as ITC's Bailee;
 - store each consignment of the Goods (at no cost to ITC) separately from all other goods purchased from ITC and those of the Buyer or any third party in such a way that they remain readily identifiable as ITC's property;
 - not remove, destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - maintain the Goods in the same condition and shape as they were in when insured on ITC's behalf for their full price against all risks to the reasonable satisfaction of ITC. On request the Buyer shall produce the policy of insurance to ITC.
 - The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:**
 - any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - any such sale shall be a sale of ITC's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
 - The Buyer's right to possession of the Goods shall terminate immediately if:**
 - the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - the Buyer suffers, in any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between ITC and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - the Buyer encumbers or in any way charges any of the Goods.
 - ITC shall be entitled to recover payment for the Goods or the Services notwithstanding that ownership of any of the Goods has not passed from ITC.
 - The Buyer grants ITC, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or where the Buyer's right to possession has terminated, to recover them.
 - Where ITC is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by ITC to the Buyer in the order in which they were invoiced to the Buyer.
 - On termination of the Contract, however caused, ITC's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.
 - Price**
 - Unless otherwise agreed by ITC in writing, the price for the Goods shall be the price set out in ITC's price list published on the date of delivery or deemed delivery. The price for the Services shall be in accordance with the quotation provided by ITC to the Buyer in accordance with clause 3.1.
 - The minimum value of the Buyer's order shall be not less than £20.00.
 - The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.
 - In the event that the Buyer's order is to be delivered to the Buyer then the Buyer shall pay for the costs of carriage notified to the Buyer by ITC from time to time.
 - ITC reserves the right, by giving notice to the Buyer at any time before the delivery to increase the price and/or the ancillary costs to reflect any increase in the cost to ITC which is due to any factor beyond the control of ITC (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of taxes, levies or duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods or change to the required Services which is requested by the Buyer, or any other change caused by any instructions of the Buyer or failure of the Buyer to give ITC adequate information or instructions.
 - Payment**
 - Subject to condition 8.4, payment of the price for the Goods or the Services is (unless otherwise agreed in writing by the parties) due in pounds sterling on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered. ITC reserves the right to request payment for the Goods and/or Services in advance.
 - Time for payment shall be of the essence.**
 - No payment shall be deemed to have been received until ITC has received cleared funds.
 - All payments payable to ITC under the Contract shall become due immediately on its termination despite any other provision.
 - The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by ITC to the Buyer. If the Buyer fails to pay ITC any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to ITC on such sum from the due date for payment at the annual rate of 8% above the base lending rate from time to time of National Westminster Bank plc, accruing on a daily basis until payment is made, whether before or after any judgment. ITC reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- Quality**
 - Where ITC is not the manufacturer of the Goods, ITC shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to ITC.
 - ITC warrants that:-**
 - (subject to the other provisions of these conditions) on delivery that the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
 - bought if the Buyer had made known that purpose to ITC in writing and ITC has confirmed in writing that it is reasonable for the Buyer to rely on the skill; and
 - that the Services will be provided using reasonable care and skill and, as far as reasonably possible, in accordance with the Contract and at the intervals and within the times referred to in the Contract.
 - The above warranty is given by ITC subject to the following conditions:
 - ITC shall be under no liability if it is established by ITC that some part of the material used in manufacture was defective;
 - ITC shall be under no liability in respect of any defect in the Goods or Services arising from any drawing, design or specification supplied by the Buyer;
 - ITC shall be under no liability under no liability under the above warranty (or any other warranty, condition or guarantee) if the Price and all ancillary costs are not paid by the Buyer on time.
 - ITC shall not be liable for a breach of either of the warranties in condition 9.2 unless:**
 - the Buyer gives written notice of the defect to ITC, and, if the defect is as a result of damage in transit to the carrier, within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
 - ITC is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by ITC) returns such Goods to ITC's place of business at ITC's cost for the examination to take place there.
 - ITC shall not be liable for a breach of either of the warranties in condition 9.2 if:**
 - the Buyer makes any further use of such Goods after giving such notice; or
 - the defect arises because the Buyer failed to follow ITC'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; or
 - the Buyer alters or repairs such Goods without the written consent of ITC.
 - Subject to condition 9.5, if any of the Goods do not conform with either of the warranties in condition 9.2 ITC shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if ITC so requires, the Buyer shall, at ITC's expense, return the Goods or the part of such Goods which is defective to ITC.
 - ITC complies with condition 9.6 it shall have no further liability for a breach of either of the warranties in condition 9.2 in respect of such Goods.
- Limitation of liability**
 - Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of ITC (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
 - any breach of these conditions;
 - any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
 - Nothing in these conditions excludes or limits the liability of ITC:
 - for death or personal injury caused by ITC's negligence; or
 - under section 2(3), Consumer Protection Act 1987; or
 - for any matter which it would be illegal for ITC to exclude or attempt to exclude its liability; or
 - for fraud or fraudulent misrepresentation.
 - ITC's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - ITC shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- Export terms**
 - Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of INCOTERMS shall have the same meaning in these Conditions, but if there is any conflict between the provisions of INCOTERMS and these Conditions, the latter shall prevail.
 - Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and ITC) apply notwithstanding any other provision of these Conditions.
 - The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
 - Unless otherwise agreed in writing by the Buyer and ITC, the Goods shall be delivered [for the air or sea port of shipment] and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
 - The Buyer shall be responsible for arranging for testing and inspection of the Goods at ITC's premises before shipment. ITC shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
 - Unless otherwise required by ITC, payment of all amounts due to the Seller shall be made by an irrevocable letter of credit, in a form acceptable to ITC, to be opened by the Buyer in favour of ITC and confirmed by a bank in the United Kingdom acceptable to ITC within 14 days after the Contract is concluded.
 - The Buyer shall not offer the Goods for resale in _____ or any other country notified by ITC to the Buyer at or before the time the Buyer's order is placed, or sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.
- Assignment**
 - ITC may assign the Contract or any part of it to any person, firm or company.
 - The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of ITC.
- Force majeure**
 - ITC reserves the right to defer the date of delivery or performance or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without prejudice to the Buyer) if it is prevented or delayed in the carrying on of its business due to circumstances beyond the reasonable control of ITC including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 90 days, the Buyer shall be entitled to give notice in writing to ITC to terminate the Contract.
- General**
 - Each right or remedy of ITC under the Contract is without prejudice to any other right or remedy of ITC whether under the Contract or not.
 - Any provision of the Contract which is void, unenforceable or unenforceable by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) shall nevertheless be deemed to be enforceable to the extent of its enforceability. Any provision of the Contract which is void, unenforceable or unenforceable shall nevertheless be deemed enforceable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
 - Failure or delay by ITC in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
 - Any waiver by ITC of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any other breach or default by the Buyer under any other provision of the Contract.
 - The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
 - The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- Communications**
 - All notices sent between the parties relating to the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax.
 - (in case of notices to ITC) to its registered office or such changed address as shall be notified to the Buyer by ITC; or
 - (in the case of notices to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to ITC by the Buyer.
 - Notices shall be deemed to have been received:
 - if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - if delivered by hand, on the day of delivery; or
 - if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
 - Notices addressed to ITC shall be marked for the attention of Mr P Graves.
- Indemnity**
 - If any claim is made against the Buyer that the Goods or Services provided infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, ITC shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
 - the Buyer shall immediately inform ITC of all such claims;
 - ITC is given full control of any proceedings or negotiations in connection with any such claim;
 - the Buyer shall give ITC all reasonable assistance for the purposes of any such proceedings or negotiations; except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of ITC (which shall not be unreasonably withheld);
 - the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
 - ITC shall be entitled to the benefit of, and the Buyer shall accordingly account to ITC for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
 - without prejudice to any duty of the Buyer at common law, ITC shall be entitled to require the Buyer to take such steps as ITC may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which ITC is liable to indemnify the Buyer under this clause.
 - Insolvency of Buyer**
 - This clause applies if:
 - the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - the Buyer ceases, or threatens to cease, to carry on business; or
 - ITC reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- If this clause applies then, without prejudice to any other right or remedy available to ITC, ITC shall be entitled to cancel the Contract or suspend any further deliveries or performance of the Services under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the Price and the Ancillary Costs shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary