

# CONDITIONS OF SALE



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## **CONDITIONS OF SALE – MAYCAST-NOKES PRECISION ENGINEERING LIMITED**

### **1. GENERAL**

1(1) In these terms and conditions the following expressions shall have the following meanings: the “Company” Maycast-Nokes Precision Engineering Limited, its Subsidiaries or its Successors, or assigns in business. The “Customer” : the person, firm or company who has agreed to purchase the goods and/or services from the Company. The “Goods” : the goods and/or services supplied by the Company to the Customer under these terms and conditions. The “Order”: the Customer's order for the Goods, as set out in the Customer's written acceptance of the Company's quotation.

1(2) A quotation for the Goods given by the Company shall not constitute an offer. A quotation shall only be valid for a period of 60 Business Days from its date of issue.

1(3) The Order constitutes an offer by the Customer to purchase the Goods in accordance with these terms and conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable specification submitted by the Customer are complete and accurate.

1(4) The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the contract shall come into existence.

1(5) All quotations and Orders are subject to these terms and conditions and any special conditions submitted by the Company. If these terms and conditions and such special conditions conflict then the special conditions shall prevail. These terms and conditions and any special conditions of the Company shall prevail over any terms and conditions inconsistent with them appearing on the Order placed with the Company or otherwise.

### **2. PRICES AND DELIVERY**

2(1) U.K. Only - Unless otherwise agreed the prices quoted are exclusive of VAT and packaging. Unless otherwise agreed with the Customer all prices are ex-works.

2(2) Export. Only - Unless otherwise agreed the prices quoted are ex-works. The Customer is responsible for freight insurance and handling charges on collection.

2(3) Risk in the Goods shall pass in a case where delivery is made by the Company’s vehicles in the U.K. when the Goods are delivered by the Company to the Customer or otherwise to its order. Where delivery is by some other means risk in the Goods shall pass to the Customer on delivery to the carrier or to the post office. Risk in the Goods in the case of an export sale shall pass when the Goods are delivered to and arrive at a U.K. port or airport and the Company will not be liable for loss or damage to Goods arising after such delivery. The Company shall be obliged to give the Customer the notice required by Section 32(3) of the Sale Of Goods Act 1979 (which relates to the giving by the seller to the buyer of notice to enable the buyer to insure goods which are to be transported)

2(4) Because of the difficulty of producing exact quantities of Goods the Company reserves the right to deliver up to five per cent more or less than the quantities ordered by the Customer in which case the Customer shall pay for the actual quantities delivered at the unit price quoted.

### **3. VARIATION OF PRICES**

3(1) Unless the order is accompanied by sufficient information, drawings and patterns to enable work to proceed forthwith, the Company is at liberty to amend prices to cover any increase on costs during the period of delay caused by lack of such details.

3(2) Any alterations by the Customer in design, weight, quantities or specifications and any suspension of work due to instructions or lack of instructions will involve adjustment of the agreed or quoted prices, if the costs are thereby affected.

3(3) If there is any increase in the cost of raw materials and/or wages during the period in which any order is being fulfilled the Company shall be free to make a corresponding adjustment to the prices quoted in respect of that part of the order which remains to be completed.

### **4. PAYMENT**

4(1) U.K. Only - Unless otherwise agreed in writing, payment (as to which time shall be of the essence) is due by the end of the month following the date of the Company's invoice and (without prejudice to the Company's other rights and remedies) any sum not so paid shall carry interest until date of payment at the rate of 3% per month. If any payment is not made on the due date the Company reserves the right to withdraw credit terms. When deliveries are spread over a period, each consignment shall be invoiced when dispatched and treated as a separate order.

4(2) Export Orders - In case of goods to be exported by the Company from the United Kingdom unless otherwise agreed all payments shall be made by irrevocable letter of credit confirmed by a London bank satisfactory to the Company. All costs in connection with the issue, confirmation and administration of the letter of credit shall be borne by the Customer. Where payment is not made by letter of credit the Company shall be entitled to charge interest upon the same terms as contained in paragraph 4(1).

### **5. DAMAGE/LOSS IN TRANSIT**

U.K. Only - All claims for damage or loss in transit or short delivery where delivery is by the Company's vehicles shall be made in writing to the Company within fourteen days of date of dispatch shown on the Company's invoice. Any claim which has not been made within the fourteen days shall be barred. The Company's sole liability in respect of Goods damaged or lost in transit or delivered in short quantity shall be the replacement of those damaged lost or short quantity Goods by other Goods conforming to the terms of the agreement incorporating these conditions. The Company shall not be liable for any consequential loss suffered by the Customer as a result of such damaged or short or non delivery.

## **6. PATTERNS TOOLING AND LIEN**

6(1) Where the Customer supplies patterns or tooling to the Company, the quotations of the Company assume that such patterns and tooling are in good condition, true to drawing and entirely suitable for the Company's methods of production and for the production of the goods in quantities required.

6(2) Any replacement of or alterations or repairs to a pattern or tooling supplied by the Customer shall be paid for by the Customer.

6(3) The Company does not accept any liability for loss or damage to any pattern or tooling supplied by the Customer while it is on the Company's premises. THE CUSTOMER MUST INSURE ITS PATTERNS AND TOOLING AGAINST THE RISK OF THEFT FIRE OR OTHER DAMAGE.

6(4) Where patterns or tooling are not supplied by the Customer but are made by the Company, only such patterns or tooling as are specially made for the Customer and paid for shall become the property of the Customer.

## **7. TIME FOR DELIVERY**

7(1) Any time or date named by the Company or requested by the Customer for delivery of Goods is an estimate only and the Company shall not be liable for the consequences of any delay whether or not caused by reasons within the control of the Company. The period, if any, quoted for delivery of Goods commences from the receipt by the Company of written instructions, information, drawings and (if the Customer is to supply them) the patterns and tooling to proceed and all necessary information to enable the Company to put the work in hand.

7(2) Any period agreed for delivery is exclusive of any period occupied in making, altering or adapting patterns or in any experimental work connected with the Goods.

7(3) If a sample casting is to be submitted to the Customer for approval then any period agreed for delivery shall only commence on receipt by the Company of such approval in writing.

## **8. STORAGE**

8(1) In the event that a Customer has supplied the Company, or the Company has purchased or manufactured, patterns or tooling and that pattern or tooling has not been used for 5 years; the Company reserves the right to charge the Customer for storage of the pattern or tooling.

8(2) The Company shall charge the Customer for all related costs and expenses (including insurance), of storing the pattern or tooling, until such time as the Customer collects the pattern or tooling, or instructs the Company to produce more Goods using the pattern or tooling. Such charges to commence from the fifth anniversary of the pattern or tooling last being used up until such time as the pattern or tooling is collected by the Customer or used again by the Company at the Customer's instruction.

8(3) In the event that a Customer has supplied the Company, or the Company has purchased or manufactured, patterns or tooling and that pattern or tooling has not been used for 10 years; the Company, after making reasonable attempts to contact the Customer, reserves the right to destroy and dispose of the pattern or tooling.

## **9. GUARANTEE**

9(1) Subject to the following terms the Company will repair or at its option replace free of charge any Goods which are shown to the reasonable satisfaction of the Company to be defective due to faulty materials or workmanship within twelve months from the date of invoice.

9(2) The Customer shall make every effort to ascertain any defect as soon as possible after the delivery of the Goods including carrying out tests or inspection during or after machining. Immediately after discovery of any defects or alleged defects the Customer shall notify the Company in writing and shall give the Company a reasonable opportunity to take action to prevent a repetition of the defect.

9(3) In the case of a sale to a Customer in the United Kingdom Goods alleged to be defective will be collected by the Company at its expense provided that if the Goods in question are subsequently shown not to be defective the costs of collection shall be paid by the Customer. In the case of Goods which have been exported and which are alleged to be defective the Customer shall return them to the Company at the Customer's expense; provided that, if the Goods are shown to the reasonable satisfaction of the Company to be defective the Company shall reimburse the cost of returning the defective goods. No Goods shall be returned to the Company without the prior agreement of the Company.

9(4) The foregoing guarantee is given in substitute for and to the exclusion of any other warranty or condition as to compliance with description, merchantability, fitness for a particular purpose or otherwise howsoever which would otherwise be implied. The Company shall not be liable to the Customer whether in contract tort or otherwise for any loss damage costs or expenses of whatsoever nature and howsoever arising suffered or incurred by the Customer arising out of or in connection with the manufacture and sale of the goods. Without affecting the generality of the foregoing the Company shall not be liable to the Customer for the cost of labour, machining or other expenditure incurred in consequence of the goods being defective. Further in the absence of any agreement between the parties the cost to the Customer of salvaging defective goods shall not be recoverable from the Company and no salvaging operation shall be proceeded with by the Customer in any manner liable to prejudice the opportunity of the Company to take the earliest possible steps to avoid a repetition of the defect in any further goods it may be making.

9(5) The foregoing guarantee does not extend to goods which are defective because of defects in the design or manufacture of patterns which have been supplied by the Customer.

## **10. RESERVATION OF TITLE**

10(1) Until such time as full payment is received by the Company for all Goods supplied by the Company to the Customer and the Customer has paid in full all monies owing to the Company all Goods shall remain the property of the Company. The Customer shall hold the Goods as bailee for the Company and shall store the Goods in such a way that it is clear that they are the property of the Company, not remove, deface or obscure any identifying mark or packaging on or relating to the Goods and maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery. The Customer's right to possession of the Goods shall cease if he (not being a Company) has a bankruptcy order made against him or enters into any voluntary arrangement, moratorium or composition with his creditors or if, being a company, the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction. The Company may following the occurrence of any of the events mentioned in this clause 10(1) at that time (without prejudice to its other rights and remedies including the right to sue for the price of the goods) terminate the Customer's right to sell the Goods and recover or recall all or any of its Goods in the Customer's possession or under the Customer's control and the Company, its officers, employees and agents are hereby irrevocably authorised to enter upon the Customer's premises to recover the Goods.

10(2) The Customer shall have the right to sell the Goods in the ordinary course of its business and shall hold any proceeds of sale in respect of Goods (which shall be kept in a separate account) along with any rights arising from any sale thereof as trustees for the Company.

## **11. IMPORT AND EXPORT LICENCES AND OTHER EXPENSES**

11(1) Import Only - The Customer shall be responsible for obtaining any import license or permit required and shall be liable for any duty, tax, impost or outlays of whatsoever nature levied by the authorities in any port or place for or in connection with the Goods and for any payments, fines, expenses, costs, charges, losses or damage incurred or sustained by the Company in connection therewith.

11(2) Export Only - The Company shall be responsible for obtaining any export license and the Customer shall provide such assistance and information to the Company as the Company requires to enable it to obtain the export licence.

## **12. INTELLECTUAL PROPERTY**

The Customer shall indemnify the Company against all damages, penalties, costs and expenses which the Company incurs or becomes liable to pay as a consequence of work done at the request of the Customer

which results in the infringement or alleged infringement of any patent, registered design, copyright, trade mark or other intellectual property right of any third party.

### **13. CANCELLATION**

13(1) No cancellation of any order by the Customer shall be accepted by the Company unless-

(i) the cancellation is received by the Company in writing; and

(ii) the Customer pays:

(a) the cost to the Company of that part of the Goods completed and work done which cannot reasonably be used elsewhere by the Company; and

(b) the cost of any items or materials specially brought by the Company which cannot be reasonably be used elsewhere by the Company; and

(c) any other costs and liabilities which the Company incurs by reason of the Customer's cancellation.

13(2) Notwithstanding paragraph 13(1) of these conditions, no cancellation of any order by the Customer will be accepted by the Company where the order falls into one of the following categories:-

(i) special orders where a delivery period of four weeks or less from the date of the order is agreed with the Company.

(ii) Other orders where a delivery period was agreed but where the purported cancellation is within six weeks of the expiry of that delivery period.

### **14. TESTING**

The Goods will be submitted to the standard tests of the Company prior to dispatch and a certificate of conformity with the specification will be made available to the Customer upon written request. If special tests or tests in the presence of the Customer or its representative are requested the Company will undertake them at its own premises and reserves the right to charge the Customer the cost thereof.

### **15. SAMPLES**

Any agreement between the Customer and the Company with respect to the supply of sample castings for inspection and approval shall be dealt with by special condition.

### **16. SUBCONTRACTING**

The Company reserves the right to sub-contract all or any part of the work to be performed under the terms of the agreement incorporating these conditions.

### **17. Entire agreement**

17(1) These terms and conditions constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

17(2) Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

#### **18. Variation**

No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

#### **19. Waiver**

19(1) A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

- (i) waive that or any other right or remedy; nor
- (ii) prevent or restrict the further exercise of that or any other right or remedy.

#### **20. Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

#### **21. NOTICES**

Any notice to be given by the parties hereto shall be in writing and shall be deemed to have been duly served if sent by first-class pre-paid post addressed to the last known place of business of the party upon whom it is served and such notice shall be deemed to have been received two days after being sent by post (where the recipient is not overseas). In the case of service by post of a notice addressed to a party overseas such notice shall be deemed to have been received 5 days after being sent by Pre-paid airmail.

#### **22. GOVERNING LAW AND JURISDICTION**

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance



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