

**1 INTERPRETATION AND APPLICATION****1.1 INTERPRETATION**

'Acknowledgement of Order' means any acknowledgement issued by the Company of an order for goods placed by the Customer.  
'Company' means MATHIAS & SONS LTD  
'Conditions' means these General Terms and Conditions of Sale.  
'Contract' means the contract, however made, between the Company and the Customer for the supply of the Goods.  
'Customer' means the person, firm or Company with whom the Company contract to supply the Goods.  
'Delivery Address' means such, if any, address as appears as such on any Acknowledgement of Order which may be issued by the Company, and if none is issued or specified, such address as may have been agreed by the Company for the purpose of delivery.  
'Goods' mean any goods, materials or services supplied by the Company to the Customer.  
'UK Mainland' means the Mainland of England, Scotland and Wales and for the avoidance of doubt excludes Northern Ireland and all offshore Islands.  
'Parties' means the Company and the Customer.  
'V. A. T.' means United Kingdom Value Added Tax.  
'Writing' includes e-mail, facsimile transmission and comparable means of communication. Where the context so admits any reference in the Conditions to the singular shall include the plural and vice versa and any reference to gender shall include the masculine and/or feminine as the case may be. The headings in these Conditions agreed by the Company are for convenience only and shall not affect their interpretation.

**1.2 APPLICATION**

These Conditions apply to all sale of Goods by the Company to the Customer and shall apply in place of and prevail over any terms or conditions contained or referred to in the Customer's order or in correspondence or elsewhere or implied by trade, custom, practice or course of dealing unless specifically agreed to in Writing by a director or other authorised representative of the Company. The company reserves the right to change, amend or alter these Terms & Conditions as it deems fit. The Customer's acceptance of any deliveries of Goods from the Company shall be conclusive evidence of the application of the Contract of such Goods.  
Any typographical, clerical or other error of omission in any sales literature, catalogue, quotation, price list, acceptance or offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company. Any waiver or breach of these Conditions shall not prejudice the Company's rights in respect of any subsequent breach.

**2 ORDERS****2.1**

A quotation issued by the Company and/or the publication of a price list or catalogue by the Company constitutes an offer capable of acceptance by the Customer within such period as may be specified, by the Company in writing in the quotation or, if none is specified, within 28 days of the date of the quotation and the Company reserves the right to withdraw or revise any quotation at any time prior to the Company's acceptance of the Customer's order.

**2.2**

The Company's acceptance of the Customer's order shall be effective only where such acceptance is made by an authorised representative of the Company. Where the Company issues an Acknowledgement of Order, unless the Customer notifies the Company in Writing within 48 hours after the date of its despatch that any of the particulars given in it are incorrect, the Customer shall be deemed to have accepted that the particulars set out in it are complete and accurate.

**2.3**

If no quotation or written Acknowledgement of Order is given by the Company but the Company has received an order from the Customer, then provided that the Customer shall have had notice of these Conditions, the Goods are supplied and all work is done on and subject to these Conditions.

**2.4 CANCELLATION BY CUSTOMER**

No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss (including loss of profit), costs (including the costs of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

**3 SPECIFICATION****3.1**

If the Goods are to be manufactured, or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses ordered against, or incurred by, the Company in connection with, or paid, or agreed to be paid, by the Company in settlement of any claim for infringement of any patent, copyright, design, trademark or other industrial or intellectual property right of any other person which results from the Company's use of the Customer's specifications.

**3.2**

The Company reserves the right to make any changes in the specification in the Goods which are required to conform to any applicable safety or other statutory requirement or, where the Goods are to be supplied to the Customer's specification, which do not materially affect their quality or performance.

**4 PRICES****4.1**

The price of the Goods shall be the Company's quoted price in writing or where no price has been quoted, the amount contained in the Company's price list therefore current at the date of invoice. The Company shall have the right at any time before delivery to revise the price of the Goods to take into account increases in costs including (without limitation) costs of any goods, materials, carriage, labour or overheads the increase or imposition of any tax, duty or other levy and any variation in foreign exchange rates.

**4.2**

Prices shown in the Company's price lists represent the ex-warehouse cost of the Goods and all delivery charges (including those for transportation, insurance clearance (including fees and duties) and onward delivery) shall be paid by the Customer.  
The Company reserves the right to raise further charges on the invoice for the Goods, or separately, in respect of packaging, transport, insurance, forwarding, storage or otherwise if the Customer requests delivery in any other way.

**4.3**

Unless otherwise specified all prices are exclusive of any applicable V. A. T. and other tax or duties payable by the Customer which the Customer shall additionally be liable to pay the Company.

**4.4**

Orders with a net invoice value of less than an amount determined from time to time by the Company ('small orders') shall be subject to a carriage charge payable to the Company. The current amount for this is £300 and the carriage charge, £7.00. The carriage paid threshold and carriage charge is exclusive of V.A.T. These amounts are variable at the option of the Company and can be ascertained at any time on application to the Company.

**4.5**

Any additions to orders already in hand will be treated as small orders and may be subjected to the surcharge described in Condition 4.4.

**5 TERMS OF PAYMENT****5.1**

Subject to any special terms agreed in Writing between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods and any other amounts payable by the Customer in relation to the Goods on or at any time after delivery of the Goods unless the Goods are to be collected by the customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

**5.2**

Payment of invoices shall unless otherwise agreed in Writing be made in full without any deduction, setoff or counterclaim within 30 days of the date of invoice.

**5.3**

Interest shall be payable by the Customer on overdue accounts at the rate of 2% per month (or part of a month) to run from the due date for payment thereof until actual receipt by the Company of the full amount whether before or after judgement.

**5.4**

If, in the opinion of the Company, the credit-worthiness of the Customer shall have deteriorated prior to delivery the Company may require full or partial payment of the price prior to delivery or the provision of security for payment by the Customer in a form acceptable to the Company.

**5.5**

Subject to the other provisions in this Condition, Goods may only be returned for credit using MUMS – Mathias' WEB ordering facility or by prior agreement in Writing signed by a duly authorised representative of the Company, and where they have no decoration (embroidery, print, transfer or any other method of decoration) and are unused, clean and fit for resale. Goods will only be credited if they are accompanied by the official MUMS Returns Note or the official Delivery Note. Where Goods so returned by agreement were originally supplied by the Company in accordance with the relevant contract the Customer shall pay to the Company by deduction from any credit due to the Customer, or in such other way as the Company shall decide a re-stocking fee of £6.00 per consignment.

Any Goods returned other than in accordance with this Condition may at the Company's option be retained by the Company or returned to the Customer, and will attract a handling charge of £7.00 per box. All returns are transported at the Customers risk and cost.

Goods altered, manufactured or decorated (embroidery, print, transfer or any other method of decoration) to the Customer's requirements, or Goods not shown in the Company's catalogue which is current at the date of the proposed return, may not be returned by the Customer.

**5.6**

If the Customer fails to make payment in full on the due date the Company shall be entitled to appropriate any payments it shall have received to such supplies and on such a basis as it sees fit.

**6 DELIVERY****6.1**

Delivery will be effected by the Company at the Customer's premises or to such other place as is mutually agreed. The Goods shall be at the Customer's risk on either entry on to the Customer's premises or such other mutually agreed place on being placed into custody on the Customer's behalf and should be insured accordingly.

**6.2**

Notwithstanding the method of delivery the Customer shall carefully examine the Goods on receipt of the same and shall give written notice of any short delivery or over delivery which must be received by the Company within 3 days of receipt of the Goods and in the case of any defects reasonably discoverable on careful examination written notice must be received by the Company within 7 days of receipt of the Goods.

**6.3**

In the event that the Company and the Customer agree to transfer the Goods by a method other than delivery effected by the Company, then the risk of loss or damage of any kind in the Goods shall pass to the Customer whichever of the following events occur earlier:-

- (a) Collection by or on behalf of the Customer or by an independent carrier for despatch to the Customer,
- (b) 7 days from the date of notice given by the Company that the Goods are ready for collection or despatch.

If the Goods shall not have been collected by or on behalf of the Customer or by an Independent carrier for despatch to the Customer within 7 days of the Company's written notice pursuant to subparagraph (3) (b) herein then the Company may at any time thereafter send to the Customer a further notice notifying the Customer of the Company's intention to sell the same after expiration of a period of not less than 7 days from the date of the notice.

**6.4**

If the Customer neglects to serve notice under sub-paragraph (3) above of any over delivery then the Company may at its option either repossess the excess Goods or invoice them and

be paid forthwith by the Customer for the excess Goods at the price ruling at the date of delivery.

## 7 TITLE AND RISK

### 7.1

The goods shall be at the risk of the Customer from the time of delivery of the goods to the Customer.

### 7.2

#### 7.2.1

The Goods shall remain the sole and absolute property of the Company as legal and equitable owner until such time as the Customer shall have paid to the Company the agreed price together with the full price of any other goods the subject of any other Contract with the Company.

#### 7.2.2

Until such payment the Customer shall be in possession of the Goods solely as bailee for the Company and in a fiduciary capacity and shall store the Goods in such a way as to enable them to be identified as the property of the Company.

#### 7.2.3

The Customer shall be at liberty and may in the ordinary course of its business sell and deliver the Goods or any product produced with the Goods to any third party as the Company's bailee and in a fiduciary capacity.

#### 7.2.4

The Company reserves the immediate right of repossession of any Goods to which it has retained title as aforesaid and thereafter to re-sell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company's servants and agents to enter upon all or any of its premises with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the Contract for any reason and is without prejudice to any accrued rights of the Company there under or otherwise.

## 8 COMPATIBILITY

### 8.1

Under EC Directive 89/656/EEC the responsibility for establishing the suitability of any of the Company's products for the intended purpose and its subsequent selection and use shall rest upon the Customer and the Company shall not be liable for any loss or damage whether consequential or otherwise. The Company in compliance with the requirements of EC Directive 89/686/EEC will make available to the Customer such relevant data as is necessary to assist the correct selection of products supplied by the Company, and the Customer shall not rely on representations made by the Company or on behalf of the Company.

## 9 THIRD PARTY RIGHTS

### 9.1

The Customer shall indemnify the Company against any and all liabilities, claims and cost incurred by or made against the Company as a direct or indirect result of the carrying out of any work required to be done on or to the Goods in accordance with the requirements of any rights of any third party, in particular, but without limitation, where the Customer produces a pattern, sample or mock-up to the Company for production purposes or where the Customer produces an outline, design or concept to the Company and the Company produces and the Customer accepts, a sample made from such outline, design or concept.

### 9.2

The Company shall have no liability to the Customer in the event of the Goods infringing or being alleged to infringe the rights of any third party. In the event that the Goods are or may be the subject of third party rights the Company shall be obliged to transfer to the Customer only such title as the Company may have.

### 9.3

The Customer shall notify the Company forthwith of any claim made or action brought or threatened alleging infringement of the rights of any third party. The Company shall have control over and shall conduct any such proceedings in such manner as it shall determine. The Customer shall provide all such reasonable assistance in connection therewith as the Company may request. The cost of any such proceedings shall be borne in such proportions as the parties shall determine.

## 10 LIABILITY

### 10.1

The Company shall not be liable to the Customer:-

#### 10.1.1

For shortages in quantity delivered unless the Customer notifies the Company in Writing of any claim for short delivery within three days of receipt of Goods;

#### 10.1.2

for damage to or loss of the Goods or any part thereof in transit (where the Goods are carried by the Company's own transport or by a carrier on behalf of the Company) unless the Customer shall notify the Company in Writing of any such claim within three days of receipt of the Goods or the scheduled date of delivery whichever shall be the earlier;

#### 10.1.3

For alleged non-delivery of the Goods unless notice to that effect is given by the Customer to the Company in Writing within ten days of the date of invoice;

#### 10.1.4

For defects in the Goods caused by fair wear and tear, abnormal conditions of storage or abnormal working conditions, willful damage, negligence, failure to follow the Company's instructions (whether oral or in Writing), misuse or alteration or repair of the Goods without the Company's prior written approval;

#### 10.1.5

For other defects in the Goods unless notified to the Company within one month of receipt of the Goods by the Customer or where the defect would not be apparent on reasonable inspection within two months of delivery.

### 10.2

#### 10.2.1

Where liability is accepted by the Company under Condition 10.1 the Company's only obligation shall be at its option to make good any shortage or non-delivery and/or as appropriate to replace or repair any of the Goods found to be damaged or defective and/or to refund the cost of any such Goods to the Customer.

#### 10.2.2

The Company's aggregate liability to the Customer whether for negligence, breach of contract, misrepresentation or otherwise shall in no circumstances exceed the cost of the defective, damaged or undelivered Goods which gave rise to such liability as

determined by the net price invoiced to the Customer in respect of any occurrence or series of occurrences.

### 10.3

Except as expressly provided in these Conditions and in relation to Contract with person dealing as consumer (within the meaning of the Unfair Contract Terms Act 1977) all conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Goods are hereby excluded and Company shall be under no liability to the Customer for any loss, damage or injury direct or indirect (including without prejudice to the generality of the foregoing) consequential loss or damage, whether for loss of profit or otherwise resulting from defective material, faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Company its employees or agents SAVE THAT the Company shall accept liability for death or personal injury caused by the negligence of the Company.

### 10.4

The Company's prices are determined on the basis of the limits of liability set out in this Condition. The Customer may by written notice to the Company request the Company to agree a higher limit of liability provided insurance cover can be obtained therefore. The Company shall effect insurance up to such limit and the Customer shall pay upon demand the amount of any and all premiums. The Customer shall disclose such information as the insurers shall require. In no case shall the Customer be entitled to recover from the Company more than the amount received from the insurers.

## 10.5 FORCE MAJEURE

The Company shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the Supply of the Goods by the Company being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond the Company's reasonable control including but not limited to act of God, war, riot, strike, lock out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials or transport or other circumstances affecting the supply of the Goods or of raw materials therefore by the Company's source of supply or the manufacture of the Goods by the Company's normal means of the delivery of the Goods by the Company's normal route or means of delivery. If due to such circumstances or events the Company has insufficient stocks to meet all its commitments the Company may apportion available stocks between its customers at its sole discretion.

## 11 INSOLVENCY AND DEFAULT

### 11.1

This Condition applies in the following circumstances:-

#### 11.1.1

The Customer is in breach of any of the terms hereof and (if such breach is remediable) fails to remedy such breach within 30 days after receipt of written notice giving full particulars of the breach and requiring it to be remedied; or

#### 11.1.2

An encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Customer; or

#### 11.1.3

The Customer makes any voluntary arrangement with its creditors or becomes subject to an Administration Order; or

#### 11.1.4

The Customer goes into liquidation (except for the purposes of amalgamation or reconstruction and in such manner that the company resulting there from effectively agrees to be bound by or assume the obligations imposed on the Customer under this Agreement);

#### 11.1.5

Anything analogous to any of the foregoing under the law of jurisdiction in relation to that other party;

#### 11.1.6

The Customer ceases, or threatens to cease, to carry on business; or

#### 11.1.7

The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notify the Customer accordingly.

### 11.2

If this Condition applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled without any liability to the Customer to stop any of the Goods in transit and/or suspend further deliveries and/or by notice in Writing to the Customer determine the contract and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contract.

## 12 GENERAL

### 12.1

If any licence or consent of any government or other authority shall be required for the acquisition, carriage or use of the Goods by the Customer the Customer shall obtain the same at its own expense and if necessary produce evidence of the same to the Company on demand. Failure to do so shall not entitle the Customer to withhold or delay payment of the price. Any additional expenses or charges incurred by the Company resulting from such failure shall be for the Customer's account.

### 12.2

Failure by the Company to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

## 12.3 NOTICES

Any notice or other communication given to a party under or in connection with this Contract shall be in writing, addressed to that party at its registered office, if it is a company, or its principal place of business or such other address as that party may have specified to the other party in writing in accordance with this clause and shall be delivered personally or sent by pre-paid 1<sup>st</sup> class post or other next working day delivery service or by commercial courier, fax or e-mail.

The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 12.4

The Contract shall be governed by and construed in accordance with the Laws of England and the parties hereby submit to the jurisdiction of the English Court.