

TERMS AND CONDITIONS OF SALE FOR FINISHING AIDS AND TOOLS LIMITED

1. **GENERAL**
- 1.1 All business undertaken by the Company is transacted subject to the conditions hereinafter set out each of which shall be deemed to be incorporated in and to be a condition of any contract between the Company and the Customer.
- 1.2 The Company will only sell or supply Goods on these conditions, and each sale contract entered into by the Company as the supplying company and the Customer is hereinafter referred to as "the Contract".
- 1.3 Any variation to these conditions can only be made in writing signed by a Director of the Company.
- 1.4 These conditions are to govern the Contract between the Company and the Customer and shall prevail over any terms put forward by the Customer unless the Company expressly agrees to them in writing. No conduct by the Company shall be deemed to constitute acceptance of any terms put forward by the Customer.
2. **ACCEPTANCE**
- 2.1 The Company's quotations and estimates are without commitment and an order is not binding on the Company unless accepted in writing signed by a Director and any action taken by the Company pursuant to such an order shall only be taken as acceptance solely upon these conditions.
3. **PRICE**
- 3.1 The Company shall establish the prices to be charged to the Customer for Goods from time to time at its discretion. The Company will give not less than 14 days prior written notice to the Customer of any increase in the price of the Goods and such increase shall apply to all orders accepted by the Company subsequent to the expiry of the notice period. Where delivery of the Goods is made by instalments the price applicable for each instalment shall be that ruling at the date upon which the Company accepts the Customer's order for the Goods.
- 3.2 Unless otherwise stated on the Company's invoice the price of the Goods shall mean and include (where applicable) the Company's costs of standard packaging. Unless otherwise indicated the price is exclusive of value added tax which shall be charged in addition at the rate or rates applying at the date of the Company's invoice. The costs of any special packing and of carriage (unless waived by prior agreement or by written quotation) shall be for the account of the Customer and if the Customer requires additional insurance cover over and above that arranged by the Company for transit then the Customer must effect such cover as it requires at its own cost and expense.
4. **PAYMENT**
- 4.1 The Customer will make payment in full without any deduction or withholding whatsoever within 30 days of the date of the invoice or of the date on which the invoice is dated after which date payment of the account will be regarded as overdue.
- 4.2 The Company reserves the right to charge the Customer interest on such overdue accounts at a rate per annum 4% above the base lending rate of Midland Bank PLC from time to time.
- 4.3 If the Company at its sole discretion agrees to the return of the Goods before any payment has been made by the Customer the purchase price shall be liable to be charged to the Customer on a handling charge of 15% of the full purchase price of the Goods. If the Company has agreed to accept the return of the Goods when only part payment has been made by the Customer, the Company shall refund the part payment after deducting a handling charge of 15% of the unpaid balance of the purchase price of the Goods.
- 4.4 If payment is to be made by instalments the failure of the Customer to pay any instalment in due time shall entitle the Company to demand and be paid the full extent of the balance then outstanding, and to treat such failure as a repudiation of the whole Contract by the Customer and to recover damages for breach of contract.
- 4.5 The Company reserves the right to defer without penalty to its delivery of any Goods which have been ordered by the Customer for so long as any accounts remain overdue for payment or any credit limit is exceeded.
- 4.6 No claim counterclaim or right of set off by the Customer in respect of the Goods comprised in any one delivery of Goods shall entitle the Customer to withhold payment of the whole or any part of the price payable in respect of any other delivery of Goods.
5. **PERFORMANCE**
- 5.1 Although the Company shall endeavour (subject to 5.2 below) to meet the Customer's delivery or completion requirements the Company will be under no obligation to deliver Goods by a specified date. Delivery and completion dates as quoted by the Company or included in the Contract are given in good faith but are estimates only and without engagement.
- 5.2 The Company may suspend or cancel the whole or any part of the Contract if by reason of circumstances beyond its control the Company is prevented in or from performing its obligations or performance of those obligations is to a substantial degree rendered difficult. For the purposes of this clause "circumstances" shall mean and include (but without limitation to the foregoing) strike; lockout; labour dispute; damage to or loss of or failure of machinery, insufficient supply of electricity, gas, oil, or water; fire; flood; government intervention; export restriction; conscription; mobilisation; war; blockade; Act of God; adverse weather and a shortage of carriage or shipping facilities. If the Company exercises its rights of suspension, the Customer may without any abatement of any part of the Contract upon payment of all or any expenses incurred by the Company to date together with the proper and reasonable charges for work done and services provided up to and including the date of exercise by the Company of its right of suspension. The Company shall have no liability for any such suspension and on any such cancellation, whether by the Company or by the Customer, the liability of the Company shall be limited to the return of the price of the Goods received less the proper and reasonable charges and expenses already incurred by the Company.
- 5.3 Part deliveries (in accordance with the Contract or with reasonable justification as a departure from the Contract) shall be deemed to represent separate contracts and the Company will be entitled to invoice the customer for part deliveries.
- 5.4 Without prejudice to any other right the Company may have, it shall be entitled to charge for abortive delivery costs, storage and associated costs should the Customer be unavailable for or refuse or defer delivery.
- 5.5 The Company does not supply Goods or undertake work on approval and Goods are not returnable except with the Company's express prior written agreement.
6. **TITLE AND RISK**
- 6.1 **Reservation of Title**
- 6.1.1 Ownership of the goods shall remain with the Company and no property in the goods whether legal or equitable shall pass from the Company until payment has been received of:
 - (a) the full price together with VAT of all Goods supplied under the Contract, and
 - (b) the full price together with VAT of all other Goods supplied under any other contract between the Company and the Customer.
- 6.1.2 (c) the full price of any carriage and delivery charges together with VAT in respect of either or both the matters set out in sub-paragraphs (a) and (b) hereof.
- 6.1.2 Until such payment in full of the said amounts has been received:
 - (a) the Goods shall be held by the Customer as bailee for the Company;
 - (b) the Customer shall store the Goods separately and in such manner that they can be readily identified as the property of the Company;
 - (c) the Company shall have the right to resume possession of the Goods at any time.
- 6.1.3 The Customer irrevocably authorises the representatives of the Company to enter upon the Customer's premises where the Goods are stored, or as notified by the Company to be stored for the purpose of repossessing them and subsequently reselling them.
- 6.1.4 The risk in the Goods shall pass to the Customer:
 - (a) when the Company delivers the Goods to the Customer or its agent or other person to whom the Company has been authorised by the Customer to deliver the Goods; or
 - (b) if the Goods are appropriated to the Customer but held at the Customer's premises at the Customer's request; and the Company shall have no responsibility in respect of the safety of the Goods thereafter and accordingly the Customer should insure the Goods thereafter against such risks (if any) as may be appropriate.
- 6.1.5 If the Customer fails to pay for the Goods on the due date (or fails to pay any instalment in which case the whole outstanding balance shall immediately become due) or if the Customer goes into receivership or is declared bankrupt (or any equivalent thereof) or enters into a composition with its creditors or the Customer, being a company, goes into liquidation or into receivership or is otherwise declared insolvent or prima facie bankrupt, the Customer shall immediately notify the Company thereof and shall upon demand made orally or in writing by or on behalf of the Company, deliver the Goods or cause the Goods to be delivered up to the Company or to the Company's order.
- 6.1.6 The Customer shall keep the Goods free from and will indemnify the Company against any charge, lien or other encumbrance thereon.
- 6.2 **Sub-sale of the Goods**
- 6.2.1 The Customer shall be entitled notwithstanding Clause 1 above, to offer for sale and sell the Goods at the best obtainable price in the ordinary course of its business as principal via a sub-customer and not as agent for the Company.
- 6.2.2 The Company, however, shall be legally and beneficially and absolutely entitled to the proceeds of any such sub-sale and the Customer shall pay all such proceeds of sale to a separate account for the Company which shall ensure that all such proceeds of sale are kept by or on behalf of the Customer in a separate identifiable form. In particular but without prejudice to the generality of the foregoing the Customer shall not pay any such proceeds of sale into any bank account which is overdrawn. Forthwith upon receipt of such proceeds of sale the Customer shall pay to the Company any of the aforesaid sums outstanding to the Company and shall not use or deal with any of such proceeds of sale in any way whatsoever until such sums have been paid.
- 6.2.4 Failure of the Customer to store the Goods separately or so that they can be readily identified as the property of the Company shall not prejudice the Company's entitlement to any such proceeds of sale.
- 6.2.5 The Customer holds any claims against sub-customers on trust for the Company.
- 6.3 **Mixed Goods**
- 6.3.1 If the Customer incorporates or mixes the Goods with other equipment or products ("the new goods") in such a way that the Goods are not a readily identifiable and removable part of the new goods, then:
 - (a) the Customer shall store such new goods separately and shall notify the Company of the precise location and position thereof; and
 - (b) the ownership of such new goods and the property therein shall vest in the Company.
- 6.3.2 All the provisions of Clauses 1 and 2 above shall apply to the sub-sale of new goods as if the references in Clauses 1 and 2 to "Goods" were references to "new goods".
- 6.3.3 Upon any sale of any new goods falling within the scope of Clause 6.3.1 by the Customer, then if the proceeds of sale exceed the price or the balance of the price of the Goods due to the Company from the Customer, the Company shall apply the balance of the proceeds of sale as follows:
 - (a) first, reimbursing the Company the cost and expense of taking of possession and the sale of the new goods and any damages which the Company has suffered as a result of any repudiation of the contract by the Customer;
 - (b) secondly, paying any sums still owing to other creditors of the Customer in respect of other items and materials used in connection with the manufacture of the new goods where the property in such items and materials has remained vested in such other creditors by reason of effective reservation of title clauses and the claims of such other creditors pursuant to such reservation of title clauses have been notified to the Company by the Customer or its liquidator, administrator or receiver or by such other creditors.
7. **DELIVERY, SHORTAGES, DAMAGE AND DEFECTS**
- 7.1 The Customer will take delivery of the Goods on the day of delivery and if the Customer fails to take delivery within the following provisions of this sub-clause shall apply:
 - (i) the Customer will bear the risk of any loss of or damage to the Goods immediately after the delivery attempt of the Company shall have failed for reasons for which in the reasonable opinion of the Company the Customer is responsible;
 - (ii) the Company may make such arrangements as it thinks fit for the storage of the Goods until the Customer collects them but the Company shall not owe the Customer any duty of care in making those arrangements and shall not be liable to the Customer for any loss of or damage to or deterioration of the Goods caused by their storage;
 - (iii) the Customer will reimburse the Company all costs and charges incurred by the Company in connection with storage of the Goods;
 - (iv) the Company may immediately, or at any time after delivery of the Goods shall have been refused, treat the Contract as repudiated by the Customer's breach and make such arrangements as it thinks appropriate for the disposal of the Goods;
 - (v) the Customer will in any case be liable, and compensate the Company for any losses and costs incurred by the Company as a result of the Customer's breach or the termination of the Contract.
- 7.2 The Customer shall inspect the Goods immediately upon delivery and shall within 7 days of such delivery give notice in writing to the Company if it is alleged that the Goods are not in accordance with the Contract. Any claim outside the 7 days will not be accepted.
- 7.3 The Customer's report in respect of alleged visible damage to the Goods at time of delivery makes a note of the alleged damage on the packing / delivery note submitted with the Goods and shall additionally within 7 days give notice in writing to the Company of such alleged damage.
- 7.4 If the Customer shall fail to give notice as required in 7.2 and 7.3 above (as applicable) then the Goods shall be deemed in all respects to be in accordance with the Contract and the Customer shall be deemed to have irrevocably and unconditionally accepted the Goods as being completely satisfactory.
- 7.5 Any item alleged to be defective (the "defective item") either through faulty manufacturing, design, or bad workmanship, shall be reported in writing to the Company within 7 days of discovery of such defect and in any event within 7 days of the date of delivery of the Goods. The Customer shall be liable for more than to make such a report will preclude the customer from making any claim (save in respect of any damage by way of death or personal injury resulting from the negligence of the Company) arising out of such alleged defect. The handling to the Company its servants or agents, on its behalf of the Company's standard form satisfaction or delivery note duly signed and without alteration or comment noted thereon shall be deemed to constitute full details of the alleged defect and if the Customer has not signed and returned such a note of proper performance by the Company of all or any of its obligations to the Customer.
- 7.6 Any of the Goods in respect of which the Customer makes a claim hereunder shall be preserved by the Customer intact as delivered and at its risk for a period of 21 days from notification of the claim within which time the Company or its authorised agent shall have the right to investigate the complaint and inspect the Goods. The original complaint should be retained until inspected by the Company or its duly authorised agent.
- 7.7 The Company undertakes that where a report is made pursuant to sub-clause (5) of this Clause 7 and the Company concurs with the customer's allegations then and only then to make good or replace (at its option) any defective item provided that it shall in no such case have any liability for value greater than the invoice value of the said defective item.
- 7.8 The Company will repair or replace free of charge any of the Goods damaged or lost in transit provided the Customer shall give the Company written notification of such damage or loss within 7 days as provided under 7.2 and 7.3 above. Any claim outside the 7 days will not be accepted.
- 7.9 In case any claim shall lie against the Company for non-delivery or short delivery of Goods the Customer shall be deemed to have accepted the invoice value of the items in question nor for any indirect or consequential loss or damage.
- 7.10 The Company will not be liable for loss of, or damage to, any item or items left for repair which is or are not reclaimed by the Customer within four calendar months of the date of deposit thereof for such purpose, or in respect of which the receipt therefor has been lost or cannot be produced. From and after the expiration of the period of four months the Company shall be at liberty to dispose of the item or items in such manner as it sees fit and on such terms as the Company may deem fit without liability for any loss or damage or consequential loss or damage sustained or allegedly sustained by the Customer in consequence of or related to such disposal.
8. **DELIVERY DATES AND INSTALLATION**
- 8.1 All delivery and installation dates are, estimates only and the Company shall not be liable for any loss, cost, damage or expense, suffered by the customer or any other person or company whatsoever arising whether directly or indirectly out of any failure to meet any estimated delivery or installation date.
- 8.2 The Customer reserves the right to suspend delivery in respect of any order for any reason at its discretion.
- 8.3 Delivery against order(s) placed for the Goods shall be clearly evidenced by the return to the Company of its, or its authorised carriers, official delivery note which must be signed and dated by an employee of the customer whose name should be clearly printed on the delivery note. The delivery note shall include a copy of the signed delivery note however signed as acknowledgement of receipt of the Goods shall be absolute and irrevocable proof of delivery of the specified number of items entered on the delivery note and no claims for shortages will be accepted or considered save as provided by the provisions of Clause 7 hereof.
- 8.4 Where the Company undertakes to install, maintain, repair, or test any Goods the Customer shall ensure that the premises to be used shall include any and all necessary costs of the Company's employees and agents and the Customer will provide at its expense all relevant information and such facilities as the Company may require.
- 8.5 The Customer will ensure that at all times there is in force a policy of insurance providing proper and adequate cover against risk, damage, consequential and other losses, (including but not limited to those arising from flood storm fire and theft) injury, and other similar occurrences, to or occasioned by the Company, its servants or agents, and in addition the Customer will be responsible for compliance with all statutory requirements and third party rights in connection with the siting installation erection and use by the Company of the Goods or the provision by the Company of Services and the Customer shall indemnify the Company its servants or agents accordingly. Once the Company has performed partial or complete installation the Goods shall be at the Customer's risk.
9. **SPECIFICATIONS**
- 9.1 Except where the Company otherwise agrees in writing the selection and choice of the Company's Goods and the assessment of the Company's Goods suitability for the Customer's purposes shall include any and all relevant specifications. Any specification, formulation, data, literature and statement as to content, suitability, performance otherwise issued, and descriptions and samples given by the Company in connection with its Goods or the Goods of others offered by the Company are offered in good faith but are intended to be approximate only and will be deemed not to constitute any representation in relation to such Goods.
- 9.2 The Company's policy is to offer the best quality of Goods available under any article or constituent part thereof and provided such altered specification substantially corresponds with the description of any Goods sold by description and provided that the quality or fitness of any Goods whose specification is so altered is similar to that of the Goods originally specified no liability shall attach to the Company in respect of such alteration nor shall the Customer have any right to reject any Goods whose specification is so altered.
- 9.4 The Company will have no responsibility for any claim arising from the alteration or amendment of the specification of any Goods manufactured by others and sold distributed or supplied by the Company or any article, part, or constituent item thereof.
10. **LIMITATION OF LIABILITIES AND INDEMNITY**
- 10.1 The Company hereby expressly excludes to the extent permitted by law any liability whatsoever arising whether in contract or in tort:
 - 10.1.1 Consequential loss or damage caused by or arising out of the use of the Goods or occurring in respect of the Goods; and
 - 10.1.2 Loss or damage due to fair wear and tear and negligence or improper use, operation, storage, assembly, or handling of (without prejudice to the generality of the foregoing) the use or operation of the Goods other than strictly in accordance with the Company's or the supplier's or manufacturer's written instructions relating to the Goods; and
- 10.1.3 Loss injury or damage (including consequential loss) arising from fire, flood, accident, industrial dispute, civil disturbance or any other act or accidental default including war and terrorism, whether or not the Goods whether or not by others and beyond the control of the Company; and
- 10.1.4 Consequential loss or damage caused by or arising whether directly or indirectly out of Services provided by the Company to and at the request of the Customer.
- 10.2 The Company will maintain public and product liability insurances to a level not less than that which the Company might be required to maintain under the public notice being given by the Company will permit inspection of the salient policies by or on behalf of the Customer.
- 10.3 Nothing in these conditions shall apply to exclude or restrict any liability which under the Unfair Contract Terms Act 1977 cannot in the relevant circumstances be excluded or restricted.
- 10.4 The Customer will indemnify the Company and its employees servants and agents against all third party claims relating in any way to Goods or Services supplied by the Company or arising from breach of, or negligence in connection with, the Contract.
- 10.5 When the Company supplies Goods or Services for the Customer to and at the special requirement, or for the special purposes, of the Customer whether or not incorporated in whole or in part in any specifications supplied by the Company as such specifications are referred to in Clause 9 hereof the Customer will provide all necessary specifications in reasonable time enable the Company to complete and effect delivery and the Company will have no liability for any defect industrial property infringement, or intellectual property infringement, derived wholly or partly from or within any specification given by the Customer to the Company and the Customer will indemnify the Company against all claims arising in consequence of the Company complying with the Customer's requirements or purposes.
- 10.6 The Company will not unless expressly authorised and requested by the Customer in writing so to do arrange any insurance on behalf of the Customer and should it insure at the Customer's request then the Company shall be entitled to retain all commissions and brokerage which might be paid or accrued for the benefit of the Company arising from the placing of such insurance. The Customer is in any event advised to make proper and adequate insurance arrangements notwithstanding the provisions of Clause 10.2 hereof.
11. **SUSPENSION AND TERMINATION**
- 11.1 The Company will be entitled without prejudice to any right of action accruing or already accrued to either party by notice in writing to the Customer forthwith (save as herein provided) to suspend or terminate the Contract if at any time:
 - 11.1.1 The Customer shall exceed any credit limit or breach any credit terms imposed by the Company;
 - 11.1.2 There shall be any serious or continuing breach or series of breaches of this agreement by the Customer; or
 - 11.1.3 The Customer, being a corporation, enters into liquidation whether compulsory or voluntarily otherwise than for the purposes of amalgamation or reconstruction or compounds with its creditors or has a Receiver or Administrator appointed of any part of its assets or suffers or suffers any similar action in consequence of debt; or, being natural persons or a partnership, the Customer, or any of the members of the firm become bankrupt or insolvent or enter into any arrangement with their creditors or take or suffer any similar action in consequence of debt; then and in any such event the Company shall be entitled to suspend further performance of the Goods or any Contract in force between the Company and the Customer and such suspension shall be deemed to have been made and the Company will perform any of the Goods in transit to the Customer or cease the installation thereof unless and until in the case of sub-clause 11.1.1 and 11.1.2 only the event or events giving rise to suspension or termination be remedied on terms satisfactory to the Company; and
- 11.2 On termination then such termination will be without prejudice a) to the Customer's obligations and the Company's rights under the Contract, and b) any loss that may be sustained by the Company by reason of such suspension or termination howsoever the same shall arise.
12. **ASSIGNMENT / SUB-CONTRACTING**
- 12.1 Unless otherwise agreed in writing the Customer may not assign either the benefit or the burden of any Contract with the Company.
13. **TRADE MARKS**
- 13.1 The Customer is hereby authorised, for the duration of the Contract to which these conditions apply only, to use all Trademarks which are now or may hereafter be used by the Company in connection with the Goods and in respect of which the Company has the rights to grant such usage subject to the following:
 - 13.1.1 The Customer shall use the Trademarks only on or in relation to the Goods supplied by the Company and shall not use the Trademarks on or in relation to any Goods which may have been altered in any way after being supplied to the Customer by the Company.
 - 13.1.2 The Customer agrees to submit to the Company prior to publication all promotional and other material upon which the Customer proposes to use the Trademarks and not proceed with the usage thereof unless and until the Company's written approval shall have been obtained, such approval to be granted or withheld at the sole discretion of the Company.
 - 13.1.3 The Customer agrees that it will not (either before or after the termination of the Contract which these conditions apply) use any word, name, title, expression or device identical to, or in the sole judgement of the Company, confusingly or colorably similar to any trademark or service mark used by the Company and not purchased or to be purchased from the Company, or as part of its corporate or business name or in relation to any business in which the Customer is or shall be engaged.
 - 13.1.4 The Customer will comply with all restrictions imposed upon the usage of the Trademarks whether those of the Company or others and shall in the case of others fully indemnify the Company against any claims arising from the failure of or default of the Customer in complying with the terms hereof.
- 13.2 The Customer shall not at any time use any device or mark or obscure the Company's logo name or nameplate or any of the Trademarks, or the logo's, nameplates and trademarks of suppliers to the Company or juxtapose with them any other mark likely to cause confusion or use them on or in connection with any Goods other than the Company's in the form supplied by the Company whether or not there shall be affixed to or displayed on Goods supplied by the Company the name the Trademark or the logo of the Company or its suppliers.
14. **NO WAIVER**
- 14.1 The Company's failure to insist upon a strict performance of any provision of these conditions shall not be deemed to be a waiver of its rights and remedies or any subsequent default by the Customer in the performance of or compliance with any of the terms of these conditions.
15. **SEVERABILITY**
- 15.1 The invalidity of any individual provisions of these conditions shall not affect the validity of the remaining provisions.
16. **RELATIONSHIP OF THE PARTIES**
- 16.1 Both the Company and the Customer are independent contractors under these conditions and the parties acknowledge that neither of them is an agent or partner of the other for any purpose and that each of them is entirely without authority to act on behalf of the other in any manner. The Company shall not be responsible to third parties for any claim arising out of the activities of the Customer and the Customer shall hold the Company harmless against any claim arising in connection therewith and indemnify and hold harmless the Company for any amount which the Company may be required to pay as a result of any claim.
17. **JOINT AND SEVERAL**
- 17.1 All agreements on the part of any of the parties hereto which comprises more than one person or entity shall be joint and several and the neuter singular gender throughout these conditions shall include all genders and the plural and the successors in title to the parties.
18. **CONSTRUCTION**
- 18.1 The heading of paragraphs in these conditions are for reference purposes only and shall affect in any way the meaning or interpretation of these conditions.
19. **GOVERNING LAW**
- 19.1 These terms and conditions of sale shall in all respects be governed by and construed in accordance with English Law.
20. **DEFINITIONS**
- 20.1 "The Company": Finishing Aids and Tools Limited (including any subsidiary or associate company as defined by Section 736 of the Companies Act 1985).
- 20.2 "Conditions": the terms and conditions of the Company herein contained relating to the sale and supply of the Goods or Services.
- 20.3 "Contract": the order for the sale and supply of the Goods or Services by the Company to the Customer.
- 20.4 "The Customer": the person or firm or company purchasing Goods from the Company.
- 20.5 "Goods": the goods whether manufactured by the Company or by others which are the subject of an order either verbal or in writing or as a combination of both.
- 20.6 "Trade mark" means the trademarks, trade names, service marks and logo (where the context permits) customarily used by either both the Company and/or its suppliers in the course of its or their business or businesses.
- 20.7 "Schedule": means any schedule attaching to a contract and which is entitled "First Schedule", "Second Schedule", and so on; addendum or appendix.
- 20.8 "Services": means the or any services provided by the Company to the customer whether or not specifically requested by the customer.
- 20.9 "Supplier": means the manufacturer of the Goods and the conditions of sale and logo (where the context permits) customarily used by either both the Company and/or its suppliers in the course of its or their business or businesses.

PLEASE DETACH