

TERMS AND CONDITIONS OF SUPPLY

1 Scope of Contract

- 1.1 The terms set out below, together with any specification referred to, comprise all the terms of the contract between Ogle Models and the Buyer. No other statement, written or oral, including statements in any brochure or promotional literature of Ogle Models, shall be incorporated into the contract or have any legal effect.
- 1.2 The terms set out below shall prevail over any terms put forward by the Buyer and except as provided for in 1.3 below no conduct of Ogle Models shall constitute acceptance of any terms put forward by the Buyer unless Ogle Models expressly agrees to them in writing signed by its duly authorised agent.
- 1.3 No employee or agent of Ogle Models has any authority to vary these terms orally or to make any representation on behalf of Ogle Models as to their effect. No addition to or variation of these terms shall be binding on Ogle Models unless in writing signed by a director of Ogle Models.
- 1.4 Any clause, or part thereof, which is or may be void or unenforceable shall be treated as severable from the remainder of this contract and shall not affect any other provisions of this contract.
- 1.5 Receipt by Ogle Models of your order shall be deemed to be conclusive evidence of your acceptance of these terms.
- 1.6 Any variations by the Buyer to the original order must first be agreed in writing by both parties and Ogle Models can vary the terms of its quotation following any such agreed variations.

2 Delivery

- 2.1 Unless otherwise agreed and stated on Ogle Models quotation the price agreed for the goods is for delivery ex works, unless delivery is quoted, and it shall be the Buyer's duty to take delivery of the goods at Ogle Models premises.
- 2.2 When the goods are ready for delivery Ogle Models will give the Buyer notice of readiness for collection. It is a condition of this contract that the Buyer shall then within seven days of service of that notice either:
 - (a) collect the goods or
 - (b) give Ogle Models instructions for their delivery at the Buyer's expense.
- 2.3 If the Buyer fails either to collect the goods or give Ogle Models instructions for their delivery in accordance with Clause 2.2, Ogle Models may exercise either of the following rights:

2.3.1 treat the Buyer's failure as a repudiation of the contract and terminate the contract with immediate effect; in that case Ogle Models may do any of the following, either alone or in any combination:

- (a) dispose of the goods as it thinks fit;
- (b) retain any payments made by the Buyer before termination of the contract;
- (c) recover from the Buyer any costs incurred in respect of the costs of storage of the goods or of their disposal, together with damages for any other losses caused by the Buyer's breach;
- (d) recover full quoted price for goods already completed

or

2.3.2 arrange for the storage of the goods, in which case:

- (a) the goods shall be stored at the Buyer's risk;
- (b) the cost of storage shall be for the Buyer's account and the Buyer will indemnify Ogle Models against all costs incurred by Ogle Models in arranging such storage;
- (c) the Buyer will pay Ogle Models a reasonable fee for its services in arranging for storage of the goods;
- (d) Ogle Models may at any time give the Buyer notice to collect the goods and, if the Buyer fails to comply with such notice, treat the Buyer's breach as repudiatory, in accordance with clause 2.3.1 above, or continue to store them in accordance with this clause.

2.4 Ogle Models will endeavour to have the goods ready for delivery by the date agreed for delivery but it is agreed that the Buyer shall not be entitled to terminate this contract by reason of Ogle Models failure to deliver by the agreed date.

2.4.1 Ogle Models shall not be liable to the Buyer for any losses caused to the Buyer by late delivery of the goods.

2.4.2 If delivery is delayed by force majeure circumstances, the following provisions shall apply:

2.4.2.1 Ogle Models shall as soon as is reasonably practicable give the Buyer notice of the reasons for the delay, provided that Ogle Models shall incur no liability by reason of any failure to give notice;

2.4.2.2 Ogle Models duty to deliver shall be suspended for so long as the force majeure circumstances continue and the time for delivery shall be extended by an equivalent period;

2.4.2.3 Ogle Models may at any time, and at its sole discretion, give notice to the Buyer to terminate the contract. In that case Ogle Models shall incur no liability to the Buyer for any losses caused as a result of the termination.

3 Quantities

- 3.1 Ogle Models shall be entitled to deliver the contract goods by instalments of any size and in any order.
- 3.2 If Ogle Models delivers more or less than the agreed quantity of goods the following provisions shall apply:
- 3.3 Ogle Models shall have no liability to the Buyer in respect of the excess or shortfall unless the Buyer gives Ogle Models notice of the excess or shortfall within ten days of delivery. If the Buyer does give such notice:
 - 3.3.1 in the case of excess delivery Ogle Models will make arrangements for the excess to be returned to Ogle Models at Ogle Models expense;
 - 3.3.2 in the case of short delivery Ogle Models may at its own discretion either:
 - (a) make good the shortfall by one or more further deliveries; or
 - (b) reduce the contract price by the same proportion as the shortage bears to the contract quantity.
- 3.4 The Buyer shall not be entitled to reject any delivery on the grounds of any excess or short delivery but shall pay the contract price or, where Ogle Models exercises the option referred to in 3.3.2(b) above, the reduced price in accordance with that provision.
- 3.5 Save as provided in Clauses 3.1-3.4 above, Ogle Models shall not be liable for any losses caused by excess or short delivery.

4 Seller's Warranty

- 4.1 Ogle Models shall have no liability whatsoever either to the Buyer or to any third party for any alleged failure of the goods for reasons of safety or performance.
- 4.2 Ogle Models shall not be liable for any economic loss suffered by the Buyer as a result of the failure of any goods, including loss of profits, business, goodwill or other consequential losses.
- 4.3 Ogle Models does not warrant that the goods are fit for any particular purpose of the Buyer and the Buyer assumes all responsibility for the performance and safety of the goods in whatever ways those goods are used by the Buyer or any third parties hereafter.
- 4.4 Ogle Models shall have no liability for any defect in the quality of the goods or their failure to correspond to any description or sample or to be fit for any purpose and all other conditions, warranties, stipulations and undertakings, whether express or implied by statute or common law are excluded.
- 4.5 The Buyer shall indemnify Ogle Models against any and all damages penalties costs and expenses for which Ogle Models may become liable by reason of any loss damage cost or expense suffered by any person using the goods manufactured by Ogle Models

5 Payment

- 5.1 Payment for goods delivered is due not later than thirty days from invoice date and shall be in UK pounds sterling unless otherwise agreed with Ogle Models. The Buyer will pay interest on sums paid late at the rate of 3% above the base lending rate of Barclays Bank plc in force from time to time together with any

other costs which Ogle Models incurs in recovering payment of any outstanding amounts including all professional and legal fees.

- 5.2 Except where Ogle Models reduces the contract price in accordance with Clauses 3.3.1(b) or 4.3(b) the Buyer will pay the full invoice price of goods delivered without any deduction, set-off or abatement on the grounds of any alleged shortfall in delivery, defect in quality or failure to conform to specification, or other breach of contract by Ogle Models.
- 5.3 If the Buyer fails to pay in full for goods delivered by the date for payment under Clause 5.1 above Ogle Models shall be entitled to bring an action for the price notwithstanding that property in the goods has not passed to the Buyer.
- 5.4 Ogle Models quotation shall be valid for two months only from the date of the quotation.
- 5.5 All prices quoted are exclusive of VAT

6 Title and Risk

- 6.1 Goods delivered shall be at the Buyer's risk from the time they are delivered.
- 6.2 Property in goods delivered shall not pass to the Buyer until the Buyer has paid all sums due to Ogle Models (a) in respect of the goods and (b) on any other account.
- 6.3 Until property in the goods passes to the Buyer in accordance with Clause 6.2, the Buyer shall hold them as bailee for Ogle Models and shall store them separately from any similar goods of the Buyer or any other person in such a way that they remain identifiable as Ogle Models property.
- 6.4 The Buyer may resell the goods before the conditions in Clause 6.2 are satisfied on the following conditions:
 - (a) any sale shall be effected by the Buyer as agent for Ogle Models, provided that the Buyer shall have no authority to create privity of contract between Ogle Models and any customer to whom the goods are sold;
 - (b) the Buyer will hold the proceeds of any such resale as trustee for Ogle Models, separate from its own monies in a separate identifiable bank account.
- 6.5 The Buyer's right to possession of goods supplied by Ogle Models shall terminate if the Buyer is declared bankrupt or makes any proposal to his creditors for any composition or voluntary arrangement or, if the Buyer is a company, an administrator, administrative receiver or liquidator is appointed in respect of its business.
- 6.6 The Buyer hereby grants Ogle Models, its agents and employees an irrevocable licence at any time to enter any premises where the goods are stored in order to inspect them or, where the Buyer's right to possession has terminated, recover them.

7 Intellectual Property

- 7.1 Ogle Models will transfer to the Buyer such title as it has to the goods.

- 7.1.1 Ogle Models believes that the goods do not infringe any intellectual property rights or any third party and warrants that it is not aware of any adverse third party intellectual property rights affecting the goods, other than those expressly disclosed to the Buyer.
- 7.1.2 If it is alleged that the goods infringe any intellectual property right of any third party the Buyer shall:
- (a) promptly notify Ogle Models of the alleged infringement;
 - (b) allow Ogle Models to defend such third party claim as it thinks fit and have sole control, at Ogle Models expense, of any litigation and/or negotiations relating thereto;
 - (c) not without Ogle Models consent make any admission of liability.
- 7.2 The Buyer will not without Ogle Models permission resell any goods supplied under this contract from which any label or logo has been removed or altered.

8 Applicable Law and Jurisdiction

- 8.1 The formation, construction and performance of this contract shall be governed in all respects by English Law.
- 8.2 It is agreed that the English courts shall have the sole jurisdiction to decide any dispute arising out of or in connection with the formation, construction or performance of this contract.

9 Miscellaneous

- 9.1 Ogle Models can if it chooses enter into sub-contracts with third parties to carry out any work as part of the Buyer's order.
- 9.2 Ogle Models may transfer or assign all or any of its rights and or/obligations under these terms and conditions to any third party without requiring the consent of the Buyer

9 Interpretation

In this contract:

“Ogle Models” means Ogle Models and Prototypes Limited.

“the Buyer” means the person or organisation named as the Buyer overleaf

“the goods” means the goods forming the subject matter of this contract indicated overleaf

“condition” means a term of this contract, any breach of which shall entitle the party not in breach to terminate the contract forthwith and without notice to the party in breach

“force majeure circumstances” means circumstances beyond Ogle Models control, including fire, flood, storm, Act of God, war, riot, civil commotion, strikes, lock-outs and other industrial action

“Seller’s premises” means Ogle Models premises at Birds Hill, Letchworth, Hertfordshire, SG6 1JA.]

“intellectual property rights” means patents, copyrights, registered and unregistered design rights, registered and unregistered trade and service marks, confidential information and such rights as are protected by the law of passing off.