

## 1. Application of Conditions

- 1.1 The Supplier shall supply and the Customer shall purchase the Products and Services in accordance with the Quotation/ Accepted Order which are subject to these Conditions.
- 1.2 The Contract shall be to the exclusion of any other terms and conditions subject to which any such quotation is accepted or intended to be accepted, or such order is made or intended to be made, by the Customer.

## 2. Definitions and interpretation

- 2.1 In these Conditions:

<b>“Business Day”</b>	means any day other than a Saturday, Sunday or bank holiday;
<b>“The Customer”</b>	means the person who accepts a quotation or offer of the Supplier for the of the Products and supply of the Services, or whose order for the Products and supply of the Services is accepted by the Supplier;
<b>“Commencement Date”</b>	means the commencement date for this agreement as set out in the Quotation/ Accepted Order;
<b>“the Contract”</b>	means the contract for the purchase and sale of the Products and supply of the Services under these Conditions;
<b>“these Conditions”</b>	means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Customer and the Supplier;
<b>“the Delivery date”</b>	means the date on which the Products and Services are to be delivered as stipulated in the Customer’s order and accepted by the Supplier;
<b>“the Product”</b>	means the Products (including any instalment of the Products or any parts for them) which the supplier is to supply in accordance with these Conditions;
<b>“month”</b>	means a calendar month;
<b>“the Engineering Services”</b>	means the design/ FEA /Testing/Acoustic Emission services to be provided to the Customer as set out in the Quotation/ Accepted Order;
<b>“the Supplier”</b>	means Formtech Composite Ltd a company registered in England under the Company Number 6545810
<b>“writing”</b>	includes any communication effected by letter, fax transmission, electronic mail or any comparable means.

- 2.2 Any reference to these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 2.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 3. Basis of Sale and Service

- 3.1 The Supplier’s employees or agents are not authorised to make presentations concerning the Products and Services unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

- 3.2 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Customer and the Supplier.
- 3.3 An order placed by the Customer may not be withdrawn, cancelled or altered prior to acceptance by the Supplier and no contract for the sales of Products shall be binding on the Supplier unless the Supplier has issued a quotation which is expressed to be an offer to sell the Products and Services or has accepted and order placed by the Customer by whichever is the earlier of:
- 3.3.1 the Supplier's Order Acknowledgement
  - 3.3.2 delivery/ completion of the Product or Service; or
  - 3.3.3 the Supplier's invoice.

#### **4. The Products**

- 4.1 No order submitted by the Customer shall be deemed to be accepted by the Supplier unless and until confirmed in writing by the Supplier's authorised representative.
- 4.2 The specification for the Products shall be those set out in the Supplier's quotation unless varied in the Customer's order (if accepted by the Supplier).
- 4.3 The Products will only be supplied in the minimum units (or multiples) stated by the Supplier.
- 4.4 No order which has been accepted by the Supplier may be cancelled by the Customer except with the agreement in writing of the Supplier on the terms that the Customer shall indemnify the Supplier in full against all loss (including loss or profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.

#### **5. The Engineering Services**

- 5.1 With effect from the Commencement Date, the Supplier shall, in consideration with the fees being paid in accordance with the Terms of Payment will provide the engineering services expressly identified in the Quotation or Order Acknowledgement.
- 5.2 The Supplier will use reasonable care and skill to perform the engineering services identified in the Quotation/ Order Acknowledgement.
- 5.3 The Supplier shall use all reasonable endeavours to complete its obligations under the Schedule, but time will not be of essence in the performance of the obligations.

#### **6. Price**

- 6.1 The price of the Products and Services shall be the price listed in the Quotation/ Order Acknowledgement.
- 6.2 The price quoted shall be valid for 30 days only or such time as the Supplier has specified in the Quotation/ Order Acknowledgement.
- 6.3 The Supplier reserves the right, by giving to the Customer at any time before delivery, to increase the price of the Products and Services to reflect any increase in the cost to the Supplier which is due to any fact beyond the control of the Supplier (such as, without limitation, any foreign exchange fluctuation, alteration of duties, significance increase in the cost of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Products or Services which are requested by the

Customer or failure of the Customer to give the Supplier adequate information or instructions.

- 6.4 Except as otherwise stated under the terms of any Quotation/ Order Acknowledgement all prices are excluded of the Supplier's charges for packaging and transport.
- 6.5 The price is exclusive and applicable value added tax excise, sales or taxes or levies of a similar nature which are imposed or charged by any competent fiscal authority in respect of the Products and Services, which the Customer shall be additionally liable to pay to the Supplier.

## 7. Payment

- 7.1 All payments are required to be made pursuant to this Agreement by either party shall be made without any set-off, withholding or deduction except such amount (if any) of tax as that party is required to deduct by law, as follows (referencing the standard Formtech part numbering system):

7.1.1 F13-600-XXXX – Engineering Services :

- 1/3 on issuing of purchase order
- 1/3 on signing off of pattern/mould design
- 1/3 on signing off of laminate book

7.1.2 F13-1XX-XXXX - Patterns/Moulds

- on signing of inspection report and receipt of invoice

7.1.3 F13-400-XXXX- Components

- 30 days after receipt of invoice

- 7.2 The time of payment shall be of the essence of these terms and conditions. If the Customer fails to make any payment on the due date in respect of the price or any other sum due under these terms and conditions then the Supplier maybe pursuant to any statutory provision in force from time to time, have the right to charge the Customer interest on a daily basis at an annual rate equal to 8.5 % from the day after the invoice becomes due until the date judgment is granted.
- 7.3 All payments shall be made to the Supplier as indicated on the Order Acknowledgement or invoice issued by the Supplier.

## 8 Delivery and Performance

- 8.1 All prices are Ex-works and the Supplier reserves the right to charge the Customer for the Delivery of the Products.
- 8.2 Delivery of Products shall be made by the Supplier delivering the Products to the address specified in the Quotation/ Order Acknowledgment.
- 8.3 The Delivery Date is approximate only and time for delivery shall not be of the essence unless previously agreed by the Supplier in writing.

- 8.4 The Products may be delivered by the Supplier in advance of the Delivery Date unless specified in the Order Acknowledgement.
- 8.5 If the Customer fails to take delivery of the Products or any part of them on the Delivery Date and/ or fails to provide any instructions, documents, licences, consents or payment required to enable the Products to be delivered on that date, the Supplier shall be entitled upon given written notice to the Customer to store or arrange for storage of the Products and then notwithstanding the provision of Condition 10.1 of these Conditions risk in the Products shall pass to the Customer, delivery shall be deemed to have taken place and the Customer shall pay to the Supplier all Costs and expenses including storage and insurance charges arising from such failure.
- 8.6 With effect from the Commencement Date the Supplier shall, in consideration of the amount(s) being paid in accordance with the Quotation/ Order Acknowledgement will provide the services expressly identified in the schedule or otherwise agreed under this agreement.

## **9 Conclusion of the Contract**

On completion of a Purchase Order/ Sales Order is completed the Supplier will give 2 weeks' notice in writing to the Customer, confirming that all moulds need to be collected from the Supplier's premises. Failure to collect the moulds could result in these being destroyed.

## **10 Non delivery of Products and Services**

- 10.1 If the Supplier fails to deliver the Products or Services and any of them on the Delivery Date other than for reasons outside the Supplier's reasonable control or the Customer's or its carrier's fault:
- 10.1.2 if the Supplier delivers the Products and Services at any time thereafter the Supplier shall have no liability in respect of such late delivery

## **11 Risk and Property**

Risk and Retention of Title

- 11.1 Risk of damage to or loss of the Products shall pass to the Customer at:
- 11.1.2 in the case of Products to be delivered at the Supplier's premises, the time when the Supplier notifies the Customer that the Products are available for collection;
- 11.1.3 in the case of Products to be delivered otherwise than at the Supplier's premises, the time of delivery or, if the Customer wrongfully fails to take delivery of Products, the time when the Supplier has tendered delivery of the Products; or

- 11.2 Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Conditions, legal and beneficial title of the Products shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of the price of the Products.
- 11.3 Sub-clause 11.2 notwithstanding, legal and beneficial title of the Products shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of the price of the Products supplied by the Supplier and the Customer has repaid all moneys owed to the Supplier, regardless of how such indebtedness arose.
- 11.4 Until payment has been made to the Supplier in accordance with these terms and Conditions and title in the Products has passed to the Customer, the Customer shall be in possession of the Products as Bailee for the Supplier and the Customer shall store the Products separately and in an appropriate environment, shall ensure that they are identifiable as being supplied by the Supplier and shall insure the Products against all reasonable risks.
- 11.5 In the event that the Customer sells or transfers the Products to a third party before legal and beneficial title has passed to him under these Conditions, the proceeds of the sub-sale or transfer (or such portion as proportion as is due to the Supplier) shall be held by the Customer on behalf of the Supplier. The Customer shall ensure that such moneys are held separately from, and are in no way mixed with, any other moneys or funds, and that all moneys held on the Supplier's behalf are identified as such.
- 11.6 The Supplier may, in accordance with the provisions of the Companies Act 1985, register any charge created by these Conditions.
- 11.7 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Supplier, but if the Customer does so all the money owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.
- 11.8 The Supplier reserves the right to repossess any Products in which the Supplier retains title without notice. The Customer irrevocably authorises the Supplier to enter the Customer premises during normal business hours for the purpose of repossessing the Products in the Supplier retains title and inspecting the Products to ensure compliance with the storage and identification requirements of sub-clause 11.4.
- 11.9 The Customer's right to possession of the Products in which the Supplier maintains legal and beneficial title shall terminate if:
- 11.9.2 The Customer commits or permits any material breach of his obligations under these Conditions;
  - 11.9.3 The Customer enters into a voluntary arrangement under Part 1 of the Insolvency Act 1986, or any other scheme or arrangement is made with his creditors
  - 11.9.4 The Customer convenes any meeting with its creditors, enters voluntary or compulsory liquidation has a receiver, manager, administrator or administrative receiver appointed in respect of its assets or undertaking or any part thereof, any documents are filed with the court for the appointment of an administrator in respect of the Customer, notice of intention to appoint an administrator is given by the Customer or any of its

directors or by a qualifying floating charge-holder (as defined in paragraph 14 of Schedule B1 of the insolvency Act 1986), a resolution is passed or petition presented to any court for the winding up of the Customer or for any proceedings are commenced relating to the insolvency or possible insolvency of the Customer.

## 12. Assignment

- 12.1 The Supplier may assign the contract or any part of it to any person, firm or company.
- 12.2 The Customer shall not be entitled to assign the Contract or any part of it without prior written consent of the Supplier.

## 13. Defective Products

- 13.1 If on delivery any of the Products are defective in any material respect and either Customer lawfully refuses delivery of the defective Products or, if they signed a delivery note "Received Uninspected" the Customer gives written notice of such defect including a "non-conformance report" within 3 business days of such delivery, the Supplier shall, at its option:

13.2

- 13.1.1 replace the defective Products within 90 days, or lesser time as agreed by the supplier, of receiving the Customer's non-conformance report; or
- 13.1.2 re-work the defective product in accordance with the non-conformance report raised by the customer;

But the non-conformance report must reflect requirements specified in the customer's latest signed drawing and/ or Purchase Order and the Supplier shall not have any further liability to the Customer in respect thereof and the Customer may not reject the Products if delivery is not refused or notice given by the Customer as mentioned above.

- 13.2 No Products may be returned to the Supplier without the prior agreement in writing of the Supplier.
- 13.3 The Supplier shall be under no liability in respect of any defect arising from fair wear and tear, or any wilful damage, negligence, subjection to normal conditions, failure to follow the Supplier's instructions, whether oral or in writing), misuse or alteration of the Products without the Supplier's approval, or any other act or omission on the part of the customer, its Employees or agents or any third party.

## 14. Customer's Default

- 14.1 If the Customer fails to make any payment on the date then, without prejudice to any other right or remedy available to the Supplier, the Supplier shall be entitled to:

- 14.1.1 cancel the order or suspend any further deliveries of Products and Services to the Customer;
- 14.1.2 appropriate any payment made by the customer to such of the Products and Service (or products supplied under any contract between the Customer and the Supplier) as the Supplier may think fit (notwithstanding any claimed appropriation by the Customer); and

14.2 This condition applies if:

- 14.2.1 the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or
- 14.2.2 the Customer becomes subject to an administration order or makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation; or
- 14.2.3 a Tax Authority takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or
- 14.2.4 the Customer ceases, or threatens to cease, to carry on business; or
- 14.2.5 the Supplier reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly.

14.3 If Condition 14.2 applies then, without prejudice to other right or remedy available to the Supplier, the Supplier shall be entitled to cancel the Contract or suspend any further deliveries under the contract without any liability to the Customer, and if the Products have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement to the contrary.

## 15. **Liability**

- 15.1 The Customer shall indemnify the Supplier against all damages, costs, claims and expenses suffered by arising from loss or damage to any equipment (including that of third parties) caused by the Customer, or its agent and employees.
- 15.2 The Supplier shall not be liable to the Customer or be deemed to be in breach of these terms and conditions by reason of any delay in performing, or any failure to perform, any of the Supplier's obligations if the delay or failure was due to any cause beyond the Supplier's reasonable control.
- 15.3 Where the Customer consists of two or more parties such expression throughout shall mean and include such two or more persons and each or any of them. All obligations on the part of such a Customer shall be joint and several obligations of such persons.
- 15.4 Each party shall be liable to pay to the other damages for any breach of each Agreement and all expenses and costs incurred by that party in enforcing its rights under this Agreement.

**16. Communications**

16.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent by electronic mail:

16.1.1 (in the case of communications to the Supplier) to its registered office or such changed address as shall be notified to the Customer by the Supplier; or

16.1.2 (in the case of communications to the Customer) to the registered office of the addressee.

16.2 Communications shall be deemed to have been received:

16.2.1 if sent by pre- paid first class post, two Business days after posting (exclusive of the day of posting); or

16.2.2 if delivered by hand, on the day of delivery; or

16.2.3 if sent by fax or electronic email on a Business Day prior to 5:00 pm, at the time of transmission and otherwise on the next Business Day.

16.3 Communications addressed to the Supplier shall be marked for the attention of:

Sales  
sales@formtech-composites.com

Billing enquiries  
accounts@formtech-composites.com

**17. Force Majeure**

17.1 In the event that either party is prevented from fulfilling its obligations under this agreement by reason of any supervening event beyond its control including but not limited to war, national emergency, flood, earthquake, strike or lock-out (subject to Sub-clause 16.2) the party shall not be deemed to be in breach of its obligations under this Agreement. The party shall be immediately give notice of this to the other party and must make all reasonable steps to resume performance of its obligation.

17.2 Sub-clause 16.1 shall not apply with respect of strikes and lockouts where such action has been induced by the party so incapacitated.

17.4 If and when the period of such incapacity exceeds 12 months then this Agreement shall automatically terminate unless the parties first agree otherwise in writing.

**18. Waiver**

No waiver by the supplier of any breach of the contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

**19. Severance**

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.



**20. Third Party Rights**

A person who is not a party to the Contract shall have no rights under the contract pursuant to the Contracts (Right of Third Parties) Act 1999.

**21. Governing Law and Jurisdiction**

These Terms and conditions shall be governed by the laws of England and Wales and the parties agree to submit to the exclusive jurisdiction of the English and Welsh courts.