



ARDEN ENGRAVING

# Arden Engraving Limited

## Terms & Conditions for Sale of Goods



### 1. INTERPRETATION

**1.1** Definitions. In these Conditions the following definitions apply:

“Business Day” means any day other than a Saturday, Sunday or bank holiday;

“Conditions” means the terms and conditions set out in this document (as amended from time to time in accordance with clause 12.6);

“Contract” means the contract between the Supplier and the Customer for the supply of Goods in accordance with these Terms & Conditions of Sale;

“Customer” means the organisation or person who purchases the Goods from the Seller;

“Force Majeure Event” has the meaning given in clause 9.1;

“Goods” means the goods (or any part of them) set out in the Order;

“Intellectual Property Rights” means all patents, registered and unregistered designs, copyright, trademarks, know-how and all other forms of intellectual property wherever in the world enforceable;

“Order” means the Customer’s order for the Goods, as set out in the Customer’s written acceptance of the Seller’s quotation or in the Customer’s purchase order form, as the case may be;

“Party” or the “Parties” refer to the parties to these Conditions;

“Seller” means Arden Dies Limited, a company registered in England and Wales with company number 00839189, with its registered address at Shepley Lane Industrial Estate, Hawk Green Marple, Stockport, SK6 7JW; and

“Specification” means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier.

**1.2** Construction. In these Conditions, the following rules apply:

**1.2.1** A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

**1.2.2** A reference to a party includes its personal representatives, successors or permitted assigns.

**1.2.3** A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

**1.2.4** Any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**1.2.5** Any reference to writing or written shall include faxes and email.

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### 2 BASIS OF CONTRACT

**2.1** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**2.2** The Order constitutes an offer by the Customer to purchase the Goods in accordance with these 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.

**2.3** The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.

**2.4** The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

**2.5** A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 days from its date of issue.

### 3. GOODS

**3.1** The Goods are described in the Specification.

**3.2** To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other [reasonable] professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual

or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.

### 4. PRICE AND PAYMENT

**4.1** The price of the Goods shall be the price listed in the Seller's quotation or such other price as may be agreed in writing by the Seller and the Customer.

**4.2** Unless otherwise stated, the price of Goods is exclusive of carriage.

**4.3** The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

**4.4** The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.

**4.5** The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the Supplier's invoice or otherwise in accordance with such credit terms as may have been agreed in writing between the Customer and the Supplier in respect of the Contract. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.

**4.6** If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above NATWEST Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

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**4.7** If payment of the price or any part thereof is not made by the due date, the Seller shall be entitled to:

**4.7.1** require payment in advance of delivery in relation to any Goods not previously delivered;

**4.7.2** refuse to make delivery of any undelivered Goods whether ordered under the contract or not and without incurring any liability whatsoever to the Customer for non-delivery or any delay in delivery; or

**4.7.3** terminate the contract.

### 5. DELIVERY

**5.1** The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, all relevant Customer and Supplier reference numbers and the type and quantity of the Goods.

**5.2** Unless otherwise agreed in writing, delivery of the Goods shall take place at the address specified by the Customer (Delivery Location) within the timescale specified by the Seller.

**5.3** Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

**5.4** Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

**5.5** The Seller shall use its reasonable endeavours to meet any stated delivery time. In any event, the Seller shall not be liable for any losses, costs, damages or expenses incurred by the Customer or any third party arising directly or indirectly out of any failure to meet any estimated delivery time.

### 6. TITLE AND RISK

**6.1** Risk in the Goods shall pass to the Customer on

completion of delivery.

**6.2** Title in the Goods shall not pass to the Customer until the Seller has received payment in full (in cash or cleared funds) for:

**6.2.1** the Goods; and

**6.2.2** all other sums which are, or which become, due to the Seller from the Customer on any account.

**6.3** Until title to the Goods has passed to the Customer, the Customer shall:

**6.3.1** store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Seller's property;

**6.3.2** not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

**6.3.3** maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery; and

**6.3.4** notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.2.

**6.3.5** give the Supplier such information relating to the Goods as the Supplier may require from time to time.

**6.4** If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 7.2, then, without limiting any other right or remedy the Supplier may have:

**6.4.1** the Customer's right to resell Goods or use them in the ordinary course of its business ceases immediately; and

**6.4.2** the Supplier may at any time:

**(a)** require the Customer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and

**(b)** if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

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### 7. TERMINATION AND SUSPENSION

**7.1** If the Customer becomes subject to any of the events listed in clause 7.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.

**7.2** For the purposes of clause 7.1, the relevant events are:

**7.2.1** the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

**7.2.2** the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

**7.2.3** (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

**7.2.4** (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an

administrator is given or if an administrator is appointed over the Customer;

**7.2.5** (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

**7.2.6** a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

**7.2.7** (being an individual) the Customer is the subject of a bankruptcy petition or order; **7.2.8** a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

**7.2.9** any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 7.2;

**7.2.10** the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

**7.2.11** the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

**7.2.12** (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

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**7.3** Without limiting its other rights or remedies, the Supplier may suspend the supply of all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause **7.2**, or the Supplier reasonably believes that the Customer is about to become subject to any of them.

**7.4** On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.

**7.5** Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.

**7.6** Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

### **8. LIMITATION OF LIABILITY**

**8.1** Nothing in these Conditions shall limit or exclude the Supplier's liability for:

**8.1.1** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

**8.1.2** fraud or fraudulent misrepresentation;

**8.1.3** breach of the terms implied by section 12 of the Sale of Goods Act 1979;

**8.1.4** defective products under the Consumer Protection Act 1987; or

**8.1.5** any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

**8.2** Subject to clause 8.1:

**8.2.1** the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and **8.2.2** the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

### **9. FORCE MAJEURE**

**9.1** Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

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### 10. INTELLECTUAL PROPERTY

**10.1** The Customer acknowledges and agrees that all Intellectual Property Rights in the Goods remains vested in the Seller.

**10.2** The Customer agrees that it shall not use any of the Seller's Intellectual Property Rights without obtaining the Seller's written authorisation

### 11. CONFIDENTIALITY

**11.1** A party ("receiving party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party ("disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 11 shall survive termination of the Contract.

### 12. GENERAL

**12.1** Relationship of Parties. Nothing contained in these Conditions shall be construed as establishing or implying any partnership or joint venture between the parties and nothing in these Conditions shall be deemed to construe either of the parties as the agent of the other.

**12.2** Assignment and Sub-Contracting. The contract between the Customer and Seller for the sale of Goods shall not be assigned or transferred, nor the performance of any obligation sub-contracted, in either case by the Customer, without the prior written consent of the Seller.

**12.3** Severability. If any term or provision of these Terms and Conditions is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if these Terms and Conditions had been agreed with the invalid, illegal or unenforceable provision eliminated.

**12.4** Waiver. A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

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

**12.6** Variation. Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Supplier.

**12.7** Notices. Any notice required or permitted under the terms of this Contract or required by statute, law or regulation will (unless otherwise provided) be in writing and will be delivered in person, sent by fax or first class post or registered mail (properly posted and fully prepaid in an envelope properly addressed) or sent by fax or by email to the respective parties at their registered offices or such addresses as may have been notified to the other party for that purpose.

**12.7** Governing Law and Jurisdiction. The contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

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