

TERMS AND CONDITIONS FOR DESIGN, DEVELOPMENT & MANUFACTURE

1. Incorporation

1.1 The undermentioned terms and conditions shall apply to and be deemed to be incorporated in any Contract with BM Injection Limited (BMI) whether arising from any Quotation/ Acknowledgement or not. Where any such terms and conditions are in any way in conflict or inconsistent with those contained or referred to in any specification offer to purchase or order received from the Customer then these terms and conditions shall apply unless and except to the extent that they have expressly been varied by BMI`s written consent.

1.2 The Customer shall be deemed not to enter into any contract with BMI in reliance upon any implied or express written or oral representation or any collateral agreement or undertaking save any such as appears in writing upon the Quotation or Acknowledgement.

1.3 The Quotation shall unless previously withdrawn remain open for twenty-one days from the date given. No order shall create any contract between BMI and the Customer unless and until BMI shall have accepted the order in writing (herein referred to as "Acknowledgement").

2. Design and Drawings

2.1 Where BMI prepares designs or drawings in the course of performance of the Customer`s order the Customer shall approve such designs and drawings in writing and until such written approval has been received by BMI it shall be under no liability to commence production and any stipulation as to delivery shall be deemed to be extended accordingly.

2.2 BMI shall not in any circumstance be liable to the Customer for any failure of the tools fully or correctly to perform the function or functions for which they are required save to the extent that such failure is the result of non-conformity of the tools with the specification.

2.3 If it should come to BMI`s notice that any work done or any goods to be supplied under the contract shall infringe or are alleged to infringe any patent registered design copyright or any other rights in the manufacture of goods BMI shall have the right to cease the manufacture of the tools and shall retain title to such goods as shall have been manufactured and the Customer shall indemnify BMI against all claims made by any person or firm or corporation in respect of such infringement and all costs and expenses arising therefrom and shall pay to BMI the value of the work done on and materials used in the performance of the Contract prior to such cessation.

3. Variations

3.1 The Customers order must be accompanied by sufficient detailed technical information to enable BMI to proceed with the order forthwith. In the event that such information differs from that on which the Quotation is based and involves the alteration thereof BMI may increase the price quoted to cover and increase in cost that such alteration may necessitate and the delivery date may be reasonably extended.

4. Prices and Payment

4.1 The prices quoted shall be deemed unless the contract appears to be ex-works exclusive of VAT which will be added at the time of invoicing at the rates then applicable.

4.2 BMI reserves the right to revise the Quotation at any time before Acknowledgement.

4.3 The prices quoted are based on the then current rate of wages price and materials, freight and insurance and normal hours of working and BMI may amend these prices to cover any increase in the cost of materials and labour, freight and insurance after Acknowledgement and the cost of working abnormal hours in so far as the same is reasonably necessary to complete any order or any part thereof (as the case may be) before delivery date or dates.

4.4 In accordance with the custom of the trade payment of the contract price shall be made:-

- (a) 50% with receipt of official order

(b) 25% on initial delivery of samples or initial tool delivery whichever is the earliest.

(c) 25% on approval – maximum 60 days from initial delivery of samples or initial tool delivery.

5. Delivery and Title

5.1 The delivery dates quoted are given in good faith and are the dates for the time of despatch and shall date from the receipt by BMI of written full detailed approval of the general assembly and until such written approval has been received BMI shall be under no obligation to commence production or buy materials. In the event of suspension or non-commencement of the work by reason of any failure by the Customer to supply such written approval or to supply all technical information or models a reasonable extension of the time for delivery shall be granted and BMI shall be at liberty to increase the quoted prices to cover any extra expenses directly or indirectly caused by the delay (including, without prejudice to the generality of this provision, the costs of and incidental to financing the purchase and storage of materials purchased in advance, if any).

5.2 The delivery date or dates cannot be guaranteed and time shall not be regarded as of the essence. Each delivery shall be considered a separate transaction and any failure to effect one delivery by the due date shall not affect the due performance of this or any other agreement between the Customer and BMI nor entitle the Customer to rescind as regards other deliveries.

5.3 BMI shall not be liable to the Customer for any delay in the performance of the contract caused by or resulting from any strike lockout breakdown fire accident war civil commotion shortage of materials fuel or from any cause whatsoever outside BMI's reasonable control.

5.4 (a) No property or title to the tools shall pass to the Customer until payment to BMI of the invoiced price payable together with all monies due owing or incurred by the Customer to BMI on any account whatsoever under this or any other contract or from any other claim action cause or proceeding whatsoever. Until such payment the tools from time to time delivered to or to the order of the Customer shall be retained by the recipient as bailee only, and the Customer shall continue to insure that same in their full value for the benefit of BMI.

5.4 (b) Pending payment of the price and all other monies as aforesaid in the event that the Customer shall purport to sell hire pledge mortgage deliver appropriate lend or otherwise pass title or possession of any or all of the tools from time to time delivered by BMI the Customer shall be deemed to have acted as trustee for BMI and shall receive and stand possessed of the proceeds of sale and all other monies or consideration due in respect of such dealings with the tools on account of and in trust for BMI and shall forthwith pay to BMI all such proceeds and other monies and pending such payment shall receive and credit the same into a separate account designated in trust for BMI and shall do all acts and things necessary to assign to BMI all those Customer's rights in respect of recovery of all the monies due to the Customer in respect of the tools and all rights to the recovery thereof and any other remedies of the Customer in respect of the breach by such third party of his or its obligations to the Customer and BMI is hereby appointed attorney of the Customer as his act and deed to execute all deeds and documents necessary to pay or assign such proceeds of the tools and such rights and remedies as aforesaid to BMI.

5.4 (c) Pending such payment as aforesaid BMI shall be entitled and is hereby authorised by the Customer to do all acts and things necessary to recover possession of all or any of the tools from time to time delivered by BMI including entry upon the premises where the same shall be and seizing the same.

6. Liability

6.1 Any claim for:-

(a) non delivery must be received in writing by both the carrier and BMI within ten days of the date of the advice note or within any shorter period which must be specified by the carrier.

(b) damage in transit or short delivery must be received in writing by both the carrier and BMI within seventy-two hours after delivery or any shorter period specified aforesaid.

BMI shall be under no liability to the Customer whatsoever for losses arising from any alleged non-delivery damage in transit or short delivery unless the Customer shall comply with the foregoing requirements as to notification and shall do all acts and things necessary to protect and assist the furtherance of any claims which BMI may have against the carrier.

6.2 BMI shall undertake only to provide goods in conformity with the specification and drawings supplied by or approved by the Customer and shall not be under any liability to the Customer in contract or otherwise for any losses arising from any defects unless the same shall arise from faulty workmanship or materials solely attributable to BMI, PROVIDED THAT:-

(a) BMI shall not be liable for any defect arising from faulty material supplied by or on behalf of the Customer.

(b) BMI shall not be liable for any defects which have not been notified to BMI in writing within 21 days after delivery (this being agreed to be a sufficient time for tool trial) or forthwith upon discovery of the defect upon earlier tool trial.

(c) BMI's liability shall be limited to correction by its own personnel on its own premises and shall absolutely cease and determine if the tool shall not be immediately returned for such purpose or if the tools are altered adapted or repaired by any other person other than in accordance with BMI's express written authority.

(d) BMI shall not be liable under any circumstances for any consequential loss however arising to any third party successor in title of the Customer or any stranger to the contract or for any losses arising from mishandling or misapplication of the tools.

6.3 For the avoidance of doubt it is hereby agreed that BMI shall undertake no duty by contract or otherwise for the fitness or sufficiency of the tools for the purpose for which they are required or their suitability for any process or materials and the Customer who shall be deemed to have satisfied himself on such matters prior to preparing the drawings and specifications or prior to approving the general assembly shall indemnify BMI against all claims costs expenses in respect of any actual or alleged loss or damage arising from any failure wholly or partially of the tool or tools to execute the purposes for which they have been intended.

7. Cancellation

7.1 The order shall not be cancelled by the Customer without BMI's written agreement. Upon cancellation (with or without such agreement) the Customer shall indemnify BMI in respect of all losses arising therefrom including (without prejudice to the generality hereof) the value of the work carried out to date of receipt of written notice of cancellation the cost of and the cost of financing the purchase and storage of materials loss of profit and (if greater) the cost to BMI of underutilisation of its capacity.

8. Arbitration

8.1 Any dispute or difference arising from the contract between the parties may at the written request of either party within twenty-eight days after the same date shall arise be referred to arbitration in England by a single arbitrator mutually agreed or appointed in default by the President of the Gauge and Tool Makers Association and the provisions of the Arbitration Act 1950 an 1979 and all statutory modifications and re-enactments thereof shall apply.

9. Specialist Processing

9.1 Subsequent processes carried out other than on BMI's premises such as texturing and plating shall be the subject of a separate order and the conditions relating to this work shall be subject to the contractor's terms of trading in addition to these terms and conditions so far as the latter are not varied by or inconsistent with the Contractor's terms of trading.

10. Construction

10.1 These terms and all other conditions of the contract shall be construed on accordance with and be governed by the laws of England.

10.2 The subject headings shall not form part of these terms or have any effect upon their interpretation.