

## G F S A LIMITED – TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

### 1. Interpretation

The following definitions and rules of interpretation apply in these terms and conditions.

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Contract:** the contract between you and us for the supply of Goods and/or Services in accordance with these terms and conditions.

**Force Majeure Event:** has the meaning given to it in clause 15.

**Goods:** the goods (or any part of them) set out in the Order.

**Goods Specification:** any specification for the Goods, including any relevant plans or drawings, that is agreed in writing by you and us.

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Order:** your order for the supply of Goods and/or Services, whether set out in your purchase order form, in your written acceptance of our quotation or otherwise.

**Services:** the services (if any) to be supplied by us to you as set out in the Service Description.

**Service Description:** the description or specification for the Services provided in writing by us to you.

**we/us:** G F S A Limited, a company incorporated and registered in England and Wales with company number 03265517 whose registered office is at Gibbs Road, Lye, Stourbridge, West Midlands DY9 8SY.

**you:** the person or firm who purchases the Goods and/or Services from us.

#### 1.2 Interpretation:

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

- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.
- (d) Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes email.

## **2. Basis of contract**

- 2.1 The Order constitutes an offer by you to purchase Goods and/or Services in accordance with these terms and conditions.
- 2.2 The Order shall only be deemed to be accepted when we issue written acceptance of the Order, at which point and on which date the Contract shall come into existence.
- 2.3 Any samples, drawings, descriptive matter or advertising issued by us and any descriptions of the Goods or illustrations or descriptions of the Services contained on our website or other marketing materials are issued or published for the sole purpose of giving an approximate idea of the Goods and Services described in them. They shall not form part of the Contract nor have any contractual force.
- 2.4 These terms and conditions apply to the Contract to the exclusion of any other terms that you seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 Any quotation given by us shall not constitute an offer capable of acceptance, and may be withdrawn by us at any time prior to the Contract coming into existence.
- 2.6 All of these terms and conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 You waive any right you might otherwise have to rely on any term endorsed upon, delivered with or contained in any of your documents that are inconsistent with these terms and conditions.

## **3. Goods**

- 3.1 The Goods are described in the Goods Specification.

3.2 To the extent that the Goods are to be manufactured in accordance with a Goods Specification supplied by you, you shall indemnify us 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 costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by us arising out of or in connection with any claim made against us for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with our use of the Goods Specification. This clause 3.2 shall survive termination of the Contract.

3.3 We reserve the right to amend the Goods Specification if required by any applicable statutory or regulatory requirement, and we shall notify you in any such event.

#### **4. Delivery of Goods**

4.1 We shall have the right to package the Goods in such manner and with such materials and in such quantities as we in our absolute discretion consider appropriate unless detailed packaging instructions have been agreed with you in writing.

4.2 If we have agreed to deliver the Goods, we shall deliver them to the location set out in the Order (or such other location as we may agree with you) at any time after we notify you that the Goods are ready. Delivery of the Goods will be completed on completion of unloading at the agreed location, except that if you (or your employees, agents or subcontractors) unload the Goods then delivery shall be deemed to commence immediately prior to such unloading. In all other circumstances, you shall collect the Goods from our premises (or such other location as may be agreed with you before delivery) within three Business Days of us notifying you that the Goods are ready, and delivery of the Goods will be completed on completion of loading onto your (or your carrier's) vehicle, except that if you (or your employees, agents or subcontractors) load the Goods then delivery shall be deemed to commence immediately prior to such loading.

4.3 Any dates quoted for delivery of the Goods are approximate only, and the time of delivery is not of the essence. If we fail to deliver the Goods, our liability shall be limited to the price of the Goods. We shall not be liable for any delay or failure in delivery of the Goods that is caused by a Force Majeure Event or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.4 If you fail to collect or take delivery of the Goods within three Business Days of us notifying you that the Goods are ready, then:

- (a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which we notified you that the Goods were ready; and
- (b) we shall store the Goods until actual delivery takes place, and charge you for all related costs and expenses (including insurance).

4.5 We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle you to cancel any other instalment.

## **5. Quality of Goods**

5.1 You shall examine the Goods upon receipt and you shall:

- (a) notify us (and the carrier where relevant) in writing within three Business Days of the expected date of delivery of any non-delivery or short delivery;
- (b) notify us (and the carrier where relevant) in writing within three Business Days of such receipt of any apparent damage, defect or shortage; and
- (c) notify us in writing within three Business Days of such receipt of any goods despatched by us to you in error.

5.2 Subject to your compliance with clause 5.1(b), we warrant that on delivery, and for a period of 12 months from the date of delivery (**Warranty Period**), the Goods shall:

- (a) conform in all material respects with the Goods Specification; and
- (b) be free from material defects in design, material and workmanship.

5.3 Subject to clause 5.4, if:

- (a) you give notice in writing to us during the Warranty Period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.2;
- (b) we are given a reasonable opportunity of examining such Goods; and
- (c) you (if asked to do so by us) return such Goods to our place of business at our cost,

we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.4 We shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.2 if:

- (a) you make any further use of such Goods after giving a notice in accordance with clause 5.3;
- (b) the defect arises because you failed to follow our oral or written instructions as to the storage, commissioning, installation, use or maintenance of the Goods or (if there are none) good trade practice regarding the same;
- (c) the defect arises as a result of us using any free issue materials or following any drawing, design or specification supplied by you;
- (d) you alter or repair such Goods without our written consent;
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
- (f) the Goods differ from the Goods Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.5 Except as provided in this clause 5, we shall have no liability to you in respect of the Goods' failure to comply with the warranty set out in clause 5.2.

5.6 These terms and conditions shall apply to any repaired or replacement Goods supplied by us.

5.7 We will provide test certificates and/or certificates of conformity in respect of the Goods only if specifically requested by you and agreed by us at the time you place the Order.

## **6. Title and risk**

6.1 The risk in the Goods shall pass to you on completion of delivery (as defined in clause 4.2).

6.2 Title to the Goods shall not pass to you until the earlier of:

- (a) us receiving payment in full (in cash or cleared funds) for the Goods, in which case title to the Goods shall pass at the time of payment; and
- (b) you reselling the Goods, in which case title to the Goods shall pass to you at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to you, you shall:

- (a) store the Goods separately from all other goods held by you so that they remain readily identifiable as our property;
- (b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

- (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on our behalf from the date of delivery;
- (d) notify us immediately if you become subject to any of the events listed in clause 12.1(b) to clause 12.1(d); and
- (e) give us such information as we may reasonably require from time to time relating to:
  - (i) the Goods; and
  - (ii) your ongoing financial position.

6.4 Subject to clause 6.5, you may resell or use the Goods in the ordinary course of your business (but not otherwise) before we receive payment for the Goods. However, if you resell the Goods before that time:

- (a) you do so as principal and not as our agent; and
- (b) title to the Goods shall pass from us to you immediately before the time at which resale by you occurs.

6.5 At any time before title to the Goods passes to you, we may:

- (a) by notice in writing, terminate your right under clause 6.4 to resell the Goods or use them in the ordinary course of your business; and
- (b) require you to deliver up all Goods in your possession that have not been resold, or irrevocably incorporated into another product and if you fail to do so promptly, enter any of your premises or the premises of any third party where the Goods are stored in order to recover them.

## **7. Supply of Services**

7.1 We warrant to you that the Services will be provided using reasonable care and skill and in accordance with the Service Description in all material respects.

7.2 In the event of any breach of clause 7.1 your sole remedy shall be the re-performance by us of the relevant Services.

7.3 We shall use our reasonable endeavours to meet any performance dates for the Services agreed in writing, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.

## **8. Your obligations**

8.1 You shall:

- (a) ensure that the terms of the Order and all information in the Service Description and/or the Goods Specification are complete and accurate;
- (b) co-operate with us in all matters relating to the Services;
- (c) provide us, our employees, agents, consultants and subcontractors, with access to your premises and other facilities as reasonably required by us to provide the Services;
- (d) provide us with such information and materials as we may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and
- (e) comply with all applicable laws, including health and safety laws.

8.2 If our performance of any of our obligations under the Contract is prevented or delayed by any act or omission by you or failure by you to perform any relevant obligation (**Customer Default**):

- (a) without limiting or affecting any other right or remedy available to us, we shall have the right to suspend performance of the Services until you remedy the Customer Default, and to rely on the Customer Default to relieve us from the performance of any of our obligations in each case to the extent the Customer Default prevents or delays our performance of any of our obligations;
- (b) we shall not be liable for any costs or losses sustained or incurred by you arising directly or indirectly from our failure or delay to perform any of our obligations as set out in this clause 8.2; and
- (c) you shall reimburse us on written demand for any costs or losses sustained or incurred by us arising directly or indirectly from the Customer Default.

## 9. Charges and payment

9.1 The price for Goods:

- (a) shall be the price set out in the Order; and
- (b) (unless agreed otherwise by us in writing) shall be exclusive of all costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to you.

9.2 Where we agree to provide test certificates and/or certificates of conformity in accordance with clause 5.7, the cost of such certificates and any work carried out by us in connection with obtaining them will be charged in addition to the price quoted, together with the cost of any additional material forgings or finished parts which may be destroyed or damaged during the relevant tests.

- 9.3 If you request any specific tests to be carried out in the presence of your representatives, then (unless agreed otherwise by us in writing) they must be carried out at our premises and we shall be entitled to charge for such tests at such rates as we notify to you from time to time. In the event of your delay in attending such tests after three Business Days' notice that we are ready to perform the tests, we shall also be entitled to storage charges in accordance with clause 4.4(b).
- 9.4 If the Order states that Services are calculated on a time and materials basis:
- (a) the charges shall be calculated in accordance with our daily or hourly fee rates, as notified to you in writing; and
  - (b) we shall be entitled to charge you for any expenses reasonably incurred by the individuals whom we engage in connection with the Services including travelling expenses, hotel costs, subsistence and any associated expenses, and for the cost of services provided by third parties and required by us for the performance of the Services, and for the cost of any materials.
- 9.5 We reserve the right to increase the price of the Goods, by giving notice to you at any time before delivery, to reflect any increase in the cost of the Goods to us that is due to:
- (a) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - (b) any request by you to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - (c) any delay caused by any of your instructions in respect of the Goods or your failure to give us adequate or accurate information or instructions in respect of the Goods.
- 9.6 We shall invoice you in accordance with any agreed milestone delivery plan and we shall determine (acting reasonably) when each milestone is complete. In the absence of such a plan, we shall invoice you at any time after delivery of the Goods or completion of the Services (as the case may be).
- 9.7 You shall pay each invoice submitted by us:
- (a) within 30 days of the date of the invoice or in accordance with any credit terms agreed by us and confirmed in writing to you (which you agree we may withdraw at any time prior to accepting an Order); and
  - (b) in full and in cleared funds to a bank account nominated in writing by us, and



time for payment shall be of the essence of the Contract.

- 9.8 All amounts payable by you under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by us to you, you shall, on receipt of a valid VAT invoice from us, pay to us such additional amounts in respect of VAT as are chargeable on the supply of the Services or Goods or both, as applicable, at the same time as payment is due for the supply of the Services or Goods.
- 9.9 If you fail to make a payment due to us under the Contract by the due date, then, without limiting our remedies under clause 12, you shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue at the rate specified pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.10 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **10. Intellectual property rights**

- 10.1 All Intellectual Property Rights in or arising out of or in connection with the Goods and/or Services (other than Intellectual Property Rights in any materials provided by you) shall be owned by us or our licensors.
- 10.2 You shall not modify, adapt, reproduce or copy the Goods.
- 10.3 You shall notify us of any infringement of our Intellectual Property Rights of which you become aware and shall provide such reasonable assistance and information as we request to enable us to take action against such infringement.
- 10.4 You grant us a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by you to us for the purpose of providing the Goods and/or Services to you.

## **11. Limitation of liability**

- 11.1 The limits and exclusions in this clause reflect the insurance cover we have been able to arrange and you are responsible for making your own arrangements for the insurance of any excess liability.
- 11.2 References to liability in this clause 11 include every kind of liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

- 11.3 Nothing in the Contract limits any liability for:
- (a) death or personal injury caused by negligence;
  - (b) fraud or fraudulent misrepresentation;
  - (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession); or
  - (d) any other liability that legally cannot be limited.
- 11.4 Subject to clause 11.3, our total liability to you shall not exceed the total price payable by you to us under the Contract.
- 11.5 Subject to clause 11.3, we shall have no liability to you for any:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;
  - (d) loss of anticipated savings;
  - (e) loss of or damage to goodwill; or
  - (f) indirect or consequential loss.
- 11.6 We have given commitments as to compliance of the Goods and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.
- 11.7 This clause 11 shall survive termination of the Contract.

## **12. Termination**

- 12.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining

a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

12.2 Without affecting any other right or remedy available to us, we may terminate the Contract with immediate effect by giving written notice to you if you fail to pay any amount due under the Contract (or any other contract between us) on the due date for payment.

12.3 Without affecting any other right or remedy available to us, we may suspend the supply of Services or all further deliveries of Goods under the Contract or any other contract between you and us if you fail to pay any amount due under the Contract on the due date for payment, you become subject to any of the events listed in clause 12.1(b) to clause 12.1(d), or we reasonably believe that you are about to become subject to any of them.

12.4 Save as set out in this clause 12, you may not cancel, suspend or vary any Contract without our prior written consent and on terms that you shall indemnify us in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by us as a result of a cancellation, suspension or variation.

### **13. Consequences of termination**

13.1 On termination of the Contract:

- (a) you shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods and Services supplied but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by you immediately on receipt;
- (b) you shall return any Goods which have not been fully paid for. If you fail to do so, then we may enter your premises and take possession of them. Until they have been returned, you shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

13.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

13.3 Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

#### **14. Confidentiality**

14.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, assets, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.2.

14.2 Each party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, contractors or subcontracts or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

#### **15. Force majeure**

We shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of our obligations if such delay or failure results from events, circumstances or causes beyond our reasonable control (a **Force Majeure Event**). The time for performance of such obligations shall be extended accordingly. For the avoidance of doubt, any failure or delay attributable to a manufacturer or supplier on whom we depend for the supply of any part of the Goods or Services (whether or not such manufacturer or supplier was prescribed by you) shall be considered a Force Majeure Event.

#### **16. General**

16.1 We may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of our rights and obligations under

the Contract. You shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of your rights and obligations under the Contract without our prior written consent.

## 16.2 Notices

(a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (ii) sent by email to the following addresses (or an address substituted in writing by the party to be served):

You: any email address you have used in connection with the negotiation of the Contract.

Us: any email address we have specifically identified as appropriate for legal notices.

(b) Any notice shall be deemed to have been received:

- (i) if delivered by hand, at the time the notice is left at the proper address;
- (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (iii) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt (9.00 am to 5.00 pm on any Business Day), when business hours resume.

(c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.3 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision or part provision of the Contract is deemed deleted under this clause 16.3, the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the commercial result of the original provision.

16.4 Except as set out in clause 2.7, a waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A delay or failure to exercise, or the single or partial exercise of, any right or

remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

- 16.5 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 16.6 The Contract constitutes the entire agreement between the parties. Each party acknowledges that in entering into the Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 16.7 The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.8 Except as set out in these terms and conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 16.9 The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 16.10 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.