

**THREESMITH MANUFACTURING TERMS AND CONDITIONS OF PURCHASE**

**1. INTERPRETATION**

1.1 In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.  
Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 1.1.1.

Confidential Information: any Input Material or other proprietary, scientific, technical, planning, business, marketing, marketing, product, quality, packaging or financial information, formulas, patterns, compilations, programs, devices, methods, techniques, processes, data, trade secrets or know-how or other information (whether or not contained in Documents).

Document: includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

Contract: the contract between the Customer and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.

Customer: Three Smith Manufacturing Limited (registered in England and Wales with company number 06702847).

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

Input Materials: any Documents, information and materials in any form developed or provided by the Customer to the Supplier relating to the Goods, including any computer programs, reports and the Specifications.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighboring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of any confidential Information (including know how and trade secrets) 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: The Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Services: all or any of the services specified in the Order.

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

Supplier: the person or firm from whom the Customer purchases the Goods.

1.2 In these Conditions, unless the context requires otherwise, 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 A reference to writing or written includes faxes and e-mails.

**2. BASIS OF CONTRACT**

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier 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.

2.3 Each Order shall be deemed to be a separate offer by the Customer to buy the Goods on the terms of these Conditions.

2.4 The Order shall be deemed to be accepted on the earlier of:

2.4.1 the Supplier issuing a written acceptance of the Order; and

2.4.2 the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

2.5 The Customer may at any time prior to delivery of the Goods amend or cancel an Order by written notice to the Supplier. If the Customer amends or cancels an Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Order up until the date of amendment or cancellation.

**3. THE GOODS**

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 correspond with their description and any applicable Input Material;

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

3.1.3 where applicable, be free from defects in design, material and workmanship and remain so for 24 months after Delivery; and

Habergham Works, Ainleys Industrial Estate,  
Elland, Halifax, HX5 9JP, United Kingdom

+44 (0)1422 344402

Directors: James Smith, Luke Smith  
Reg in England, No: 06702847 • VAT No: GB 289 5322 63



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3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Supplier shall ensure that at all times it has and maintains all the licenses, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.3 The Customer shall have the right to inspect and test the Goods at any time before delivery.

3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

#### 4. DELIVERY

4.1 The Supplier shall ensure that:

4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.3 if the Supplier requires the Customer to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall either be collected by the Supplier from the Delivery Location or returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

4.2.2 on the date specified in the Order, or, if no such date is specified, within 28 days of the date of the Order;

4.2.3 to the Customer's premises at Habergham Works, Ainleys Industrial Estate, Elland, Halifax HX5 9JP or such other location as is set out in the Order, or as instructed by the Customer prior to delivery (Delivery Location); and

4.2.4 during the Customer's normal business hours, or as instructed by the Customer.

4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

4.4 If the Supplier:

4.4.1 delivers less than 95% of the quantity of Goods ordered, the Customer may reject the Goods; or

4.4.2 delivers more than 105% of the quantity of Goods ordered, the Customer may at its discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 5.

#### 5. REMEDIES

5.1 If the Goods are not delivered on the date they are due as referred to in clause 4.2.1, or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, the Customer shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:

5.1.1 to terminate the Contract;

5.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

5.1.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;

5.1.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

5.1.5 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and

5.1.6 to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

5.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.3 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:

5.3.1 any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

5.3.2 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

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5.3.3 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors. This clause 5.3 shall survive termination of the Contract.

5.4 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

### 6. TITLE AND RISK

Title and risk in the Goods shall pass to the Customer on completion of delivery.

### 7. PRICE AND PAYMENT

7.1 In consideration of the satisfactory delivery of the Goods and/or performance of the Services, THREESMITH MANUFACTURING shall pay the Supplier the Price in the manner set out in this condition 7.

7.2 The Supplier shall on or at any time after the despatch of the Goods or the performance of the Services or at such other time as the Purchase Order may specify, send an invoice to Threesmith Manufacturing and each invoice shall quote the number of the Purchase Order; the number of the relevant delivery note; quantity, units and price of the Goods; and Threesmith Manufacturing's Purchase Order product code for the Goods.

7.3 The price of the Goods or Services is exclusive of amounts in respect of value added tax (VAT), but includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Customer.

7.4 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 and/or performance of the Services.

7.5 Unless otherwise stated in the Purchase Order and subject to the other provisions of these Conditions Threesmith Manufacturing shall pay the Price within 45 days of the end of the month in which the Goods are delivered and/or the Services provided.

7.6 Payment shall be made to the bank account nominated in writing by the Supplier. All payments shall be made in pounds sterling (UK £) unless otherwise specified in the Purchase Order.

7.7 The Customer may, without limiting any other rights or remedies it may have, set off any amount owed to the Customer by the Supplier under the Contract against any amounts payable by the Customer to the Supplier under the Contract, including any amount (determined by the Customer in its absolute discretion (acting unreasonably) in satisfaction of the Customer's rights or remedies under clause 5.1.5 and 5.1.6.

7.8 Payment shall not operate to waive or prejudice any of Threesmith Manufacturing rights under the Contract or otherwise nor shall it be deemed to signify acceptance of any Goods and/or performance of the Services subsequently found to be defective.

### 8. INTELLECTUAL PROPERTY RIGHTS

8.1. The Supplier acknowledges that all ownership and all rights, including Intellectual Property Rights, in any Input Materials supplied by the Customer to the Supplier belong to the Customer and that the Supplier has no such rights in, or to, the Input Materials other than a right to use them in accordance with the sale of the Goods and the Contract.

8.2 Any goodwill derived from the use by the Supplier of the Input Materials, accrues to the Customer. The Customer may, at any time during the Contact or following termination, call for a confirmatory assignment of that goodwill and the Supplier shall immediately execute it.

8.3 Any Intellectual Property Rights conceived or made by the Supplier to the Input Materials in the course of the supply of the Goods will belong to the Customer and the Supplier assigns and agrees to assign all its interest in such Intellectual Property Rights to the Customer. Whenever requested to do so by the Customer, including following termination, the Supplier will, at its own expense, execute any and all applications, assignments or other instruments which the Customer deems necessary to give effect to this clause.

8.4 The Supplier shall not represent that it has any title in or right of ownership to any Intellectual Property Rights in any Input Materials or do or suffer to be done any act or thing which may in any way impair the rights of the Customer in any Intellectual Property Rights in such Input Materials, or bring into question the validity of any registration of such Intellectual Property Rights.

8.5 The Supplier shall promptly and fully notify Customer of any actual or threatened infringement of any of the Intellectual Property Rights referred to in clause 8.1 which comes to the Supplier's notice, or which the Supplier suspects has taken or may take place.

8.6 The Supplier shall at the request and expense of the Customer take all such steps as Customer may reasonably require to assist the Customer in maintaining the validity and enforceability of any Intellectual Property Rights referred to in clause 8.1, and shall enter into formal licenses of such Intellectual Property Rights as the Customer may reasonably request.

### 9. INPUT MATERIAL

The Supplier will, whenever the Customer requests in writing and in any event upon termination of the Contact for any reason whatsoever, return to the Customer on demand all Input Materials and no copies shall be kept.

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### 10. INSURANCE

During the term of the Contract and for a period of 2 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

### 11. CONFIDENTIAL INFORMATION

11.1 The Supplier shall during the Contact, and following the date the Contact is terminated, hold any Confidential Information made available, or disclosed, by the Customer to the Supplier in strict confidence and shall treat such Confidential Information with the same degree of care as they employ for the protection of its own information of a similar nature, but in any event with no less than a reasonable degree of care as judged by the nature of the information and prudent industry practice.

11.2 The Supplier may disclose the Customer's Confidential Information:-

11.2.1.1 to its employees, officers, representatives or advisers who need to know such Confidential Information for the purposes of carrying out the Supplier's obligations under the Contact provided that the Supplier shall ensure that such of its employees, officers, representatives or advisers to whom it discloses the Customer's Confidential Information comply with this clause 11; and

11.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.3 The Supplier shall not use the Customer's Confidential Information for any purpose other than to perform its obligations under the Contact.

### 12. TERMINATION

12.1 THREESMITH MANUFACTURING shall be entitled to terminate the Contract at any time in whole or in part upon giving to the Supplier written notice of termination at any time prior to delivery of the Goods or performance of the Services ("Termination Notice") specifying the extent to which the Contract is terminated and the date upon which such termination is to be effective.

12.2 The Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if the Supplier becomes subject to any of the following events:

12.2.1 the Supplier commits a material breach of any of the provisions of this agreement and, in the case of such a breach which is capable of remedy, fails to remedy the breach within 14 days after receipt of a written notice served by the Customer giving particulars of the breach and requiring it to be remedied;

12.2.2 the Supplier 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) 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;

12.2.3 the Supplier 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 Supplier is a company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

12.2.4 (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 Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

12.2.5 (being an individual) the Supplier is the subject of a bankruptcy petition or order;

12.2.6 a creditor or encumbrancer of the Supplier 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;

12.2.7 (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 Supplier;

12.2.8 (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;

12.2.9 a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;

12.2.10 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2.2 to clause 12.2.9 inclusive;

12.2.11 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;

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

12.2.13 (being an individual) the Supplier 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.

12.3 If Threesmith Manufacturing serves a Termination Notice, the Supplier shall be entitled only to be reimbursed for the Price payable for the Goods and/or Services in respect of which a Termination Notice has been served. The Supplier shall use its best endeavours to mitigate its losses in respect of Goods subject to a termination.

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12.4 Termination of any Contract or part thereof for whatever cause shall not affect the rights or remedies of either party in respect of any breach of the Contract before termination, or in respect of any sum of money owing to or become owing by the other.

### 13. OWNERSHIP

13.1 Without prejudice to any right of rejection accruing to Threesmith Manufacturing ownership in all components and materials for the Goods, services and/or supporting materials and in the Goods, services and/or supporting materials themselves shall pass to Threesmith Manufacturing upon delivery unless payment is made prior to delivery when it shall pass upon payment, and where the Price is paid by instalments ownership over such proportion of the Goods as shall be equal to the proportion of the Price paid shall pass to Threesmith Manufacturing upon payment of the relevant instalment.

13.2 Once ownership has passed to Threesmith Manufacturing the Supplier shall:

13.2.1 (unless the Goods have been delivered to Threesmith Manufacturing or as Threesmith Manufacturing shall direct) supply all raw / editable files including all associated images and assets to Threesmith Manufacturing

13.2.2 (unless the Goods have been delivered to Threesmith Manufacturing or as Threesmith Manufacturing shall direct) store them and procure that they are stored separately from goods and materials belonging to the Supplier or any other person in a manner which makes them readily identifiable as Threesmith Manufacturing's Goods;

13.2.3 (unless the Goods have been delivered to Threesmith Manufacturing or as Threesmith Manufacturing shall direct) make them available for inspection by Threesmith Manufacturing or its representatives at any reasonable time and comply with all instructions of Threesmith Manufacturing with regard to and including allowing Threesmith Manufacturing to enter upon any land or premises where the Goods may be for the time being to take possession of them; and

13.2.4 irrevocably licence Threesmith Manufacturing to agree and to sell on the Goods or any part of them in the ordinary course of trade.

### 14. FORCE MAJEURE

Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavors to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 20 Business Days, the Customer may terminate this Contract immediately by giving written notice to the Supplier.

### 15. ASSIGNMENT AND SUBCONTRACTING

15.1 The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

15.2 The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the Customer's prior written consent.

### 16. NOTICES

16.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

16.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 15.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.

16.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 17. SEVERANCE

17.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

17.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

### 18. WAIVER

A waiver of any right or remedy under the Contract 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

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## 19. THIRD PARTY RIGHTS

A person who is not a party to the Contract shall not have any rights under or in connection with it.

## 20. VARIATION

20.1 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer.

20.2 The Customer reserves the right to revise and amend these Conditions from time to time for reasons including changes in market conditions affecting the Customer's business, changes in technology, or changes in relevant laws and regulatory requirements.

## 21. 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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