Banbury Plastic Fittings Limited Terms and Conditions of Business

1. DEFINITIONS

In the context of these terms and conditions:
- "the Company" means Banbury Plastic Fittings Limited, registered in England and Wales with company number 3935890.
- "the Conditions" means these terms and conditions of business, as amended from time to time in accordance with clause 17.
- "the Customer" means the person, firm or company by whom the Order is placed.
- "Drawings" means any drawings for the Products, including any relevant designs or specifications, that are supplied to the Company by the Customer or produced by the Company at the Customer's instruction, as agreed between the parties.
- "the Goods" means the finished goods described in the Order.
- "the Order" means the Customer's order for the Supply of Goods, as set out below, overleaf, or in the Company's written confirmation of order acceptance, as the case may be.
- "the Order’s Contract" means the contract between the Customer and the Company in accordance with these Conditions to which these Conditions apply.
- "the Part Mould" means the tooling (other than Company Tooling) described in the Order or otherwise made for the purposes of manufacture of the Goods to be supplied under the Contract.
- "the price" means the price fixed or to be charged for the Goods and/or services supplied.
- "the Company" means the company or companies which may from time to time agree to purchase the Goods and/or services supplied.
- "the Service" means the supply of any services supplied.
- "the Working day" means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

2. GENERAL

Unless otherwise expressly agreed in writing by a director of the Company all Tooling or Mouldings made Product or services supplied or for work undertaken by the Company are made, supplied and undertakes upon these Conditions and no agent or representative of the Company has any authority to vary or omit these Conditions. These Conditions apply to the exclusion of all other terms and conditions (except any which might be implied by law in favour of the Company) and in particular to the exclusion of any which the Customer may purport to apply under an order confirmation, Order or otherwise. All Orders shall be deemed to be an offer by the Customer to contract pursuant to these Conditions, which the Company is free to accept or reject at its discretion.

3. ACCEPTANCE AND VARIATION OF PRICE

3.1 Quotations issued by the Company whether verbally or in writing do not constitute offers and are subject to acceptance by the Company of the Customer's Order when placed and unless otherwise agreed no contract until written acceptance by the Company of the Customer's Order. The Customer shall confirm all verbal Orders in writing within ten days of the original instructions.

3.2 Provision is made by the Customer of any Tooling and/or Mouldings as required by the Customer and for work undertaken by the Company are made, supplied and undertaken upon these Conditions and no agent or representative of the Company has any authority to vary or omit these Conditions. These Conditions apply to the exclusion of all other terms and conditions (except any which might be implied by law in favour of the Company) and in particular to the exclusion of any which the Customer may purport to apply under an order confirmation, Order or otherwise. All Orders shall be deemed to be an offer by the Customer to contract pursuant to these Conditions, which the Company is free to accept or reject at its discretion.

4. SAMPLES AND DESIGN

4.1 It is the responsibility of the Customer to request Tooling or Moulds be made, supplied and/or work undertaken by the Company or otherwise by the Company. All Tooling or Moulds made, supplied and/or work undertaken by the Company are made, supplied and/or (except any which might be implied by law in favour of the Company) and in particular to the exclusion of any which the Customer may purport to apply under an order confirmation, Order or otherwise. All Orders shall be deemed to be an offer by the Customer to contract pursuant to these Conditions, which the Company is free to accept or reject at its discretion.

5. CUSTOMER TOOLING

5.1 Payment for Customer Tooling shall be strictly net cash on the due date stated on the invoice therefore in accordance with the provisions of Clause 5 below. Risk of damage to or loss of the Customer Tooling shall however be that of the Customer at all times. Property in the Customer Tooling shall pass to the Customer immediately upon payment of all sums due in respect of the Customer Tooling but subject however to the provisions of Clauses 5.6 and 5.7 below.

5.2 The Customer shall be responsible for obtaining and maintaining insurance of the Customer Tooling to a value not less than its full replacement value comprehensively against all usual risks of loss, damage, or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing. The Customer shall however be that of the Customer at all times. Property in the Customer Tooling shall pass to the Customer immediately upon payment of all sums due in respect of the Customer Tooling but subject however to the provisions of Clauses 5.6 and 5.7 below.

5.3 The Customer shall be responsible for obtaining and maintaining insurance of the Customer Tooling to a value not less than its full replacement value comprehensively against all usual risks of loss, damage, or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing. The Customer shall however be that of the Customer at all times. Property in the Customer Tooling shall pass to the Customer immediately upon payment of all sums due in respect of the Customer Tooling but subject however to the provisions of Clauses 5.6 and 5.7 below.

5.4 The Customer shall be responsible for obtaining and maintaining insurance of the Customer Tooling to a value not less than its full replacement value comprehensively against all usual risks of loss, damage, or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing. The Customer shall however be that of the Customer at all times. Property in the Customer Tooling shall pass to the Customer immediately upon payment of all sums due in respect of the Customer Tooling but subject however to the provisions of Clauses 5.6 and 5.7 below.

5.5 The Customer shall be responsible for obtaining and maintaining insurance of the Customer Tooling to a value not less than its full replacement value comprehensively against all usual risks of loss, damage, or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing. The Customer shall however be that of the Customer at all times. Property in the Customer Tooling shall pass to the Customer immediately upon payment of all sums due in respect of the Customer Tooling but subject however to the provisions of Clauses 5.6 and 5.7 below.

5.6 The Customer shall be responsible for obtaining and maintaining insurance of the Customer Tooling to a value not less than its full replacement value comprehensively against all usual risks of loss, damage, or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing. The Customer shall however be that of the Customer at all times. Property in the Customer Tooling shall pass to the Customer immediately upon payment of all sums due in respect of the Customer Tooling but subject however to the provisions of Clauses 5.6 and 5.7 below.

5.7 The Customer shall be responsible for obtaining and maintaining insurance of the Customer Tooling to a value not less than its full replacement value comprehensively against all usual risks of loss, damage, or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing. The Customer shall however be that of the Customer at all times. Property in the Customer Tooling shall pass to the Customer immediately upon payment of all sums due in respect of the Customer Tooling but subject however to the provisions of Clauses 5.6 and 5.7 below.

5.8 The Customer shall be responsible for obtaining and maintaining insurance of the Customer Tooling to a value not less than its full replacement value comprehensively against all usual risks of loss, damage, or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing. The Customer shall however be that of the Customer at all times. Property in the Customer Tooling shall pass to the Customer immediately upon payment of all sums due in respect of the Customer Tooling but subject however to the provisions of Clauses 5.6 and 5.7 below.

5.9 The Customer shall be responsible for obtaining and maintaining insurance of the Customer Tooling to a value not less than its full replacement value comprehensively against all usual risks of loss, damage, or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing. The Customer shall however be that of the Customer at all times. Property in the Customer Tooling shall pass to the Customer immediately upon payment of all sums due in respect of the Customer Tooling but subject however to the provisions of Clauses 5.6 and 5.7 below.

5.10 The Customer shall be responsible for obtaining and maintaining insurance of the Customer Tooling to a value not less than its full replacement value comprehensively against all usual risks of loss, damage, or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing. The Customer shall however be that of the Customer at all times. Property in the Customer Tooling shall pass to the Customer immediately upon payment of all sums due in respect of the Customer Tooling but subject however to the provisions of Clauses 5.6 and 5.7 below.

5.11 The Customer shall be responsible for obtaining and maintaining insurance of the Customer Tooling to a value not less than its full replacement value comprehensively against all usual risks of loss, damage, or destruction by fire, theft or accident, and such other risks as the Company may from time to time nominate in writing. The Customer shall however be that of the Customer at all times. Property in the Customer Tooling shall pass to the Customer immediately upon payment of all sums due in respect of the Customer Tooling but subject however to the provisions of Clauses 5.6 and 5.7 below.

5.12 If the Customer fails to effect or maintain any of the insurances required under this clause 6, the Company shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and shall charge such amount to the Customer as a debt due from the Customer.

6. COMPANY TOOLING

6.1 All Company Tooling shall at all times remain the property of the Company which is held by the Company at its premises (or on its behalf by any third party at any other location) shall pass to the Customer on delivery to it of the Company Tooling. Company Tooling shall remain at the sole risk of the Customer for the period during which the Company Tooling is in the possession, custody or control of the Customer (or such other third party at whose premises the Company Tooling is held) and the interest of the Company shall be that of the Customer as bailee during such period pending the Company Tooling being delivered. If in the opinion of the Company it is not necessary to do so the Company shall pass to the Customer Tooling immediately and the Customer shall pay to the Company a reasonable charge therefor.

6.2 The Customer shall be responsible for paying any duties and/or taxes chargeable in respect of the costs of setting up and manufacturing such Company Tooling and a reasonable profit on anticipated volume production during such period during which the Customer Tooling is in the possession, custody or control of the Company.

6.3 The Customer shall be responsible for paying any duties and/or taxes chargeable in respect of the costs of setting up and manufacturing such Company Tooling and a reasonable profit on anticipated volume production during such period during which the Customer Tooling is in the possession, custody or control of the Company.

6.4 The Customer shall be responsible for paying any duties and/or taxes chargeable in respect of the costs of setting up and manufacturing such Company Tooling and a reasonable profit on anticipated volume production during such period during which the Customer Tooling is in the possession, custody or control of the Company.

6.5 The Customer shall be responsible for paying any duties and/or taxes chargeable in respect of the costs of setting up and manufacturing such Company Tooling and a reasonable profit on anticipated volume production during such period during which the Customer Tooling is in the possession, custody or control of the Company.

6.6 The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Company and proof of premium payment to the Company to confirm the insurance arrangements.
DELIVERY
7. The Company will use all reasonable endeavours to deliver at the time stated but delivery dates shall be regarded as estimates only, and time of delivery shall not be of the essence of the Contract. The Company shall not be liable for any delay occasioned by any cause whatsoever beyond the Company’s control.

8. Products shall be deemed to be delivered when they leave the premises of the Company or as the case may be the premises of the Company’s suppliers in circumstances where the Products are delivered directly from such suppliers.

9. In the case of delivery of Products by instalments the Customer will not be entitled to treat the delivery of faulty goods in any one instalment or the late delivery or non-delivery of any one instalment as a breach of any of the whole of the Contract.

10. A variation and delivery of up to 10% above or below the quantity of the Goods ordered shall be deemed due execution of the Order and shall not of itself give to the Customer any right of rejection or any other rights (save that in the case of an under-delivery the Customer shall be entitled to a pro rata adjustment of the price payable) and the Company shall be entitled to make a pro rata adjustment to the payment due to reflect the delivered quantities.

11. When it is necessary for the Customer to supply all containers, packaging, labels, identifications or particulars in respect of the Goods or do any other act to enable the Company to effect delivery of the said containers, packaging, labels, identifications or particulars must be supplied or acts performed as soon as reasonably practicable, and the Company shall not be liable for any delay in delivery of Products as a result of the Customer’s delay or failure to provide the same.

RISKS AND TITLE TO PRODUCTS
8.1 Risk of damage to or loss of the Products shall pass to the Customer upon delivery but title in the Products remains vested in the Company and shall only pass from the Company to the Customer upon full payment being made by the Customer of all sums due:

8.1.1 in respect of the relevant Products; and

8.1.2 on whatsoever other account or grounds to the Company from the Customer.

8.2.7 In the case of the Products being sold by the Customer in such manner as to pass to a third party title to such of the Products, the Customer shall place the proceeds of such sale in a separate bank account.

A variation and delivery of up to 10% above or below the quantity of the Goods ordered shall be deemed due execution of the Order and shall not of itself give to the Customer any right of rejection or any other rights (save that in the case of an under-delivery the Customer shall be entitled to a pro rata adjustment of the price payable) and the Company shall be entitled to make a pro rata adjustment to the payment due to reflect the delivered quantities.

9. In the event of the Products becoming constitutives of or being converted into other products whilst sums are due as provided in Clause 8.1 hereof the Company shall have the ownership of and title to such other products (not by way of a charge) as if they were the Products and accordingly this Clause 8 shall so far as appropriate apply to such other products subject to the Customer’s right to the surplus of any monies realised by the said products in excess of those due to the Company as provided herein.

9. Any implied authority that the Customer shall be entitled to sell the Products and pass property in the same to third parties in the normal course of its business of manufacture other products out of the same or sell such other products will continue until otherwise notified by the Company by the Company or until the happening of any of the following events:-

9.1. Any notice to the Customer that the Company shall be entitled to sell the Products and pass property in the same to third parties in the normal course of its business of manufacture other products out of the same or sell such other products will continue until otherwise notified by the Company by the Company or until the happening of any of the following events:-

9.1.1 if the Customer has become insolvent or declared to be insolvent by its creditors, or the Court appoints liquidators, or the Commission for Corporate Affairs is appointed to receive the assets of the Customer, or the Customer takes advantage of any insolvency law; or

9.1.2 if the Customer shall default on any of its obligations to the Company; or

9.1.3 if the Customer shall fail to make payment of the Products or make in default of any other obligations to the Company hereunder or any of the events referred to in Clause 8.5.1 – 8.5.5 happens or the Company causes or threatens to cease trading or if the Company shall reasonably doubt the solvency of the Customer then in any such case the Company reserves the right to stop manufacture and delivery of any Products ordered by the Customer under the terms of any contract.

LIABILITY
11.1 The Company shall inspect the Products upon delivery. The Company will make good at its option by repair or replacement any defects in any of the Products due solely to defective workmanship or materials which are notified in writing to the Company and, in the case of any defect discoverable on reasonable examination, such notification must be made within ten (10) days from the date of delivery and, in the case of any defect not discoverable on reasonable examination, such notification must be made within ten (10) days of the date such defect is actually discovered provided that the Customer does not make any further use of the Products after giving such notification, and further provided that the aforesaid obligations on the Company shall not extend to defects caused by willful damage, negligence (other than negligence of the employees or agents of the Company), incorrect storage or application, movement or installation, defects arising as a result of the Company following any Drawing or other design or specification supplied by the Customer, or defects caused by fair wear and tear provided further that the aforesaid obligations on behalf of the Company shall in any event only apply to defects notified within the period of 6 (six) months from the date of the delivery of the Products. If required by the Company and at the Customer’s cost the Products must be returned within fourteen (14) days of notification of the defect, packaged and transported in accordance with the Company’s requirements. Repair or replacement in accordance with this clause 11.1 shall be the Customer’s sole remedy for defective Products, and this clause 11.1 shall apply to any repaired or replacement Products.

11.2 To the extent permitted by law and save as herein set out and for liability for death or personal injury resulting from negligence on the part of the Company and save for breach of the Company’s statutory implied warranties to that, all express or implied conditions, warranties or warranties as to the description, quality or fitness of any and all Drawings and/or Products (or samples) supplied by the Company are expressly excluded.

11.3 Except in respect of death or personal injury caused by the negligence of the Company, the Company shall not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, term or condition (whether expressed or implied by statute, contract, for loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with any Customer Tooling or Mouldings or the design, preparation, manufacture or production thereof respectively, or the supply of Products or their re-sale by the Customer, and the entire liability of the Company under or in connection with the Contract shall be limited to the purchase price paid by the Customer for the Products hereunder, except as expressly provided to these terms and conditions and the Company accepts no liability where material or components supplied by the Customer or through its offices or from sources dictated by the Customer shall be defective in any unsatisfactory condition and the Customer shall indemnify the Company against any loss suffered by the Company arising as a result of such defects or conditions.

FORCE MAJEURE
12. The Company shall be excused from liability to the Customer if performance of the contract is prevented or hindered (in particular if an agreed delivery date is delayed) by any cause whatsoever beyond the Company’s control and in particular without prejudice to the generality of the foregoing by Act of God, war, riot, civil commotion, Government controls, restrictions or prohibitions, or any other Government act or omission whether local or national, fire, flood, subsidence, sabotage, accident, strike or lock out or shall not be liable for any loss or damage resulting therefrom suffered by the Customer.

SAFETY INSTRUCTIONS
13. The Company undertakes with the Company that it will ensure compliance so far as is reasonably practicable by its employees, agents, licensees and customers with any instructions given by the Company or the manufacturer for the purpose of ensuring that all Products will be safe and will not risk the health and safety of persons handling, using or disposing of them.

INDEMNITY
14. The Company shall forthwith indemnify the Company on a full indemnity basis against all and any claims for compensation whatsoever (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company due to an alleged or actual infringement of any third party’s intellectual property rights arising out of Custom Mouldings or Customer Tooling manufactured, or services provided, by the Company to the Customer’s order and in accordance with any samples, Drawings, specifications and/or other instructions given by the Customer to the Company.

LEGAL INTERPRETATION
15. The Contract and these Conditions and any claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims) shall be governed and construed in accordance with English law, and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or these Conditions.

SEVERANCE AND WAIVER
16. If any part of these Conditions is or becomes ineffective, invalid, illegal or unenforceable for any reason, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of any other provision or all or part of this Agreement which remain binding between the parties.

16.2 A waiver of any right under the Contract or law is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. Failure or neglect by the Company to enforce at any time any of its rights hereunder shall not be a waiver of such right or neglect to in any way affect the validity of the whole or any part of these terms and conditions and the Company’s right to take subsequent action shall not be precluded thereby. No single or partial exercise of any right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

VARIATION
17. 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 agreed in writing and signed by the Company.