Fine-cast Foundry Limited
CUSTOMER TERMS AND CONDITIONS

1. Interpretation

1.1 **Definitions.** 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 12.6.

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

Customer: the person or firm who purchases the Goods from Finecast.

Finecast: Fine-cast Foundry Limited (registered in England and Wales with company number 04528905).

Force Majeure Event: any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

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

Intellectual Property Rights: means intellectual property of whatsoever nature, including patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information, know-how and trade secrets and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world**.**

Order: the Customer's order for the Goods, as received by telephone or as set out in the Customer's purchase order form, the Customer's written acceptance of Finecast's quotation or overleaf (as the case may be).

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

Specialised Tools: any jigs, tools, dies, patterns, designs, components and materials supplied by the Customer or manufactured to the Customer's order for use in connection with the Order.

1.2 **Construction**

In these Conditions, the following rules apply:

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

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

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

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

1.2.5 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 Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate. The Customer is responsible for ensuring that written confirmation of Orders placed by telephone are clearly marked as such, and agrees to bear liability for any Orders which are duplicated as a result of its failure to do so.

2.3 The Order shall only be deemed to be accepted when Finecast issues a written acceptance of the Order, at which point the Contract shall come into existence. There is no obligation on Finecast to accept any Order.

2.4 Subject to clause 7.2, any variation to any Order shall only be binding when agreed in writing by Finecast. Finecast reserves the right to correct any errors or omissions made in the preparation of documents.

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

2.6 Any samples, drawings, descriptive matter, or advertising produced by Finecast and any descriptions or illustrations contained in Finecast's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.7 Where the Order is based upon a new pattern, an altered pattern or a pattern new to Finecast, Finecast may in its discretion submit sample castings to the Customer for approval in writing, following receipt of which Finecast shall commence work on the Order. Any such samples shall form part of the Order / must be paid for by the Customer, unless returned to Finecast at the Customer's expense within one month of the date of despatch.

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

3. Goods

3.1 The Goods are described in the Specification.

3.2 The Customer shall indemnify Finecast against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by Finecast in connection with any claim made against Finecast for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Finecast's use of the Specification of Specialised Tools. This clause 3.2 shall survive termination of the Contract.

3.3 Finecast reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

3.4 Finecast shall not be liable for loss or damage to any Specialised Tools stored by Finecast.

4. Delivery

4.1 Finecast shall endeavour to ensure that:

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

4.1.2 if Finecast requires the Customer to return any packaging materials to Finecast, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Finecast shall

reasonably request. Returns of packaging materials shall be at Finecast's expense.

4.2 Finecast shall deliver or arrange delivery of the Goods to the location set out in the Order or such other location as the parties may agree ("Delivery Location") at any time after Finecast notifies the Customer that the Goods are ready.

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

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

4.5 If Finecast fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. Finecast shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide Finecast with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to accept delivery of the Goods within three Business Days of Finecast notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or Finecast's failure to comply with its obligations under the Contract:

4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which Finecast notified the Customer that the Goods were ready; and

4.6.2 Finecast shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.7 If 10 Business Days after the day on which Finecast notified the Customer that the Goods were ready for delivery the Customer has not accepted delivery of them, Finecast may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 Finecast 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 the Customer to cancel any other instalment.

5. Quality

5.1 Finecast warrants that on delivery, the Goods shall conform in all material respects with the Specification and be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing to Finecast within a seven days of delivery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

5.2.2 Finecast is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by Finecast) returns such Goods to Finecast's place of business within three months of delivery at the Customer's cost,

Finecast shall, at its option, repair or replace the defective Goods, or refund the price of any defective Goods in full.

5.3 Finecast shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

5.3.2 the defect arises because the Customer failed to follow Finecast's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.3.3 the defect arises as a result of Finecast following any drawing, design or Specification supplied by the Customer;

5.3.4 the Customer alters or repairs such Goods without the written consent of Finecast;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

5.3.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, Finecast shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by Finecast.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

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

6.2.1 the Goods; and

6.2.2 any other goods or services that Finecast has supplied to the Customer.

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

6.3.1 hold the Goods on a fiduciary basis as Finecast's bailee;

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

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

6.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

6.3.5 notify Finecast immediately if it becomes subject to any of the events listed in clause 8.2; and

6.3.6 give Finecast such information relating to the Goods as Finecast may require from time to time.

6.4 If before title to the Goods passes to the Customer, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy Finecast may have, Finecast may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in Finecast's published price list in force as at the date of delivery. Subject to the Customer's compliance with clause 7.6, Finecast may in its discretion agree a discount to the price of the Order.

7.2 Finecast may, by giving notice to the Customer at any time up to 5 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

7.2.1 any factor beyond Finecast's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give Finecast adequate or accurate information or instructions.

7.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer. Finecast may in

its discretion waive charges for the transport of the Goods where those Goods are to be delivered within its usual delivery area.

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

7.5 Finecast may invoice the Customer for the Goods on or at any time after the completion of delivery. Should Finecast at any time during manufacture of goods or shipment of goods assess the customer to pose a financial risk following credit checking they have the right to request payment in full before dispatch of order.

7.6 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by Finecast. Time of payment is of the essence and should payment not be received within period the 30 day period then Finecast has the right to immediately re-claim their property from the customer or any third party site.

7.7 If the Customer fails to make any payment due to Finecast under the Contract by the due date for payment ("due date"), then the Customer shall pay interest on the overdue amount at the rate of 3% per annum above Lloyds TSB Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount and, where applicable, an additional payment in respect of any discounts applied to the Order.

7.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Finecast in order to justify withholding payment of any such amount in whole or in part. Finecast may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by Finecast to the Customer.

8. Customer's insolvency or incapacity

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or Finecast reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to Finecast, Finecast may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and Finecast without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

8.2 For the purposes of clause 8.1, the relevant events are:

8.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) 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;

8.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

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

8.2.4 (being an individual) the Customer is the subject of a bankruptcy petition or order;

8.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

8.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;

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

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

8.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.8 (inclusive);

8.2.10 the Customer suspends, threatens to suspends, ceases or threatens to cease to carry on all or substantially the whole of its business;

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

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

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. Limitation of liability

9.1 Nothing in these Conditions shall limit or exclude Finecast's liability for:

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

9.1.2 fraud or fraudulent misrepresentation;

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

9.1.4 defective products under the Consumer Protection Act 1987; or

9.1.5 any matter in respect of which it would be unlawful for Finecast to exclude or restrict liability.

9.2 Subject to clause 9.1:

9.2.1 Finecast shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and

9.2.2 Finecast's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

10. Force majeure

10.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.

10.2 Should any such failure or delay exceed one calendar month, such period to be calculated with reference to the nature of the Goods subject to any Contract, the Contract may be terminated by either party with immediate effect on written notice to the other. The Customer agrees to pay Finecast in respect of any costs incurred by Finecast in connection with the Order until the date of termination.

11. Confidential information and intellectual property

11.1 A party (“receiving party”) shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party (“disclosing party”), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products its services or its customers which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

11.2 The Customer warrants that it is the sole legal and beneficial owner of the Intellectual Property rights in any Specification or Specialised Tools provided to Finecast. The Customer grants Finecast for the purpose of this agreement a non-exclusive licence to use the Specification and Specialised Tools.

12. General

12.1 Assignment and subcontracting

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

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

12.2 Notices

12.2.1 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, sent by pre-paid first class post, recorded delivery, commercial courier, fax or email.

12.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 12.2.1; 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.

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

12.3 Severance

12.3.1 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.

12.3.2 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.

12.4 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.

12.5 **Third party rights**

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

12.6 **Variation**

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 Finecast.

12.7 **Governing law and jurisdiction**

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