

1. General

- 1.1 Any quotation or tender made by Corvaglia Mould AG in Switzerland (**Seller**) for the sale of moulds or moulds related components such as electrical parts or temperature controllers (**Goods**), training for, as well as the installation, and testing of the Goods (**Services**) and any corresponding contract or agreement (**Contract**) with a customer or any other party (**Customer**) shall be governed only by these General Terms and Conditions for the Sale (**Conditions**) to the entire exclusion of all other terms or conditions unless otherwise agreed in writing by the Seller.
- 1.2 A purchase order for Goods or Services from the Customer (**Order**) shall constitute an offer from the Customer to purchase the Goods or Services subject to these Conditions. Orders shall not be binding on the Seller until the Seller accepts such Orders and notifies the Customer in writing of such acceptance (**Order Confirmation**). The Seller will only accept an Order when a corresponding Order Confirmation is issued, subject to these Conditions.
- 1.3 Any variation to these Conditions shall have no effect unless expressly agreed in writing by the Seller. If any variation, suspension or any instruction of the Customer in respect to a Contract increases or reduces the cost or time to the Seller of performing the Contract, then the price and programme shall be adjusted accordingly. The time for despatch or delivery shall automatically be adjusted in accordance with any variation.

2. Specification

The Customer is responsible for satisfying itself as to the suitability of the Goods for any injection moulding machine, bottling lines or other applications. Under no circumstances shall the Seller be bound by any statement with respect to (a) the scope of supply, (b) performance criteria including but not limited to cycle time, tool availability, or output such as closures, or (c) other characteristics of the Goods and Services including but not limited to compliance with local laws and regulations unless expressly incorporated in the Contract, although nothing in these Conditions shall be construed as attempting to limit either party's liability for fraud or fraudulent misrepresentation.

3. Payment

- 3.1 All payments shall be made in the currency specified in the Order and transferred into the designated account of the Seller. All sums due shall be payable within thirty (30) days of the date of the Seller's invoice and time for payment shall be of the essence. No deduction whether by way of set-off, counterclaim or otherwise, shall be made by the Customer except for claims of the Customer which are not disputed by the Seller or which have been finally confirmed by a court of law.
- 3.2 Where payment is to be secured by a letter of credit, then except as otherwise agreed in writing, such letter of credit shall: (a) be an irrevocable letter of credit; (b) provide for partial deliveries; (c) be advised through and confirmed by a reputable bank acceptable to the Seller within thirty (30) days of formation of the Contract; (d) conform to the latest edition of the International Chamber of Commerce's Uniform Custom and Practice for Documentary Credits (UCP 600); and (e) be valid for at least sixty days beyond the latest despatch or delivery date stated in the Contract.

4. Delivery, Title and Risk of Loss

- 4.1 Unless otherwise agreed in writing by the Seller, (a) delivery of the Goods shall be made FCA Incoterms 2020 at the Seller's place of business, (b) dates cited for delivery shall be approximate only, and (c) time for delivery shall not be of the essence. If no delivery dates are specified, delivery shall be made within a reasonable time.
- 4.2 Subject to the Seller's prior written consent, if late delivery, for which the Seller is sole responsible, is subject to liquidated damages, any such liquidated damages shall (a) under no circumstances exceed zero-point-five (0.5) percent per week of delay up to a maximum of three (3) percent of the price payable for the delayed portion of the Goods or Services, (b) be subject to a grace period of two (2) weeks, and (c) be deemed sole and exclusive remedy for any such delay of the Seller.
- 4.3 Legal title to and beneficial ownership in any consignment of the Goods shall pass to the Customer upon receipt by the Seller of all sums due in respect of the Goods. All risks of loss or damage to the Goods shall nevertheless pass to the Customer on delivery and the Customer shall maintain the Goods in satisfactory condition and keep them adequately insured on the Seller's behalf for their full price and on request provide evidence of such insurance.

5. Receiving, Inspection, and Acceptance of Goods

- 5.1 The Customer shall be responsible for receiving and inspecting the Goods. If the Customer fails to notify the Seller of any material non-conformities within a reasonable period of time following the delivery of the Goods and/or completion of Services, not to exceed a maximum of thirty (30) calendar days, the delivery of the Goods shall be deemed accepted, without prejudice to the testing and warranty provisions hereunder.
- 5.2 Unless otherwise agreed in the Contract, the Customer shall, at its own expense, arrange for a suitable test environment, providing the Seller access to an injection moulding machine, a hot runner, an appropriate number of sufficiently skilled operators, a production environment as specified by the Seller in writing, and such other things as may be reasonably required to properly install and test the Goods. Subject to Clause 1.3, if the Customer fails to timely arrange for a suitable test environment and if such failure results in any downtime, the Customer shall pay the Seller a fixed amount for each day exceeding the total number of days agreed for the completion of the installation and testing procedure as per the Contract. Unless otherwise agreed in the Contract, the Seller's standard testing procedures, including factory acceptance tests and site acceptance tests where applicable, shall apply.
- 5.3 Should the Seller fail to use reasonable efforts to correct any non-conformity, replace any non-conforming Goods or re-perform or correct non-conforming Services within a reasonable period of time, based on the complexity of the non-conformities, the Customer may terminate the Contract or a portion thereof. The Seller's maximum liability under this Clause 5.3 shall be to refund the portion of the price paid by the Customer for the portion of the Goods or Services that is non-conforming.
- 5.4 Notwithstanding anything to the contrary contained herein or elsewhere, the Goods or Services shall be deemed finally accepted by the Customer the earlier of (a) upon signing of an acceptance protocol by the Customer, or (b) if the Customer unreasonably withholds or delays such signing, upon successful completion of the site acceptance tests, or (c) upon the Customer using the Goods in a production environment or for the regular conduct of the Customer's business.

6. Warranty

- 6.1 The Seller warrants that the Goods and Services supplied shall, under proper use, conform to the specification in the Contract for a period of twelve (12) months upon the earlier of final acceptance in accordance with Clause 5.4 or fifteen (15) months after delivery of the Goods or performance of the Services (**Warranty Period**). For the purpose of this Clause 6.1, **proper use** shall mean operation, storage, handling, and maintenance of the Goods in accordance with the Seller's manuals and specifications, good industry practice, and local laws.
- 6.2 The Seller's obligation under this warranty shall be limited to making good by repair or replacement at the Seller's option any non-conformity in the Goods or re-performing any non-conforming Service which appears before the expiration of the Warranty Period or, at the Seller's option, reimbursing the price received for the Goods or Services. Where the Seller opts to repair the Goods, the Customer shall return the Goods to be repaired to the Seller's premises. The Seller's obligation is subject to: (a) the Seller being given notice by the Customer of the non-conformity within reasonable time, not to exceed ten (10) days after the discovery of the non-conformity; and (b) the Seller being given a reasonable opportunity after receiving notice of the non-conformity to examine the non-conforming Goods or Services.

- 6.3 The Seller's obligation shall not extend to failure caused by (a) fair wear and tear, misuse, or neglect; (b) any repair or maintenance of the Goods in defiance of the Seller's manuals; (c) any modifications to the Goods; (d) designs, specifications, or instructions provided by the Customer; (e) any external factors such as but not limited to raw materials, additives, humidity levels, temperatures, cooling performance, air pressure, parameters or handling of the injection moulding machine, or any other periphery requirements; or (f) more generally defects for which the Customer is responsible or which are caused by activities performed by the Customer without the Seller's prior written consent.
- 6.4 The above warranty is in place of and excludes to the fullest extent permitted by law all other warranties and conditions, whether oral, written, statutory, express or implied. The Seller's liability and the Customer's remedies in respect of non-conformities in the Goods or Services and any damage to the Goods or Services resulting therefrom are solely and exclusively as stated herein.
- 7. Intellectual Property Rights**
Unless otherwise agreed in writing by the Seller, no title to any of the Seller's industrial or intellectual property or to industrial or intellectual property in the Goods and Services supplied is transferred to the Customer under these Conditions or the Contract (where intellectual property includes but is not limited to patents, design rights, copyrights, trademarks, database rights, know-how and proprietary information). No designs, drawings or Goods supplied by the Seller shall be reproduced, disclosed, copied or reverse engineered without the Seller's prior written permission. The Customer shall not without the consent of the Seller remove, cover, obscure or in any way alter any distinctive mark forming part of or impressed on or affixed to the Goods received by the Customer and any of the Goods which will have been so covered, obscured or altered without such consent shall not be sold. The Seller shall under no circumstances be obliged to indemnify or hold the Customer harmless for any intellectual property infringements such as but not limited to intellectual property infringements of closures made from the Goods.
- 8. Limitation of Liability**
8.1 Subject to Clause 8.3, the Seller shall not in any circumstances be liable for any loss of use, production, production output including closures made from the Goods, profit, business, contracts, revenues or anticipated savings, any increase in operating costs, or any other financial or economic loss or any indirect or consequential loss or damage whatsoever whether suffered by the Customer or by any third party.
8.2 The exclusions and limitations of liability contained in these Conditions shall apply to all claims of any kind whether in contract, tort or otherwise on the part of the Seller, its employees, agents, sub-contractors or suppliers.
8.3 No limitation or exclusion contained in these Conditions shall apply in cases of fraud or fraudulent misrepresentation, death or personal injury caused by the negligence of the Seller, or in (other) cases where the limitation or exclusion would be illegal under statutory laws.
8.4 Except as provided under Clause 8.3, notwithstanding anything else in these Conditions, in a Contract, or otherwise, the total aggregate liability of the Seller to the Customer for all claims of any kind for any loss or damage resulting from its performances or lack of performance under these Conditions or any Contract in any one calendar year shall not in any event exceed an amount equal to hundred (100) percent of the price of the Goods or Services giving rise to liability, which the Supplier delivered to the Buyer in such calendar year.
- 9. Confidentiality**
Neither party shall divulge or communicate to any person without prior written consent of the other party any confidential information including but not limited to information relating to patents, trademarks, registered/ unregistered rights, design rights, copyright formulations, engineering drawings, specifications, data, know-how, inventions, models, sample components, formulae, and manufacturing methods disclosed to it (**Confidential Information**) and shall not use the Confidential Information for any purpose other than the development, sale, and intended use of the Goods under these Conditions. The obligation of confidentiality will continue to apply at all times during the continuance of any Contract incorporating these Conditions and for a period of five (5) years after the expiration or termination of the Contract but will cease to apply to information which is at the date of the disclosure public knowledge through no fault of the receiving party or is disclosed subject to a legal or regulatory requirement. Each disclosing party shall have the right, immediately upon expiration or earlier termination of a Contract (for any reason whatsoever), to request the other receiving party to return all Confidential Information in its possession.
- 10. Termination**
A party may immediately terminate a Contract by giving written notice to the other party, if the other party: (a) commits a material breach of the Contract which is not capable of remedy, (b) commits a continuing breach of the Contract or of these Conditions and fails to remedy it within fifteen (15) days of a written notice requiring the breach to be remedied; (c) is dissolved, becomes insolvent, is over indebted, fails or is unable to or admits in writing its inability to pay its debts, institutes or has instituted against it proceedings seeking a judgment of insolvency or bankruptcy, has a resolution passed for its winding up or liquidation, seeks or becomes the subject of the appointment of an administrator, receiver or similar official in respect of its assets; or (d) ceases or threatens to cease to carry on business. Neither party shall give any notice of termination other than expressly provided herein or under applicable laws. Upon termination or expiration of a Contract, neither party shall be entitled to any amount for any cause arising directly or indirectly from such termination or expiration from the other party, provided that within fifteen (15) days of the issue by either party of a notice of termination the Customer shall pay to the Seller (a) the outstanding balance of the Contract value of the Goods and Services which have been delivered at the date of the notice, and (b) any other sum due under the Order Confirmation. Termination or expiration of the Contract shall be without prejudice to: (a) any party's obligations contained herein which survive the termination or expiration of the Contract; and (b) any prior rights which either party has accrued prior to the termination or expiration of the Contract.
- 11. Miscellaneous**
11.1 Any spare parts provided to the Customer for the Goods shall be subject to these Conditions.
11.2 Each right or remedy of a party hereunder is without prejudice to any other right or remedy of the party.
11.3 If any provision herein is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, or unenforceable it shall, to the extent of such illegality, invalidity, voidness, voidability, or unenforceability, be deemed severable and the remaining provisions herein and the remainder of such provision shall continue in full force and effect.
11.4 Failure or delay by a party in enforcing or partially enforcing any provision of these Conditions and/or any Contract hereunder shall not be construed as a waiver of any of its rights under these Conditions and/or such Contract.
11.5 Any assignment of a Contract or part thereof shall not be permitted unless the other party consents in writing to such assignment (such consent not to be unreasonably withheld or delayed).
11.6 Notices must be in writing and delivered by hand, registered mail, or courier to the other party's general manager at its registered office or trading address.
11.7 These Conditions as well as any Contract shall be governed by and construed in accordance with the laws of Switzerland without regard to its conflict of laws provisions. The United Nations 'Convention on Contracts for the International Sale of Goods' signed in Vienna in 1980 shall not apply to this Contract. The courts of Zurich, Switzerland, shall have exclusive jurisdiction for any dispute arising out of or in connection with these Conditions or any Contract. No condition of, or benefit conferred hereunder, shall be enforceable by any third party.