

TERMS AND CONDITIONS OF SALE

The buyer's attention is in particular drawn to the provisions of Condition 17.4.

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Condition apply in these terms and conditions ("Conditions").
Blanket Order: any forecasting order provided by the Buyer to the Company setting out their characteristics of the products required and the price agreed by the parties, together with detail as to minimum and maximum quantities of the Goods and a clear description of lead times, and precise detail of quantities and timescales required to be complied with for the purposes of delivery.
Buyer: the person, firm or company who purchases the Goods from the Company by issuing a Schedule Order.
Clean Receipt: means a delivery receipt signed by the Buyer or on behalf of an authorised representative indicating that the Goods, the subject of the relevant Schedule Order, have been received and that no claim for damaged materials or short delivery is made.
Company: Barton Cold Form (UK) Limited (Company Number 7000736) whose registered address is at Pointon Way, Stonebridge Cross Business Park, Droitwich Spa, Worcestershire, WR9 0LP.
Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these Conditions and the relevant Schedule Order as further defined in Condition 6.7.
Delivery Point: the Company's place of business where delivery of the Goods is to take place under Condition 6.1.
Goods: any goods specified in a Schedule Order to be supplied to the Buyer by the Company (including any part or parts of them).
Schedule Order: means any order for Goods and/or services issued by the Buyer to the Company.
Working Day: means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory, public or bank holiday.
- 1.2 A reference to a law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to the other gender.
- 1.5 Condition headings do not affect the interpretation of these Conditions.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under Condition 2.3 the Contract shall be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification, Schedule Order or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in any of the Buyer's purchase order, Blanket Order, Schedule Order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These Conditions apply to all the Company's sales and any variation to these Conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a duly authorised representative of the Company. The Buyer acknowledges that it has not relied on any statement, promise, warranties or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this Condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 The Buyer's submission of a Schedule Order or the Buyer's acceptance of a quotation or offers from the Company for Goods shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions. In the absence of any other express or implied acceptance of these Conditions by the Buyer, receipt of Goods by the Buyer will be conclusive proof of the Buyer's acceptance of these Conditions.
- 2.5 No Schedule Order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of the relevant Schedule Order is issued by the Company.

3. DESCRIPTION

- 3.1 The quantity and description of the Goods and/or services shall be as set out in the Company's quotation or acknowledgement of the Blanket Order and/or Schedule Order.
- 3.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues, brochures, website or other such materials are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.

4. SPECIFICATIONS

- 4.1 Where the Buyer provides detailed specifications for the Goods the Buyer shall ensure that such specifications are provided to the Company in a reasonable time to enable the Company to meet any agreed delivery time.
- 4.2 Where manufacturing tolerance, materials or type of finish are not specified in a specification by the Buyer then the Company reserves the right to manufacture to the Company's general tolerance or finish or commercial quality material.
- 4.3 Notwithstanding Conditions 4.1 and 4.2 any errors or inaccuracies contained in a specification for Goods provided by the Buyer shall be the sole responsibility of the Buyer. The Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any errors or inaccuracies contained in a specification provided by the Buyer in respect of the Goods, nor shall any such errors or inaccuracies entitle the Buyer to terminate or rescind the Contract.
- 4.4 Where the Buyers requests any change to the specification and the Company incurs additional costs as a result of such change then the Buyer shall be liable for all additional costs incurred by the Company in implementing such change.

5. BLANKET ORDERS

- 5.1 The Buyer shall provide the Company with a Blanket Order stating the type of Goods and/or services required for a specified and defined period ("Specified Period"). The Company shall manufacture or procure from third party companies the quantity of Goods specified in the Blanket Order.
- 5.2 Blanket Orders shall be given in writing by the Buyer and confirmed in writing by the Company within two Working Days. The Buyer shall act reasonably and in good faith when forecasting its requirements under a Blanket Order.
- 5.3 Blanket Orders placed under this Condition 5.3 shall constitute legally binding orders and the Company shall treat all Blanket Orders as written confirmations to proceed to manufacture and/or purchase in from third party suppliers the Goods the subject of the Blanket Order.
- 5.4 Blanket Orders shall specify the following:
 - 5.4.1 the type and quantity of Goods required;
 - 5.4.2 any specification set out in accordance with Condition 4; and
 - 5.4.3 where applicable, anticipated dates of requirement for each of the batches of the Goods.
- 5.5 The Buyer will raise a Schedule Order at least once a month which shall have the effect of drawing down specified quantities and types of Goods from the Blanket Order.
- 5.6 The Schedule Order shall specify the following:
 - 5.6.1 the type and quantity of Goods required;
 - 5.6.2 any specification set out in accordance with Condition 4; and
 - 5.6.3 where applicable, delivery dates in accordance with Condition 6.
- 5.7 Any Schedule Order submitted by the Buyer, and acknowledged by the Company, shall constitute an offer by the Buyer and the acknowledgment shall constitute acceptance by the Company of the offer for the Goods.
- 5.8 In the event of a variation (upward or downward) in excess of 20 per cent of the quantities specified in the Request for Quotation and subsequent Quotation by reference to the Schedule Orders submitted in any Specified Period, the Company reserves the right, notwithstanding any other provision of these Conditions, at any time, to:
 - 5.8.1 consider the business impact of such variations; and
 - 5.8.2 calculate the cost to the Buyer of the excess built up stock of raw materials, tools, unfinished goods and finished goods, whether manufactured or procured from third party suppliers as a result of the Company meeting the requirements of the Blanket Order ("Residual Value"); and
 - 5.8.3 invoice the Buyer for the total or any part of the Residual Value in accordance with Condition 14.

6. DELIVERY

- 6.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Delivery Point. The Buyer shall make all necessary arrangements to take delivery of the Goods whenever they are tendered for delivery.
- 6.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 6.3 Subject to the other provisions of these Conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or

expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract.

- 6.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
 - 6.4.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - 6.4.2 the Goods shall be deemed to have been delivered; and
 - 6.4.3 the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
 - 6.5 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading the Goods.
 - 6.6 The Company may deliver the Goods by discreet schedule call offs (a "Call Off"). Each Call Off shall be invoiced and paid for in accordance with the provisions of the Contract.
 - 6.7 Each Call Off shall be a separate Contract and no cancellation or termination of any one Contract relating to a Call Off shall entitle the Buyer to repudiate or cancel any other Contract or Call Off.
- ## 7. NON-DELIVERY
- 7.1 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 14 days of the date when the Goods would in the ordinary course of events have been received.
 - 7.2 The Company reserves the right to reject any claim for damaged material or short delivery where the Goods have been collected from the Delivery Point by the carrier and the carrier has been given a Clean Receipt by the Buyer.
 - 7.3 Any claim for damage or short delivery by the Buyer must be notified in writing to the Company by the Buyer within three Working Days (3 days) of the Buyer's receipt of the Goods. Such notice shall detail:
 - 7.3.1 numbers of containers of that item received and the total gross weight;
 - 7.3.2 details of any damage to containers; and
 - 7.3.3 delivery note number, batch number and such other information as may reasonably be required to identify the Goods the subject of such notice.
 - 7.4 The quantity and weight of any consignment of Goods as recorded by the Company on despatch from the Delivery Point shall be conclusive evidence of the quantity and weight received by the Buyer on delivery.
- ## 8. DEFERMENT OR SUSPENSION OF DELIVERIES BY COMPANY
- 8.1 Deliveries and/or performance may be wholly or partially suspended by the Company in the event of a stoppage, delay or interruption of work in the establishment of the Company during the delivery period as a result of any cause whatsoever beyond the control of the Company including but not limited to strikes, lock-outs, trade disputes, breakdown or inability to obtain materials or goods purchased for resale. In such circumstances, the Contract shall be treated as suspended for any period of such delay.
 - 8.2 If the Buyer makes any default in payment under any Contract or commits an act of bankruptcy or makes any compromise or assignment for the benefit of creditors or enters into voluntary or compulsory liquidation or becomes subject to receivership the Company may, at its option, cancel any undelivered or uncompleted portion of any Schedule Order and stop any of the Goods in transit and shall nonetheless be entitled to claim against the Buyer for any loss or damage sustained by non-completion of the Contract.
- ## 9. DEFERMENT OR SUSPENSION OF DELIVERIES BY THE BUYER
- 9.1 In the case of the Buyer requesting postponement of delivery or completion of a part of, or the whole of the Goods or services specified in the Schedule Order for a period not exceeding three months from the delivery date originally required, the Contract shall not be invalidated but:
 - 9.1.1 if manufacture of the Goods or the supply of services has not commenced the price shall be subject to variation and the revised price shall be notified to the Buyer by the Company following receipt of the revised delivery or completion date required;
 - 9.1.2 if manufacture of the Goods or supply of services has been commenced then:
 - (a) the Goods and/or services will be invoiced and paid for as if the delivery date had not been postponed;
 - (b) a storage charge of 1½% per month of the invoice value of the Goods will be charged from the date of the invoice as in (a) above to the actual date of despatch;
 - (c) deferment of delivery or completion will not be extended longer than three months for manufactured product or goods purchased for resale after the delivery date or completion date originally required and Goods will be despatched and storage charges will be invoiced at the termination of that period. Any request for postponement of delivery or completion for a period exceeding three months shall be regarded as a cancellation of the Schedule Order and the provisions of Condition 11 shall apply.

10. RETURNED GOODS

- 10.1 Goods returned by the Buyer to the Company without justifiable reason may be subject to a re-handling charge at the sole discretion of the Company.
- 10.2 If the Company supplies Goods in chargeable containers then credit will be given for the full charge on return in good condition. If the containers have been damaged whilst in the possession of the Buyer then the Company will deduct the cost of any repairs from any credit given. The cost of returning empty containers is to be paid by the Buyer unless otherwise agreed in the acknowledgement of the Schedule Order by the Company. Any containers which have not been returned within 3 months shall be considered sold to the Buyer and the Company will not be required to accept return.
- 10.3 The Company's obligation at Condition 10.2, shall be subject to the Company's right to set-off against any sums due to the Seller whether under any Contract or otherwise any lawful set-off or counterclaim to which the Company may at any time be entitled.

11. CANCELLATION

- 11.1 If cancellation takes place prior to the commencement of manufacture of Goods, or order from the sub-supplier in the event of goods purchased for resale the Buyer will be liable for payment in full immediately on cancellation for any material specifically acquired and for any preliminary costs including without limitation, tooling incurred.
- 11.2 If cancellation takes place after commencement of manufacture of Goods, the Buyer shall be liable for payment immediately on cancellation of the full value of the Goods ordered less any savings made (if any) by cessation of manufacture and the sale value of any scrap realised. In addition the Buyer shall be liable for an administration charge determined at the sole discretion of the Company at no less than £250 or such other amount as may from time to time be determined by the Company.

12. RISK/TITLE

- 12.1 The Goods are at the risk of the Buyer from the time of delivery.
- 12.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
 - 12.2.1 the Goods and any chargeable containers in which the Goods may be supplied; and
 - 12.2.2 all other sums which are or which become due to the Company from the Buyer on any account.
- 12.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
 - 12.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
 - 12.3.2 store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - 12.3.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - 12.3.4 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 12.4 The Buyer's right to possession of the Goods shall terminate immediately if:
 - 12.4.1 the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any

- proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 12.4.2 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
- 12.4.3 the Buyer in any way grants a legal charge, lien, pledge, mortgage or other security interest over the Goods or otherwise encumbers any of the Goods.
- 12.5 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 12.6 The Buyer grants the Company, its employees, agents, consultants and subcontractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 12.7 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.
- 12.8 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this Condition 12 shall remain in effect.
- 13. PRICE AND QUOTATIONS**
- 13.1 The price of the Goods shall be as agreed at the time of Order and as amended from time to time, any such price changes to be determined at the sole discretion of the Company.
- 13.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage, insurance, and duty all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.
- 13.3 The Company shall be entitled to amend the price of Goods the subject of any Contract in the event that:
- 13.3.1 an order is received for a quantity different from that quoted for; or
- 13.3.2 delivery is required in instalments smaller than those specified in the quotation; or
- 13.3.3 where product specifications given on the Schedule Order are different from those stated in the quotation; or
- 13.3.4 where product or quantities given on a Schedule Order are different;
- 13.3.5 where in the Company's reasonable opinion the quantity of Goods required in a Schedule Order results in or is likely to result in, an excess of Goods manufactured or ordered by the Company for the Buyer based on the Blanket Order.
- 13.3.6 if there is a material variation in any price of raw materials by more than 5 %.
- 13.4 Any quotation given by the Company is only valid when made in writing on the Company's official quotation form and signed by an authorised representative of the Company.
- 13.5 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of an order to the Buyer. Any quotation is valid for a period of 28 days only from its date, provided that the Company has not previously withdrawn it.
- 13.6 Any quotation provided by the Company may be altered to reflect price changes at any time until the Company has issued a written acknowledgement of the order.
- 13.7 The Company reserves the right at any time prior to delivery to correct typographical and other errors in the Company's quotation and/or offer to supply.
- 14. PAYMENT**
- 14.1 Normal credit terms will be granted by the Company on receipt of adequate references or other evidence, otherwise Goods will be despatched against payment of pro forma invoices.
- 14.2 Subject to Condition 14.5, payment of the price for the Goods is due in the agreed currency on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered or in the manner and at the times specified by the Company provided always that the Company shall not exercise such right unreasonably.
- 14.3 Time for payment shall be of the essence.
- 14.4 No payment shall be deemed to have been received until the Company has received cleared funds.
- 14.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.
- 14.6 The Buyer shall make all payments due under the Contract in full (unless otherwise agreed in writing between the parties) without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 14.7 If the Buyer fails to make any payment on the date specified in accordance with Condition 14.2 the Company may treat such failure to pay as a material breach of these terms and terminate the Contract.
- 14.8 Notwithstanding the provisions of Condition 14.7 if the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of four percent (4%) above the base lending rate from time to time of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998.
- 14.9 The Company shall be entitled to a general lien on all Goods of the Buyer in the Company's possession (including any Goods the Buyer has already paid for) for the unpaid price of all Goods sold to the Buyer by the Company under any order.
- 14.10 Where Goods are delivered by instalments the Buyer shall be obliged to pay for each instalment in accordance with the foregoing terms.
- 15. QUALITY**
- 15.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.
- 15.2 The Company warrants that (subject to the other provisions of these Conditions) on delivery, and for a period of 2 months from the date of delivery, the Goods shall:
- 15.2.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979; and
- 15.2.2 be reasonably fit for the purpose set out in the specification.
- 15.3 The Company shall not be liable for a breach of any of the warranties in Condition 15.2 unless:
- 15.3.1 the Buyer gives written notice of the defect to the Company with two (2) months of the date of delivery or tendered delivery, and, if the defect is as a result of damage in transit via the carrier, within two (2) days of the time when the Buyer discovers or ought to have discovered the defect; and
- 15.3.2 the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost for the examination to take place there.
- 15.4 The Company shall not be liable for a breach of any of the warranties in Condition 15.2 if:
- 15.4.1 the Buyer makes any further use of such Goods after giving such notice; or
- 15.4.2 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) to use the Goods in accordance with good trade practice; or
- 15.4.3 the Buyer alters or repairs such Goods without the written consent of the Company.
- 15.5 Subject to Condition 15.3 and Condition 15.4, if any of the Goods do not conform with any of the warranties in Condition 15.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate.
- 15.6 If the Company complies with Condition 15.5 it shall have no further liability for a breach of any of the warranties in Condition 15.2 in respect of such Goods.
- 15.7 Any Goods replaced shall belong to the Company and any repaired or replacement Goods shall be guaranteed on these terms for the unexpired portion of the 2 month warranty period.
- 15.8 The Buyer acknowledges and agrees that conditions of storage, weather and the environment can cause permanent rust or other damage to an unfinished metal surface and accordingly the Company shall have no liability to the Buyer whatsoever in the event that the Buyer orders or requests the Goods to be supplied without an appropriate finish.
- 16. HEALTH AND SAFETY**
- 16.1 In accordance with Section 6 Health and Safety at Work Act 1974, the Company ensures that as far as is reasonably practicable the Company's products are safe and without risk to health and safety when properly used. All products can constitute a health hazard if used incorrectly or without regard to the Company's relevant health and safety recommendations. It is a condition of supply that the Buyer acquaints itself with any appropriate health and safety information provided by the Company and take all necessary steps to sure that the goods will be safe and without risk to health when properly used.
- 17. LIMITATION OF LIABILITY**
- 17.1 Subject to Condition 6, Condition 7 and Condition 15, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 17.1.1 any breach of these Conditions;
- 17.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
- 17.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 17.2 All warranties, Conditions and other terms implied by statute or common law (save for the Conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 17.3 Nothing in these Conditions excludes or limits the liability of the Company:
- 17.3.1 for death or personal injury caused by the Company's negligence; or
- 17.3.2 under section 2(3), Consumer Protection Act 1987; or
- 17.3.3 for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- 17.3.4 for fraud or fraudulent misrepresentation.
- 17.4 Subject to Condition 17.2 and Condition 17.3:
- 17.4.1 the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall not in any event exceed ten percent (10%) of the price of the Contract; and
- 17.4.2 the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 18. INDEMNITY**
- 18.1 The Buyer hereby undertakes to indemnify and keep indemnified the Company at all times from and against all actions, claims, costs, proceedings, damages, losses and expenses which are directly or indirectly from:
- 18.1.1 the manufacture of Goods to the specifications provided by the Buyer or where such specifications shall be at fault or in the event of a claim or threatened or alleged by a claim third party that the specifications or the Goods manufactured pursuant to the specifications infringe the intellectual property rights of such third party or where such Goods manufactured pursuant to the specification are defective (except where such defect is due to the proven negligence of the Company); and
- 18.1.2 any claim made against the Company under the Consumer Protection Act 1987 by any person suffering any loss, damage or injury as a result of defects in products manufactured, used and/or sold by the Buyer incorporating Goods manufactured and/or sold by the Company. "Defects" shall have the meaning ascribed to it by Section 3 of the CPA 1987.
- 19. COMPANY INDEMNITY**
- 19.1 If a claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of a drawing, design or specification supplied by the Buyer, the Company shall indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:
- 19.1.1 the Company is given full control of any proceedings or negotiations in connection with the claim;
- 19.1.2 the Buyer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;
- 19.1.3 except pursuant to a final award, the Buyer shall not pay or accept the claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);
- 19.1.4 the Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer shall use its best endeavours to do);
- 19.1.5 the Company shall be entitled to the benefit of, and the Buyer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- 19.1.6 without limiting any duty of the Buyer at common law, the Company may require the Buyer to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Buyer under this Condition.
- 20. PATTERNS/DRAWINGS/TOOLS**
- 20.1 The Company shall retain all intellectual property rights in all patterns, drawings, tools and any other intellectual property produced or created by the Company in the course of manufacturing and supplying the Goods. The Buyer may not utilise, reproduce or communicate knowledge of such items to any third party without the express written consent of the Company.
- 21. ASSIGNMENT**
- 21.1 The Company may assign or sub-contract the Contract or any part of it to any person, firm or company.
- 21.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 22. FORCE MAJEURE**
- 22.1 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 3 months, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 23. GENERAL**
- 23.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 23.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 23.3 If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected.
- 23.4 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 23.5 The Buyer may not withhold payment of any invoice or other amount due to the Company by reason of any right of set off or counterclaim which the Buyer may have or allege to have for whatever reason.
- 23.6 These Conditions and each Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 24. COMMUNICATIONS**
- 24.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or email:
- 24.1.1 (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company, fax number 01905 777048, email address info@bartoncoldform.co.uk; or
- 24.1.2 (in the case of communications to the Buyer) to the registered office of the addressee (if it is a company) or to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer from time to time.
- 24.2 Communications shall be deemed to have been received:
- 24.2.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- 24.2.2 if delivered by hand, on the day of delivery; or
- 24.2.3 if sent by fax on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day;
- 24.2.4 if sent by email, on the date of transmission, provided that a confirming copy thereof is sent by first class pre-paid post to the other party at the address referred to in Condition 24.1 within 24 hours after transmission.
- 24.3 Communications addressed to the Company shall be marked for the attention of the Managing Director.