



ELASTO UK LTD TERMS AND CONDITIONS OF PURCHASE

1. Interpretation

1.1 In these Conditions:-

'Buyer'	means ELASTO UK Limited.
'Conditions'	means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller.
'Contract'	means the contract for the sale and purchase of the Goods and/or the supply and acquisition of the Services incorporating these Conditions.
'Delivery Address'	means the address described as the address for delivery on the Order or such other address as agreed in Writing between the Buyer and the Seller.
'Goods'	means the goods (including any instalment of the goods or any part of them) described in the Order.
'Order'	means the Buyer's purchase order to which these Conditions are annexed.
'Price'	means the price of the Goods and/or the charge for the Services as described in the Order.
'Seller'	means the person so described in the Order.
'Services'	means the services (if any) described in the Order.
'Specification'	includes any plans, drawings, data or other information relating to the Goods and/or Services provided by the Buyer to the Seller or agreed in Writing by the Buyer.
'Writing'	includes telex, cable, facsimile transmission, email communication and comparable durable means of communication.

1.2 Any reference in these Conditions to a particular piece of legislation or a provision of a particular piece of legislation shall be construed as a reference to that particular piece of legislation as amended, re-enacted or extended at the relevant time and includes any subordinate legislation for the time being in force made under it.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 A reference to person shall include bodies corporate and unincorporate.

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

2. **Basis of Purchase**

- 2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Conditions.
- 2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.
- 2.3 The Order will lapse unless unconditionally accepted by the Seller on these Conditions and in Writing within seven days of the date of Order.
- 2.4 No variation to the Order or these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Seller.

3. **Specifications**

- 3.1 The quantity, quality and description of the Goods and/or the Services shall, subject to these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.
- 3.2 The Buyer's rights under these Conditions are in addition to the statutory conditions implied in favour of the Buyer by the Sale of Goods Act 1979.
- 3.3 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer and in consideration of the Buyer placing the Order the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property. The Seller shall not disclose to any third party or itself use any such Specification except (i) to the extent that it is or becomes public knowledge through no fault of the Seller; or (ii) as required for the fulfilment of this Contract; or (iii) as required by law.
- 3.4 Materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the Buyer to the Seller or not so supplied but used by the Seller specifically in the manufacture of the Goods shall at all times be and remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in Writing.
- 3.5 The Seller shall comply with all applicable laws, regulations and other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and/or performance of the Services.
- 3.6 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to their despatch, and the Seller shall provide the Buyer with all facilities reasonably required for such inspection and testing.
- 3.7 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract and/or the Specification, and the Buyer so informs the Seller within 30

days of inspection or testing, the Seller shall take all such steps as are necessary to ensure compliance. Notwithstanding any inspection or testing the Seller shall remain fully responsible for the Goods and the inspection or testing shall not affect or diminish the Seller's obligations under the Contract.

- 3.8 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.

4. **Price of the Goods and Services**

- 4.1 The Price of the Goods and/or the Services shall be as stated in the Order and, unless otherwise stated, shall be:-
- 4.1.1. exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a valid VAT invoice); and
- 4.1.2. inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts, or levies other than value added tax.
- 4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.
- 4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller to the Buyer or to other third parties, whether or not notified to the Buyer and whether or not shown on the Order.

5. **Terms of Payment**

- 5.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods and/or completion of the Services, as the case may be, and each invoice shall quote the number of the Order.
- 5.2 Save in respect of a genuine dispute, the Buyer shall pay the Price of the Goods and/or the Services within 60 days from the end of month in which a valid VAT invoice is received or upon such extended credit terms as may be agreed between the Buyer and Seller.
- 5.3 The Buyer may set off against the Price any sums owed to the Buyer by the Seller.
- 5.4 The Seller is not entitled to suspend delivery of the Goods and/or Services as a result of any sums being outstanding.

6. **Delivery**

- 6.1 At no additional cost to the Buyer, the Goods shall be delivered to, and/or the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours. The Seller shall off-load the Goods at its own risk as directed by the Buyer.
- 6.2 Where the date of delivery of the Goods and/or of performance of the Services is to be specified after the placing of the Order, the Buyer shall give the Seller reasonable notice of the specified date.

- 6.3 The time of delivery of the Goods and/or of performance of the Services is of the essence of the Contract.
- 6.4 If requested by the Buyer, a certificate of analysis and a packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently on every such delivery.
- 6.5 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable. Failure by the Seller to deliver or perform any one instalment shall entitle the Buyer to elect to treat the Contract as repudiated.
- 6.6 The Buyer may reject any Goods delivered which are not in accordance with the Contract and/or the Specification, and the Buyer shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery or, within a reasonable time after any latent defect in the Goods has become apparent.
- 6.7 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Services.
- 6.8 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.
- 6.9 If the Goods are not delivered and/or the Services are not performed on the due date then, without limiting any other remedy, the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damages for delay 2 per cent of the Price for every week's delay, up to a maximum of 10 per cent.

7. **Risk and Property**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.
- 7.2 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made.

8. **Warranties and Liability**

- 8.1 The Seller warrants to the Buyer that the Goods:-
- 8.1.1. will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller;
 - 8.1.2. will be free from defects in design, material and workmanship;
 - 8.1.3. will correspond with any relevant Specification or sample; and
 - 8.1.4. will comply with all statutory requirements and regulations relating to the sale and/or manufacture of the Goods.
- 8.2 The Seller warrants to the Buyer that the Services:-
- 8.2.1 will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances; and

- 8.2.2 will be performed in compliance with all statutory requirements and regulations relating to the Services.
- 8.3 Without limiting any other remedy, if any Goods and/or Services are not supplied or performed in accordance with the Contract and/or the Specification, then the Buyer shall be entitled:-
- 8.3.1. to require the Seller to repair the Goods or to supply replacement Goods and/or Services in accordance with the Contract within seven days; or
- 8.3.2. at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods and/or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
- 8.4 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:-
- 8.4.1. breach of any warranty given by the Seller in relation to the Goods and/or Services;
- 8.4.2. any claim that the Goods (or their manufacture) infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
- 8.4.3. any liability under the Consumer Protection Act 1987 in respect of the Goods;
- 8.4.4. any act or omission or negligence of the Seller or its employees, agents or sub-contractors in (i) supplying, delivering and installing the Goods; or (ii) performing the Services.
- 8.5 Neither the Seller nor the Buyer shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Goods and/or Services, if the delay or failure was beyond that party's reasonable control. Without limiting the foregoing, the following shall be regarded as causes beyond either party's reasonable control:-
- 8.5.1. Act of God, explosion, flood, tempest, fire or accident;
- 8.5.2. war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- 8.5.3. acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- 8.5.4. import or export regulations or embargoes;
- 8.5.5. strikes, lock-outs or other industrial actions or trade disputes (except those involving the employees of the affected party);
- 8.5.6. difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- 8.5.7. power failure or breakdown in machinery.

9. Termination

- 9.1 The Buyer shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving notice to the Seller at any time prior to delivery and/or performance, in which event the Buyer's sole liability shall be to pay to the Seller the Price for the Goods and/or Services in respect of which the Buyer has exercised its right of cancellation, less the Seller's net saving of cost arising from such cancellation.
- 9.2 The Buyer may terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:-
- 9.2.1. the Seller commits a material or persistent breach of these Conditions;
 - 9.2.2 the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
 - 9.2.3. an encumbrancer takes possession, or a receiver is appointed, over any of the property or assets of the Seller; or
 - 9.2.4. the Seller ceases, or threatens to cease, to carry on business; or
 - 9.2.5. the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.
- 9.3 Termination of the Contract shall be without prejudice to the rights and duties of either party accrued prior to termination. Those Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

10. Confidentiality

Save as required by law, the Seller shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer or its agents and any other confidential information concerning the Buyer's business or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same of the purpose of discharging the Seller's obligations to the Buyer and the Seller shall ensure that such employees, agents or sub-contractors are subject to no less onerous obligations of confidentiality as bind the Seller.

11. General

- 11.1 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
- 11.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified by the relevant party pursuant to this provision and such notice shall be delivered by hand, by first class or overseas post or by fax. Notice served by hand or by facsimile shall be deemed to be served immediately PROVIDED THAT in the case of notices served by fax, a successful facsimile transmission receipt is obtained. Notices served by first class post shall be deemed served two days after posting if sent to a UK address or seven days after posting if sent to an overseas address.

- 11.3 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision. Failure or delay by the Buyer in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 11.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part such provision (or part thereof) shall be deemed severable and the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 11.5 Nothing in this Agreement shall be construed as creating a partnership or joint venture of any kind between the parties or as appointing any party as agent for the other party for any purpose and neither party shall have the authority to bind the other party or to contract in its name for any purpose.
- 11.6 Except as otherwise provided in these Conditions, these Conditions and the Order shall be the entire agreement between the parties in relation to the matters discussed therein and no other terms shall apply to it. These Conditions and the Order shall prevail over any inconsistent terms implied by law or by trade, custom, practice or course of dealing and any such inconsistent terms are hereby expressly excluded. No conduct by any party shall be deemed to constitute acceptance of any terms put forward by the other.
- 11.7 The Contract shall be governed by the laws of England and Wales and all disputes arising in connection with it shall be submitted to the exclusive jurisdiction of the English courts.