

1. TERMINOLOGY/DEFINITIONS

1.1 The contract between Haygrove Ltd, (the “Seller”) and the person whose order for goods (“Goods”) is accepted by the Seller in accordance with Section 2 below (the “Buyer” or the “Customer”) for the sale and purchase of the Goods formed in accordance with Section 2 below (the “Contract”) shall be upon and subject to these terms and conditions of sale (“Conditions”) to the exclusion of all other terms and conditions, including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document.

- 1.1.1 “Business Day”: a day other than a Saturday, Sunday or public holiday when banks in London are open for business.
- 1.1.2 “Conditions”: the terms and conditions set out in this document as amended from time to time in accordance with clause [1.2] below.
- 1.1.3 “Customer”: the person, firm or company who purchases the Goods from the Seller.
- 1.1.4 “Force Majeure”: an event or circumstance beyond a party’s reasonable control as referred to in clause 13 below.
- 1.1.5 “Goods”: the goods or any part of them set out in the Order.
- 1.1.6 “Order”: the Customer’s order for the Goods as set out in the quotation of the Seller signed by the Buyer.
- 1.1.7 “Specification”: any specification of the Goods including any related plans and drawings that are agreed by the Customer and the Seller.

1.2 Neither party may introduce any additional terms or attempt to vary or otherwise modify these Conditions without the mutual agreement of both parties in writing, signed by a director of each party.

1.3 References to a person herein include (without limitation) any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality) and references to any gender include every gender. References to the singular include the plural and vice versa.

2. PLACEMENT AND ACCEPTANCE OF ORDERS

2.1 Any quotation given by the Seller is an invitation to the Buyer to make an offer only. No Order or acceptance of quotation of the Buyer placed with the Seller shall be binding on the Seller unless and until it is accepted in writing by the Seller. The Contract is formed when the Order is accepted by the Seller by way of a written Seller Order confirmation form.

2.2 For the avoidance of doubt, neither acceptance of a deposit in accordance with Section 8 below nor commencement of work on a purchase order shall be construed as acceptance of an Order.

2.3 All Orders shall be placed by the Buyer signing the letter of quotation provided by the Seller and returning such signed quotation to the Seller.

2.4 Where the intention is for the Buyer to place an Order through a third party Producer Organisation (“PO”), or payment is to be made by the PO, should the PO not accept or be able to make such payment the responsibility automatically reverts to the Buyer.

2.5 Unless otherwise expressly provided for in a quotation, any quotation is valid for a period of 28 days only from its date, provided the Seller has not previously withdrawn it. This period of validity may be reduced by the Seller in periods of high volatility in raw material and foreign exchange markets.

3. CANCELLATION

Subject to Section 12, the Contract or any part of it may only be cancelled by agreement of the Buyer and the Seller in writing. Where such cancellation renders preparatory work done or expenditure incurred by the Seller abortive (to meet the Buyer’s requirements) a cancellation charge shall be payable. This shall be equal to the cost of such preparatory work and the amount of such expenditure including, but not limited to, the transport and recovery of any materials delivered.

4. PRICE AND SPECIFICATION

4.1 The price payable by the Buyer for each delivery shall be the price stated at the date of and specified in the quotation or, in the event a quotation was not sought or has expired, in the acceptance of order form. The price is exclusive of Value Added Tax which shall be charged to the Buyer at the rate applicable at the date of invoice, and any other taxes (including without limitation excise taxes or import or export duties) relating to the sale, use or the delivery of the Goods also shall be charged to the Buyer. In the event the Buyer believes that it is exempt from obligations to pay such taxes, the Buyer shall demonstrate such exemption to the Seller’s reasonable satisfaction. Prices quoted are in sterling unless otherwise agreed. The Buyer shall reimburse the Seller on demand for any expense incurred on the conversion of foreign currencies, bank charges, presenting and/or processing of any payment or otherwise resulted in obtaining sterling funds on the sum due.

4.2 Notwithstanding Section 4.1, Goods are supplied at the price current on the date of delivery. The Seller therefore reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the price of the Goods as stated in a quotation or acceptance of order form (as the case may be ) to reflect any increase in cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any significant increase in the costs of labour, materials or other costs of manufacture, any foreign exchange fluctuation, currency regulation or alteration of duties, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by the instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions) provided that the amount of any increase shall be fair and reasonable in the circumstances and reflect the increase in cost incurred by the Seller.

4.3 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses, (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Seller in connection with any claim made against the Seller for actual or alleged infringement of a third party’s intellectual property rights arising out of or in connection with the Seller’s use of the Specification. This clause 4.3 shall survive termination of the Contract.

4.4 The Seller reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

5. DELIVERY

The Seller shall use commercially reasonable efforts to provide delivery on the date requested by the Buyer in the Purchase Order but such date is not guaranteed. The Seller shall in no case be liable for damages nor shall the Buyer have any right to rescind the Contract for any delay in delivery. Notwithstanding any other provision herein contained, the Seller may at its option deliver the Goods to the Buyer by instalments. Where the Goods are delivered by instalments each such instalment shall be deemed to be sold or supplied under a separate Contract to which these terms and conditions shall apply and no default in respect of any one instalment shall affect or prejudice due performance as regards any other instalments. If the Buyer shall refuse delivery of any Goods made during normal shipment acceptance hours the Buyer shall pay all of the Seller’s cost associated with such failure to accept the shipment, including, without limitation, any damages expenses or costs relating to loading or unloading of the shipment.

6. RISK

The risk in respect of all the Goods supplied under these terms and conditions shall pass to the Buyer upon the delivery of the Goods to the Buyer, or where relevant, to the third party import agent.

7. RETENTION OF TITLE

7.1 Notwithstanding that risk in the Goods shall pass to the Buyer in accordance with clause 6, title to the Goods (whether separate and identifiable or incorporated in or mixed with other goods) shall remain with the Supplier until payment in full has been received by the Seller:

- 7.1.1 for the Goods;
- 7.1.2 for any other Goods supplied by the Seller;
- 7.1.3 of any other monies due from the Buyer to the Seller on any account.

7.2 Until title to the Goods passes to the Buyer under clause 7, the Buyer shall:

- 7.2.1 Keep the Goods separately and readily identifiable as the property of the Seller
- 7.2.2 Not attach the Goods to real property without the Seller’s consent.

7.3 Any resale by the Buyer of Goods in which property has not passed to the Buyer shall (as between the Seller and the Buyer only) be made by the Buyer as agent for the Seller.

7.4 Goods shall be deemed sold or used in the order delivered to the Buyer.

7.5 At any time before title to the Goods passes to the Buyer (whether or not any payment to the Seller is then overdue or the Buyer is otherwise in breach of any obligation to the Seller), the Seller may (without prejudice to any other of its rights):

- 7.5.1 retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so) which the Buyer hereby authorises;
- 7.5.2 require delivery of all or any part of the Goods.

7.6 The Seller may at any time appropriate sums received from the Buyer as it deems fit, notwithstanding any purported appropriation by the Buyer.

7.7 The Seller shall have no obligation to perform under a signed quotation and no Contract shall be formed unless and until it is acknowledged by the Seller in writing on its acceptance of order confirmation form. In the event an order is not accepted by the Seller, any deposit made in accordance with Section 8 below will be promptly refunded to the Buyer by the Seller.

8. TERMS OF PAYMENT

Unless otherwise agreed and stated on the Quotation Summary or Invoice, the Buyer shall pay 50% of the price of the Goods as a deposit due (a) in the case of Goods ordered pursuant to a fixed quotation, together with the signed quotation; or (b) in the case of Goods ordered without knowledge of the price for the order, within five (5) days of receipt of the Seller’s acceptance of the order confirmation form specifying the price of the Goods. The outstanding balance of the price of the Goods shall be due on delivery of the Goods to the Buyer. Unless otherwise specified on the Seller’s quotation, prices shall include without limitation the right to repossess and/or resell the Goods in accordance with Section 7. In the event, including without limitation training and hoop bending. Where the Goods are delivered in instalments the Buyer shall be obliged to pay for each instalment upon the terms set forth above. In the event the Buyer has not made timely payment in accordance with this Section 8, the Seller shall be entitled to interest on that part of the purchase price not yet paid at the rate of the lesser of (a) 4% of the unpaid balance owed to the Seller for each day that payment is overdue; or (b) the maximum amount allowable by law. Such right to interest shall be in addition to any other remedies available to the Seller. Notwithstanding without limitation the right to repossess and/or resell the Goods in accordance with Section 7. In the case that no timely payment is made in accordance with section 8, this can result in the delay of shipment of Goods.

9. TOLERANCES

Gauges, weights, chemical composition and sizes will, so far as possible, be adhered to but reasonable excesses and deficiencies thereof shall be accepted by the Buyer, who shall not be entitled to reject any Goods or to require replacement of any Goods on the ground that they are not precisely as specified.

10. SELLER’S WARRANTY/BUYER’S CLAIM

10.1 The Seller warrants that the Goods shall be free from defects in materials or workmanship. Except as set forth in this section 10, the Seller makes no other warranties, express or implied, regarding the Goods or any services performed by the Seller in connection with the Goods and

specifically disclaims any warranties of merchantability or fitness for a particular purpose. Claims for Goods damaged in transit or for shortages in delivery shall be made by the Buyer by written notice to the Seller and its carriers within three (3) days of delivery. Claims for breach of warranty shall be made in writing to the Seller within four (4) weeks of the date of delivery. In the event of a claim brought in accordance with this Section 10, the Seller undertakes, at the Seller’s option, to replace, repair or refund the purchase price for those Goods for which the Seller determines a breach of warranty exists or damage has occurred in transit. Such replacement, repair or refund shall be the sole remedy for the Buyer for breach of warranty or Goods that are damaged in transit. Save for personal injury or death for which there is no limit of liability, in no event shall the Seller be liable for any incidental, indirect, consequential or special damages. The Seller’s liability shall be limited to replacement, refund or repair as set forth in this section 10 and the Seller shall not be liable for any claim or loss associated with any consequential or incidental other damages, regardless of their basis, whether in contract or in tort on the part of the Seller, its employees or its agents arising out of or in connection with any defect of the Goods or any act, omission, neglect or default of the Seller, its employees, or agents.

10.2 The Buyer acknowledges that the Seller is required to attend a variety of establishments over which the Seller has no control of the environment or the biological hazard posed by the Buyer by written notice to the Seller and its carriers within three (3) days of delivery. The Seller is responsible for giving the Seller such reasonable direction in respect of the Seller’s attendance at the Buyer’s premises as the Buyer sees fit in respect of any potential risk that the Seller may pose in relation to the spreading of any disease, virus, infection or other biological hazard (if any) that may present a risk to the Buyer’s livelihood, business or premises. In the absence of any direction or prior notification from the Buyer the Seller shall take such reasonable precautions as it sees fit but it shall not be responsible for any disease, infection, virus or other biological hazard that may affect the Buyer’s business, livelihood or premises howsoever caused.

10.3 Save in respect of personal injury or death for which nothing in these Terms and Conditions shall limit the liability, the Seller’s liability to the Buyer under this agreement shall not exceed £100,000.

11. INDEMNITY

The Buyer shall indemnify, defend and hold harmless the Seller and its employees, shareholders, officers, directors, affiliates, subcontractors and other agents against any and all claims, liabilities, damages, costs and expenses arising out of or relating to (a) customisation or modification of the Goods that results in direct or indirect infringement of or misappropriation of the intellectual property rights of a third party provided that such customisation or modification was conducted in accordance with the Buyer’s specifications or instructions; (b) failure to assemble, disassemble, unpack, handle, unload, use and otherwise operate the Goods in accordance with the user manual and other instructions provided, from time to time, by the Seller; or (c) use or operation of tools or material supplied by the Buyer. For the avoidance of doubt, the Buyer recognises that the Goods sold hereunder have limitations in their ability to handle extremes in certain types of weather including, without limitation, high winds and heavy snow, and that the Seller shall have no liability associated with damages or loss caused by the Buyer’s failure to follow the Seller’s manuals and instructions for such weather conditions.

12. SUSPENSION OF DELIVERIES

In the event that the Buyer fails to pay and/or defaults in payment of any sum owed to the Seller in accordance with a purchase order and its corresponding invoice, then in addition to any other rights granted to the Seller in Section 7 above, the Seller shall have the right to either suspend all further deliveries until the default is cured or to cancel the Contract so far as any of the Goods remain to be delivered there under.

13. FORCE MAJEURE EVENT

Notwithstanding anything to the contrary contained herein, neither the Buyer nor the Seller shall be liable for any delay or failure to perform under the Contract as a result, in whole or in part, of an event outside the reasonable control of the non-performing party, including without limitation an act of God, action by any government, civil war, strikes, lockouts or other labour disputes, embargoes, fire, flood, trade disputes, unfavourable weather, any material becoming unavailable (and irreplaceable whether at all or at commercially acceptable prices), acts of terrorism, acts of war, customs delays and delays resulting from governmental homeland security measures.

14. USE OF SELLER’S EQUIPMENT

In connection with the purchase of the goods by the Buyer hereunder, the Seller may make available to the Buyer certain equipment utilised in connection with hoop bending. In such event, the Buyer acknowledges and agrees that (i) it will provide competent personnel to operate the equipment; (ii) it has read and understood and will follow all of the Seller’s instructions (whether written or oral) regarding the operation of the equipment; (iii) the sale of the Goods hereunder does not constitute a commitment by the Seller to install the Goods; and (iv) the Buyer shall have no property right to the equipment as a result of the Buyer’s use of the equipment for hoop bending.

15. INSOLVENCY AND BREACH

In the event that (a) the Buyer shall commit any breach of these terms and conditions and shall fail to remedy such breach (if capable of remedy) within a period of thirty days from receipt of a notice in writing from the Seller requesting such remedy; or (b) any distress or execution is levied upon any of the Goods or over the property of the Buyer; or (c) the Buyer offers to make any arrangements with or for the benefit of its creditors or commit any act of bankruptcy or has a receiver or administrator appointed for the whole or any part of its property or assets; or (d) an order is made or a resolution is passed or analogous proceedings are taken for the winding up of the Buyer (save for the purpose of reconstruction or amalgamation without insolvency and previously approved in writing by the Seller), the Seller shall thereupon be entitled without prejudice to its other rights hereunder forthwith to terminate further deliveries until the default has been made good. Notwithstanding any such termination the Buyer shall pay the Seller for all the Goods delivered up to and including the date of termination.

16. TERMINATION

16.1 The Seller shall be entitled to terminate a Contract upon one week’s notice to the Buyer if the Seller is unable to fulfil an Order.

16.2 Without limiting its other rights or remedies, the Seller may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer’s financial position deteriorates to such an extent that in the Seller’s opinion the Customer’s capability to adequately fulfil its obligations under the Contract is placed in jeopardy.

17. SUB-CONTRACTING AND ASSIGNMENT

The Seller reserves the right to sub-contract the fulfilment of any Contract or part thereof. The Seller shall be entitled to assign any Contract but the Buyer shall not.

18. PARTIAL COMPLETION

In the case of partial completion of an Order, the Seller shall be entitled to reasonable payment in respect of all work done by it, without prejudice to its rights should non-completion be caused by the Buyer or be the result of termination of an Order by the Seller in accordance with Section 15.

19. INTELLECTUAL PROPERTY

19.1 The Buyer acknowledges that any drawings, sketches, quotations and other documents supplied by the Seller with the Goods and the actual design and construction of the Goods constitutes valuable intellectual property of the Seller and, as such, the Buyer agrees not to (a) challenge, damage or otherwise threaten such rights; (b) use or disclose, directly or indirectly, such materials, design and construction to any third parties without the prior written consent of the Seller; or (c) copy or otherwise manufacture the goods or any materials distributed with or otherwise relating to the goods or services provided in connection with the Goods.

19.2.1 Each party undertakes that it shall not at any time during the Contract and for a period of two years after termination of the Contract disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs except as permitted by clause 19.2.2. For the purposes of this clause, group means in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party. Each party may disclose the other’s confidential information:

19.2.2.1 to its employees, officers, representatives or advisers who need to know such information for the purpose of exercising the party’s rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party’s confidential information comply with this clause 19.2.2.1;

19.2.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

19.2.3 No party shall use any other party’s confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Contract.

20. TOOLS

All tools whether made specifically for the Buyer’s Order or not and whether the Buyer pays the whole or any part of the cost thereof shall be and remain the property of the Seller.

21. NOTICES

21.1 Any notice or other communication to be given under the Conditions must be in writing and may be delivered or sent by prepaid first class letter post or facsimile transmission.

21.2 Any notice or document shall be deemed served if delivered, at the time of delivery, if posted 48 hours after posting; and if sent by facsimile transmission at the time of transmission.

21.3 Service of notice by e-mail is not permitted.

22. SEVERANCE

If at any time one or more of the provisions of the Conditions is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, then the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

23. WAIVER AND VARIATION

23.1 No waiver of any breach of any term hereof shall be deemed a waiver of any preceding or succeeding breach of the same or any other term.

23.2 No variation of this Contract shall be effective unless it is in writing and signed by the parties or their authorised representatives.

24. THIRD PARTY RIGHTS

A person who is not party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

25. APPLICABLE LAW

The Contract shall be governed by and construed in accordance with the laws of England and Wales. The parties hereby submit to the exclusive jurisdiction of the courts of England and Wales.