Hilton Docker Mouldings Ltd

Terms and Conditions of Sale

Definitions - In this Agreement, the following words or phrases shall have the following meanings: **Hilton Docker Mouldings Ltd** (hereafter HDM, We, Our, Us means Hilton Docker Mouldings Limited, Companies House registration number **01018731** (or any other linked company notified as providing Goods or Services);

Customer (hereafter Customer, You, Your) means the company to whom HDM are providing Goods or Services.

Acknowledgement of Order means Our confirmation of an order from the Customer under which HDM provide Goods or Services;

Agreement means the agreement between HDM and the Customer for the provision of any Goods and/or Services to a Customer as set out in these Terms and Conditions;

Goods means any goods, products or other tangible items HDM prepare for delivery to the Customer.

Parties means HDM and the Customer, and **Party** shall mean either one of them.

Price means the amount the Customer shall pay for Goods and/or Services HDM provide as set out in clause 3.

Schedule means the document HDM provide confirming details of the basis on which We will provide Goods and/or Services to the Customer.

Services means those works HDM carry out which are not directly part of the production of any Goods which are delivered to the Customer.

Supply of Goods/Services

2.1 These Terms and Conditions provide the basis for the Agreement for any Goods or Services HDM provide. If the Customer has been provided with a Schedule that will form part of an Agreement where applicable together with any Acknowledgement of Order. HDM are not obliged to provide any Goods and/or Services where We have not provided an Acknowledgement of Order. No other terms and conditions shall apply to the provision of any goods or services by HDM unless expressly agreed in writing by a Director of HDM.

2.2 HDM shall use reasonable endeavours to provide the Goods and/or Services in accordance with any request, Acknowledgement of Order or Schedule. We shall use reasonable

endeavours to provide the Goods and/or Services within any time specified or requested, but time shall not be of the essence.

2.3 The Customer acknowledges that HDM are not liable for any delay in providing any Goods and/or Services and that HDM's liability in providing any Goods and/or Services is limited in accordance with these Terms and Conditions. For the avoidance of doubt, We shall not accept any penalties for late delivery.

Price and payment

3.1 Where HDM provide the Customer with an Acknowledgement of Order this will set out the charges for the Goods and/or Services that shall be the Price the Customer will pay.

3.2 Where charges or prices are not confirmed in an Acknowledgement of Order but are specified in a Schedule the Price shall be calculated based on the Schedule.

3.3 In the event the charges or prices are not set out in an Acknowledgement of Order or specified in a Schedule (e.g. for special / bespoke orders) the charges shall be as otherwise notified to the Customer or will be the prevailing HDM prices where applicable at the date Goods are ready for dispatch. If a Service is provided and if there is no price, it shall be calculated based on Our usual charges at that point and that shall be the Price.

3.4 Credit terms will not apply unless HDM agree in writing to allow such terms and shall be subject to any terms we require Where credit terms are agreed, standard HDM terms of 30 days from date of invoice will apply and any exceptions to this must be agreed in writing by a HDM director.

3.5 Where credit terms do not apply HDM shall issue a Pro Forma invoice for the Goods or Services which must be paid in full before manufacturing of the Goods or the Services can commence.

3.6 All Prices are exclusive of VAT and any other applicable taxes, which will be charged in addition to the Price at the rate in force at the time, which You are required to pay.

3.7 If the Customer does not make a payment by the date stated in an invoice or as otherwise provided for in an Agreement then HDM shall be entitled to:

3.7.1 charge interest on the outstanding amount at the rate of 3% a year above the base lending rate of Barclays Bank plc, accruing daily.

3.7.2 require the Customer to pay, in advance, for any Goods or Services (or any part of the Goods) which have not yet been performed; and

3.7.3 not perform any further Services (or any part of the Services) or provide any further Goods.

3.8 Any dispute on a Price or in the provision of Goods and/or Services must be raised with HDM within 7 days of the provision of an invoice or (if later) the provision the Goods or Services.

3.9 All payments should be paid (and cleared) into HDM company bank account for which we will provide details. When making a payment You shall quote relevant reference numbers and the invoice number.

3.10 Customer moulds will not be released until all invoices have been paid in full.

3.11 If our payment terms are not being met, we reserve the right to either destroy Customer moulds or claim these moulds as our own and produce and sell products from these moulds to other parties.

The Customer's obligations / delivery

4.1 You shall:

4.1.1 co-operate with HDM where the provision of the Goods and/or Services reasonably require including provision of manpower or equipment to offload the products where applicable.

4.1.2 for Ex Works contracts, be responsible from the point of collection, the collection, risk insurance and transportation of any Goods to your premises. For DAP contracts (Delivered at Place) HDM shall be responsible for the delivery, insurance, the costs of which will be included in your item price or in some cases identified as a separate line item. In case special packaging or transportation is required, this will be agreed in advance and charged as an additional cost to the Customer.

4.1.3 ensure that all Goods delivered conform with their delivery note and in the event of any short delivered Goods must notify HDM within 24 hours, failing which You agree that Goods were delivered as specified. In the event of any short delivered Goods We shall only be liable to provide the additional Goods;

4.1.4 fully inspect all Goods on delivery or collection and any damaged or faulty Goods must be reported to HDM within 24 hours of delivery or collection, otherwise You agree Goods were delivered/collected in good condition. In the event of any damaged or faulty Goods HDM's liability shall be strictly limited to providing repairs or replacement Goods only;

4.1.5 ensure that Your staff and agents reasonably co-operate and assist Us;

4.2 You shall not charge HDM for any access to or use of Your facilities which are reasonably required in the provision of the Works

Returns

5.1 We will not accept the return of any Goods for credit unless notified of any damage or fault in accordance with clause 4.1.4 above or where We have previously agreed in writing.

5.2 Unless the items are faulty, damaged (where the cause is by HDM), not as described or generally not in accordance with the contract, HDM do not have any obligation to accept returns. In the event HDM agree to the return of any Goods other than in accordance with clause 4.1.4 We may –

5.2.1 refuse any return where the Goods are not in their original condition; and

5.2.2 make a restocking charge of 20% of the Price for the Goods, providing the goods are in their original "as new" condition.

5.2.3 make a commercial offer to purchase Goods from you at a price we determine appropriate.

5.3 All returned goods will be initially inspected by HDM and if any damages are found, HDM will inform the Customer of Our findings. We reserve the right to return the Goods to the Customer or make a charge to rectify any issues. In this event all transport charges along with rectification costs will be the responsibility of the Customer.

Title

6.1 Title to any Goods shall remain with HDM until the full Price for the Goods together with any taxes (including VAT) have been paid and no other payments remain outstanding.

6.2 Until title to any Goods have passed to the Customer, You shall hold all Goods to which the title remains with HDM on a fiduciary basis as bailee for Us. You shall store, insure and protect the Goods from damage in an appropriate environment, separate from other goods in a way which allows them to be identified as Our property.

6.3 Notwithstanding that the title in any Goods remains with HDM You may sell or use the Goods in the ordinary course of Your business at full market value which shall be held for Our account. Any sale or dealing shall be on Your own behalf and You shall deal as principal when making such sales or dealings. Until title passes to You the entire proceeds of sale or otherwise of the Goods shall be held in trust for HDM and shall not be mixed with other money.

6.4 HDM shall be entitled to recover the Price (plus any applicable taxes) notwithstanding that title has not passed.

6.5 Until title in the Goods passes from HDM to the Customer You shall on request, deliver up to HDM such of the Goods as have not ceased to be in existence or resold. If You fail to do

so We may enter upon any premises (and You authorise Us by Our servants or agents to enter those premises) owned, occupied or controlled by You where the Goods are situated and repossess the Goods. On making such a request Your rights under clause 6 shall cease.

6.6 You shall not pledge or in any way charge by way of security for an indebtedness any of the Goods which are HDM property. Without prejudice to any other right in the event of any breach of this clause 6.6 all other sums due to HDM shall become immediately due and owing.

6.7 You shall insure all Goods to the full Price against 'all risks'.

Exclusions

7.1 HDM shall not be liable to the Customer for any loss or damage to any goods (including without limitation the Goods, any tooling, drawings, patterns or any moulds) which belong to the Customer and; We use, and/or store as part of any Service, and/or are on any of HDM owned or controlled premises.

7.2 We shall not be liable for any loss or damage or expense arising out of a defect or inaccuracy in any drawings supplied by the Customer. In the event of any inaccuracy or defect in the drawings supplied by the Customer You shall reimburse HDM for any additional costs We may incur to rectify those drawings and or any subsequent works.

Warranties, liability and indemnities

8.1 Each of the Parties acknowledges that, in entering into an Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in the Agreement, and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes or limits liability for death, personal injury or fraud.

8.2 HDM warrant that We will use reasonable care and skill in producing any Goods and/or performing any Services to the standard generally accepted within the industry. However, We provide no warranty that any Goods and/or Services shall be provided by any particular time.

8.3 If HDM provide any Goods and/or perform any Services (or any part thereof) negligently or in breach of this Agreement, then, if requested by You, We will re-perform the relevant part of the Services or replace any Goods (where applicable), subject to clauses 9.3 below. Your request must be made within 7 days of the date of delivery of the provision of any Goods or Service in question.

8.4 For the avoidance of doubt, neither Party shall be liable to the other for any indirect or consequential losses.

8.5 Except in the case of death or personal injury caused by Our negligence or fraud, Our liability under or in connection with an Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever shall not exceed the Price of and Goods or Services to which the claim relates or £1500 whichever is the lower amount.

8.6 Save as provided in this clause 8, We shall not be liable in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by You or any third party in connection with any Agreement.

Minimum Order/Cancellation

9.1 Any Agreement or order placed with Us is subject to a minimum Price of £100 excluding delivery or taxes. We reserve the right to remove any discounts and to increase a Price if an order placed is less than £100 excluding delivery and taxes.

9.2 Once HDM have provided an Acknowledgement of Order or accepted an order You cannot cancel the Agreement except with Our written agreement and on terms that you shall indemnify HDM in full against any and all costs, loss, damages, charges and expenses We incur and We shall retain the right to charge a cancellation fee.

9.3 We may cancel an Agreement at any time on the provision of 14 days written notice to You. On giving such notice, We shall promptly repay any sums paid in respect of the Price for Goods or Services which have not been provided. We shall not be liable for any loss or damage whatever arising out of such cancellation.

9.4 If an Agreement is cancelled for any reason prior to completion, the Customer shall be responsible for all costs incurred by HDM up to the date of cancellation, including but not limited to, any design work, materials, consumables and labour. In addition, the Customer will also be responsible for all expenditure reasonably incurred after the date of cancellation for commitments reasonably and necessarily incurred by it for the provision/performance of the Goods/Services prior to the date of cancellation.

Termination/Variation

10.1 Without prejudice to the other remedies or rights We may have, We may terminate an Agreement, at any time, on written notice to You:

10.1.1 if You are in material breach of your obligations under any Agreement and, if the breach is capable of remedy within 14 days, if the breach is not remedied within 7 days of You receiving notice which specifies the breach and requiring it to be remedied; or

10.1.2 if You become insolvent or if an order is made or a resolution is passed for Your winding up (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator, administrative receiver or receiver is appointed in respect of the whole or any part of Your assets or business, or if You make any composition with Your creditors or take or suffer any similar or analogous action in consequence of debt. The notice shall take effect as specified in the notice.

10.2 On termination of an Agreement, You shall pay for all Goods and/or Services provided up to the date of termination, and for all expenditure HDM reasonably incur after the date of termination from commitments reasonably and necessarily incurred by it for the provision/performance of the Goods/Services prior to the date of termination.

10.3 We may vary any term of an Agreement (including the Price) at any time. We shall provide You with 7 days' notice of any change We make.

Intellectual Property/Confidentiality

11.1 The Customer licences HDM to use any of its intellectual property required in the production of the Goods or the provision of Services. The Customer shall indemnify HDM against any and all costs and/or losses which it may incur as a result of a claim by any third party to intellectual property rights licenced under this clause 11.1.

11.2 Where the Goods or Services include any intellectual property which is not the property of the Customer prior to the request for any Goods or Service it shall be the property of HDM and/or its licensors. The Customer agrees that it has no rights or interest in any intellectual property developed by HDM other than in any background intellectual property or as provided under this clause 11. Where the Goods or Services include intellectual property, which do not belong to the Customer, the Customer agrees that it shall protect the rights of HDM and/or its licensors as if they were its own and further they shall not provide any goods, drawings or derivative items from the Goods or Services to any third party other than with the express written permission of HDM.

11.3 The Customer acknowledges and agrees that a breach of the restrictions contained in clause 11.2 will cause significant damage to HDM in requiring it to take steps to prevent an

infringement of its intellectual property rights and losses as a result of any such infringement. The parties agree that in the event of a breach of the restrictions set out in clause 11.2 liquidated damages shall become due from the Customer to HDM in the sum of £100,000 and that such sum is a reasonable assessment of the potential costs and losses.

11.4 No intellectual property rights shall transfer from HDM and/or its licensors unless specified expressly in writing signed by a Director of HDM.

11.5 HDM shall indemnify the Customer against any and all costs and/or losses which it may incur as a result of a claim by any third party to intellectual property rights owned by HDM and which are required to enjoy the use of any Goods.

11.6 You shall keep any confidential information of HDM (which shall include without being limited to, the design of any Goods, the specifications of any moulds, the physical moulds any drawings or specifications prepared by HDM) strictly confidential and secret, however disclosed to or received by You. You shall only use the confidential information for the purposes of an Agreement. You shall inform Your officers, employees and agents of Your obligations under the provisions of this clause, and ensure that Your officers, employees and agents meet the obligations.

11.7 For the avoidance of doubt, it is strictly prohibited for the Customer or any third party to use (either as a basis or starting point, or in any other way) any HDM intellectual property and / or confidential information for any purpose other than to fulfil the requirements of this agreement and the order in question. It is expressly forbidden for the Customer to distribute, imitate in any form or make any copies of products, parts of products, drawings, specifications, moulds, parts of moulds, impressions or manufacture finished parts using HDM intellectual property. It is also expressly forbidden for the Customer to use any part of HDM intellectual property with the aim to “pass off” these parts or part of these parts as their own. We will protect our intellectual property and take immediate action for any breaches of these terms, the penalties for a breach in this regard are clearly highlighted in clause 11.3. If you are or become aware of any third-party breaching HDM intellectual property rights, you must notify HDM immediately.

11.8 The Customer shall not trade in copies or imitations of such Goods nor provide information and / or cooperate with any third parties in order to facilitate the copying of HDM’s products or Intellectual Property. If the Customer has already copied or imitated such Goods, the Customer agrees to forever cease to manufacture or supply such copies or imitations.

11.9 In order to prevent any breach of 11.7 and 11.8, and to satisfy themselves, the Customer must conduct the necessary Due Diligence on any third-party they intend to work with. For

the avoidance of doubt, in case of a breach by the Customer's third party, the Customer will be held equally liable if it is found that the Customer has facilitated a breach and the appropriate legal action will be also taken against the Customer.

11.10 Any tool, pattern, mould or moulding manufactured at any time which is in contravention of terms of section 11, shall immediately become the property of HDM, who is hereby entitled to manufacture or derive tools, patterns, moulds and mouldings therefrom. HDM also have the express right and authority from the Customer (or the Customer's associated third party) to seize the offending moulds and Goods and recover immediate possession. The provisions of the terms in section 11 are additional to any other rights and remedies of HDM.

Storage

12.1 HDM offer a mould storage service for any moulds We produce for the Customer. A charge will be made for this storage service, and the rates will be determined by HDM and communicated to the Customer accordingly. As a gesture of goodwill, all new moulds produced by HDM will be subject to a grace period and therefore will be stored free of charge for the first 6 months, after this grace period, charges will then apply This storage service incurs a significant costs, hence the necessity for these costs to be recovered in the form of storage charges, however despite this, for moulds which are in regular use where the Customer is placing "**regular"** orders, then storage charges may be reduced or removed at the discretion of a director of HDM. For clarity we would consider the definition of **"regular"** to be any mould which is used at least once every month.

12.2 We do not store patterns or any other items unless agreed in writing signed by a Director of HDM.

12.3 The storage location will be determined at the sole discretion of HDM which could be either a HDM production facility, a dedicated off-site warehouse, or an outside area. Where outside storage is provided the degradation of items will occur more quickly than indoor storage. The provision of storage will not ensure that items do not degrade and HDM are not responsible for any wear and tear, damage or degradation.

12.4 We may change the place of storage, without notice and at any time for another place of storage. The level of protection shall be determined by HDM.

12.5 The moulds will be stored at the Customer's risk and HDM have no liability for any loss, theft or damage to items we hold in storage. HDM will not insure the moulds and insurance is to be provided strictly by the Customer. The Customer acknowledges and agrees it is their

responsibility to retain the patterns, drawings and/or designs from which any mould may be restored and to obtain any insurance cover required for the Customer items. HDM will provide valuations for items and moulds on request.

12.6 as per clause 3.10, if your account is in arrears, which for clarity includes any unpaid storage charges, we reserve the right to either destroy the Customer's moulds or claim these moulds as our own, to produce and sell products from these moulds to other parties. If, according to these terms HDM decide to destroy your mould(s), then the Customer will be responsible for all costs related to the scrapping and disposal and these costs will be debited to your account.

General

13.1 **Force majeure**

We shall not have any liability under or be deemed to be in breach of any Agreement for any delays or failures in performance of this Agreement that result from circumstances beyond Our reasonable control.

13.2 **Amendments**

This Agreement may only be amended in writing signed by duly authorised representatives of the Parties.

13.3 **Entire agreement**

Each Agreement contains the whole agreement between the Parties in respect of the Goods/Services. The Parties confirm that they have not entered into an Agreement on the basis of any representation that is not expressly incorporated into this Agreement. Nothing in this Agreement excludes liability for fraud.

13.4 **Notices**

Any notice to be given under an Agreement shall be in writing and shall be sent by first class mail to the address of the relevant Party set out in clause 1 or by email to the usual email address for the relevant Party. Delivery shall be assumed on the second day after posting any mail or the day after an email was sent.

13.5 **Law and jurisdiction**

The validity, construction and performance of all Agreements shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

13.6 **Third parties**

For the purposes of the Contracts (Rights of Third Parties) Act 1999 and, notwithstanding any other provision of an Agreement, each Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.

13.7 **Set off**

We may set off any sums due from You against a Price paid for other Goods or Services (whether this is to be repaid to You or not). You may not set off any sums due to Us against any liability or claim You may have against Us or any third party.

13.8 **Assignments**

We may assign, transfer or sub-contract any or all of the duties, Services, obligations and benefits in an Agreement to a third party, at Our sole discretion.