

# UNIFABS LIMITED

## TERMS AND CONDITIONS OF SUPPLY

### 1. INTERPRETATION

The following definitions and rules of interpretation apply in these Conditions.

#### 1.1. Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**CAD Drawings:** computer-aided design drawings relating to Products either provided by the Customer to Unifabs in accordance with clause 2.1.2(a) or produced by Unifabs as part of the CAD Drawing Services in accordance with these Conditions.

**CAD Drawing Services:** the design and production of CAD Drawings by Unifabs for the Customer based on a Specification.

**Change Order:** a document setting out the proposed changes to the Contract and the effect that those changes will have on:

- (a) the Products and/or Services;
- (b) the price for the Products and/or Services;
- (c) the timetable for the delivery of the Products and/or Services; and
- (d) any of the other terms of the relevant Order Acknowledgement and/or CAD Drawings.

**Commencement Date:** has the meaning given in clause 2.2.1(b) and 2.3.4 (as applicable).

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 18.8.

**Contract:** the contract between Unifabs and the Customer for the supply of Products and/or Services which is made up of these Conditions, the Order Acknowledgement and the CAD Drawings.

**Customer:** the person or firm who purchases the Products and/or Services from Unifabs, as specified in the Order Acknowledgement.

**Customer Default:** has the meaning as set out in clause 8.2.

**Delivery Date:** the date on which Unifabs shall deliver the Products, as specified in the Order Acknowledgement.

**Delivery Location:** means the address at which Unifabs shall deliver the Products as specified in the Order Acknowledgement.

**Force Majeure Event:** has the meaning given to it in clause 16.1.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business

names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**Manufacturing Services:** the manufacturing of the Products based on the CAD Drawings which is undertaken by Unifabs for the Customer.

**Order:** the Customer's written order for the Manufacturing Services and the Products, as set out in the Customer's purchase order form or the Customer's written acceptance of the Quotation, as the case may be.

**Order Acknowledgement:** Unifabs' written acceptance of the Customer's Order which, for the avoidance of doubt, forms part of the Contract between the parties.

**Products:** the products set out in the Order Acknowledgement and as further detailed in the CAD Drawings.

**Quotation:** the quotation provided by Unifabs to the Customer in respect of the provision of the Manufacturing Services and the Products in accordance with clause 2.3.1(b).

**Services:** the CAD Drawing Services and/or the Manufacturing Services provided by Unifabs to the Customer.

**Specification:** the initial description or specification for the Products provided in writing by the Customer to Unifabs in accordance with clause 2.1.1.

**Unifabs:** Unifabs Limited registered in England and Wales with company number 05938239 and registered office at Haunchwood Park Drive, Galley Common, Nuneaton, Warwickshire, CV10 9SP.

**Unifabs Materials:** has the meaning given in clause 8.1.6.

## **1.2. Interpretation:**

- 1.2.1. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2. A reference to a party includes its personal representatives, successors and permitted assigns.
- 1.2.3. A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.4. Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.5. A reference to **writing** or **written** includes email.

## 2. BASIS OF CONTRACT

2.1. The Customer shall either:

2.1.1. request that Unifabs provides the Customer with CAD Drawing Services, in which case the Customer shall provide Unifabs with a Specification; or

2.1.2. request that Unifabs provides the Customer with Manufacturing Services and Products, by either:

(a) providing Unifabs with CAD Drawings produced by the Customer or other third party; or

(b) confirming that Unifabs should use the CAD Drawings which have been produced by Unifabs and approved by the Customer as part of the CAD Drawing Services,

and the Customer shall provide as much information as Unifabs reasonably requests in order to prepare a Quotation;

2.2. Where clause 2.1.1 applies:

2.2.1. Unifabs shall, as soon as reasonably practicable either:

(a) inform the Customer that it declines to provide the requested CAD Drawing Services; or

(b) inform the Customer that it will provide the requested CAD Drawing Services, at which point and on which date the Contract shall come into existence (**Commencement Date**).

2.2.2. Unifabs may give an estimate to the Customer as to the price to subsequently manufacture and deliver the products which are the subject of the CAD Drawing Services. The Customer acknowledges that any such estimate provided by Unifabs to the Customer shall not constitute a Quotation and shall not be binding upon Unifabs should the Customer subsequently wish to engage Unifabs to provide Manufacturing Services and Products based on the CAD Drawings which Unifabs has produced.

2.3. Where clause 2.1.2 applies:

2.3.1. Unifabs shall, as soon as reasonably practicable either:

(a) inform the Customer that it declines to provide the requested Manufacturing Services and Products; or

(b) provide the Customer with a Quotation;

- 2.3.2. if Unifabs provides the Customer with a Quotation pursuant to clause 2.3.1(b), Unifabs and the Customer shall discuss and agree the terms of that Quotation;
  - 2.3.3. once the Quotation is agreed, the Customer shall place an Order with Unifabs, which shall constitute an offer by the Customer to purchase the Manufacturing Services and Products in accordance with these Conditions; and
  - 2.3.4. the Order shall only be deemed to be accepted when Unifabs issues the Customer with an Order Acknowledgement, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5. Any Quotation given by Unifabs shall not constitute an offer, and is only valid for a period of thirty (30) days from its date of issue.
- 2.6. All of these Conditions shall apply to the supply of both Products and Services except where application to one or the other is specified.

### **3. PRODUCTS**

- 3.1. The Products are described in the Order Acknowledgement and the CAD Drawings.
- 3.2. The Customer shall indemnify Unifabs against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Unifabs arising out of or in connection with any claim made against Unifabs for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with Unifabs's use of the CAD Drawings (regardless of whether such CAD Drawings have been provided by the Customer or produced by Unifabs as part of the CAD Drawing Services). This clause 3.2 shall survive termination of the Contract.
- 3.3. Unifabs reserves the right to amend the Order Acknowledgement and/or the CAD Drawings if required by any applicable statutory or regulatory requirement and Unifabs shall notify the Customer in any such event.

### **4. DELIVERY OF PRODUCTS**

- 4.1. Unifabs shall ensure that each delivery of the Products is accompanied by a delivery note which shows all relevant Customer and Unifabs reference numbers, the type and quantity of the Products (including the code number of the Products, where applicable), special storage instructions (if any) and, if the Products are being delivered by instalments, the outstanding balance of Products remaining to be delivered.
- 4.2. Unifabs shall use reasonable endeavours to deliver the Products to the Delivery Location on the relevant Delivery Date.

- 4.3. Delivery of the Products shall be completed on the completion of unloading of the Products at the Delivery Location, unless otherwise agreed between the parties in writing.
- 4.4. Any Delivery Dates for the Products are approximate only, and the time of delivery is not of the essence. Unifabs shall not be liable for any delay in delivery of the Products that is caused by:
  - 4.4.1. a Force Majeure Event;
  - 4.4.2. the Customer changing its requirements for the Products; or
  - 4.4.3. the Customer's failure to provide Unifabs with adequate delivery instructions for the Products or any other instructions that are relevant to the supply of the Products.
- 4.5. If Unifabs fails to deliver the Products, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Products. Unifabs shall have no liability for any failure to deliver the Products to the extent that such failure is caused by:
  - 4.5.1. a Force Majeure Event;
  - 4.5.2. the Customer changing its requirements for the Products; or
  - 4.5.3. the Customer's failure to provide Unifabs with adequate delivery instructions for the Products or any relevant instruction related to the supply of the Products.
- 4.6. If the Customer fails to accept delivery of the Products within one (1) Business Day of the day on which Unifabs attempted to make delivery of the Products, then except where such failure or delay is caused by a Force Majeure Event or by Unifabs's failure to comply with its obligations under the Contract in respect of the Products:
  - 4.6.1. delivery of the Products shall be deemed to have been completed at 9.00 am on the next Business Day following the day on which Unifabs attempted to make delivery of the Products; and
  - 4.6.2. Unifabs shall store the Products until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.7. If ten (10) Business Days after the day on which Unifabs attempted to make delivery of the Products, the Customer has not taken delivery of the Products, Unifabs may resell or otherwise dispose of part or all of the Products and, after deducting reasonable storage and selling costs, charge the Customer for any shortfall below the price of the Products.
- 4.8. Unifabs may deliver the Products by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

## **5. QUALITY OF PRODUCTS**

- 5.1. Unifabs warrants that on delivery the Products shall:
  - 5.1.1. conform in all material respects with their description, the Order Acknowledgement and the CAD Drawings; and
  - 5.1.2. be free from material defects in design, material and workmanship.
- 5.2. Subject to clause 5.3, Unifabs shall, at its option, repair or replace the defective Products, or refund the price of the defective Products in full if:
  - 5.2.1. the Customer gives notice in writing within a reasonable time of discovery that some or all of the Products do not comply with the warranty set out in clause 5.1;
  - 5.2.2. Unifabs is given a reasonable opportunity of examining such Products; and
  - 5.2.3. the Customer (if asked to do so by Unifabs) returns such Products to Unifabs's place of business at Unifabs's cost.
- 5.3. Unifabs shall not be liable for the Products' failure to comply with the warranty in clause 5.1 if:
  - 5.3.1. the Customer makes any further use of such Products after giving a notice in accordance with clause 5.2;
  - 5.3.2. the defect arises because the Customer failed to follow Unifabs's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products or (if there are none) good trade practice;
  - 5.3.3. the defect arises as a result of Unifabs following the CAD Drawings in the production of the Products;
  - 5.3.4. the Customer alters or repairs such Products without the written consent of Unifabs;
  - 5.3.5. the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 5.3.6. the Products differ from the Order Acknowledgement and/or the CAD Drawings as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
- 5.4. Except as provided in this clause 5, Unifabs shall have no liability to the Customer in respect of the Products' failure to comply with the warranty set out in clause 5.1.
- 5.5. The terms of these Conditions shall apply to any repaired or replacement Products supplied by Unifabs.

## **6. TITLE AND RISK**

- 6.1. The risk in the Products shall pass to the Customer on completion of delivery.
- 6.2. Title to the Products shall not pass to the Customer until Unifabs receives payment in full (in cash or cleared funds) for the Products.
- 6.3. Until title to the Products has passed to the Customer, the Customer shall:
  - 6.3.1. store the Products separately from all other goods held by the Customer so that they remain readily identifiable as Unifabs's property;
  - 6.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Products;
  - 6.3.3. maintain the Products in satisfactory condition and keep them insured against all risks for their full price on Unifabs's behalf from the date of delivery;
  - 6.3.4. notify Unifabs immediately if it becomes subject to any of the events listed in clause 14.2.2 to clause 14.2.4; and
  - 6.3.5. give Unifabs such information relating to the Products as Unifabs may require from time to time.
- 6.4. If, before title to the Products passes to the Customer, the Customer becomes subject to any of the events listed in clause 14.2.2 to clause 14.2.4, then Unifabs may, without limiting any other right or remedy it may have:
  - 6.4.1. require the Customer to deliver up all Products in its possession which have not been resold, or irrevocably incorporated into another product; and
  - 6.4.2. if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Products are stored in order to recover them.

## **7. SUPPLY OF SERVICES**

- 7.1. Unifabs shall supply the Services to the Customer in accordance with these Conditions and, in respect of the Manufacturing Services, the Order Acknowledgment in all material respects.
- 7.2. Unifabs shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order Acknowledgment, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 7.3. Unifabs reserves the right to amend the Order Acknowledgment and/or the CAD Drawings if necessary to comply with any applicable law or regulatory requirement or if the amendment will not materially affect the nature or quality of the Services, and Unifabs shall notify the Customer in any such event.

- 7.4. Unifabs warrants to the Customer that the Services will be provided using reasonable care and skill.
- 7.5. Unifabs shall ensure that any CAD Drawings it produces as part of the CAD Drawing Services shall materially reflect the Specification.
- 7.6. The Customer may reject any CAD Drawings delivered to it that it considers (acting reasonably and in good faith towards Unifabs at all times) do not comply with clause 7.5, provided that:
- 7.6.1. the Customer gives written notice of such rejection to Unifabs within three (3) Business Days of delivery; and
- 7.6.2. none of the events listed in clause 7.8 apply.
- 7.7. If the Customer fails to give notice of rejection in accordance with clause 7.6, it shall be deemed to have accepted the CAD Drawings and Unifabs shall have no further liability to the Customer for the CAD Drawings.
- 7.8. Unifabs shall not be liable for failure to comply with clause 7.5 in any of the following events:
- 7.8.1. the Customer makes any further use of the CAD Drawings after giving notice in accordance with clause 7.6.1;
- 7.8.2. the defect arises as a result of Unifabs following the Specification supplied by the Customer;
- 7.8.3. the Customer alters the CAD Drawings without the written consent of Unifabs;
- 7.8.4. the CAD Drawings differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 7.9. If the Customer rejects the CAD Drawings under clause 7.6 then the Customer shall be entitled to require Unifabs to amend or replace the rejected CAD Drawings.
- 7.10. Once Unifabs has complied with the Customer's request under clause 7.9, it shall have no further liability to the Customer for the rejected CAD Drawings' failure to comply with clause 7.5.

## **8. CUSTOMER'S OBLIGATIONS**

- 8.1. The Customer shall:
- 8.1.1. ensure that the terms of the Order Acknowledgement and any information it provides in the Specification are complete and accurate;
- 8.1.2. co-operate with Unifabs in all matters relating to the Products and the Services;



- 8.1.3. provide Unifabs, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by Unifabs to provide the Products and/or Services;
  - 8.1.4. provide Unifabs with such information and materials as Unifabs may reasonably require in order to supply the Products and/or Services, and ensure that such information is complete and accurate in all material respects;
  - 8.1.5. comply with all applicable laws, including health and safety laws;
  - 8.1.6. keep all materials, equipment, documents and other property of Unifabs (**Unifabs Materials**) at the Customer's premises in safe custody at its own risk, maintain Unifabs Materials in good condition until returned to Unifabs, and not dispose of or use Unifabs Materials other than in accordance with Unifabs's written instructions or authorisation; and
  - 8.1.7. comply with any additional obligations as set out in the Order Acknowledgement.
- 8.2. If Unifabs's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 8.2.1. without limiting or affecting any other right or remedy available to it, Unifabs shall have the right to suspend performance of the Services and/or delivery of the Products until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays Unifabs's performance of any of its obligations;
  - 8.2.2. Unifabs shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Unifabs's failure or delay to perform any of its obligations as set out in this clause 8.2; and
  - 8.2.3. the Customer shall reimburse Unifabs on written demand for any costs or losses sustained or incurred by Unifabs arising directly or indirectly from the Customer Default.

## **9. CHANGE CONTROL**

- 9.1. Either party may propose changes to the Order Acknowledgement and/or the CAD Drawings but no proposed changes shall come into effect until a relevant Change Order has been signed by both parties.
- 9.2. If Unifabs wishes to make a change to the Order Acknowledgement and/or the CAD Drawings it shall provide a draft Change Order to the Customer.
- 9.3. If the Customer wishes to make a change to the Order Acknowledgement and/or the CAD Drawings:

- 9.3.1. it shall notify Unifabs and provide as much detail as Unifabs reasonably requires of the proposed changes, including the timing of the proposed change; and
- 9.3.2. Unifabs shall, as soon as reasonably practicable after receiving the information at clause 9.3.1, provide a draft Change Order to the Customer.
- 9.4. If the parties:
  - 9.4.1. agree to a Change Order, they shall sign it and that Change Order shall amend the relevant Order Acknowledgement and/or CAD Drawings; or
  - 9.4.2. are unable to agree a Change Order, either party may require the disagreement to be dealt with in accordance with the dispute resolution procedure in clause 17.
- 9.5. Unifabs may charge for the time it spends on preparing and negotiating Change Orders which implement changes proposed by the Customer pursuant to clause 9.3 on a time and materials basis at Unifabs's daily rates as notified to the Customer from time to time.

## **10. CHARGES AND PAYMENT**

- 10.1. The price for the Products and Manufacturing Services:
  - 10.1.1. shall be the price set out in the Order Acknowledgement; and
  - 10.1.2. shall be inclusive of all costs and charges of packaging, insurance and transport of the Products.
- 10.2. The charges for the CAD Drawing Services shall be as agreed between the parties in writing.
- 10.3. Unifabs reserves the right to increase the price of the Products and/or the Services, by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Products and/or the Services to Unifabs that is due to:
  - 10.3.1. any factor beyond the control of Unifabs (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 10.3.2. any request by the Customer to change the Delivery Date(s), quantities or types of Products and/or Services ordered, the Order Acknowledgement or the CAD Drawings; or
  - 10.3.3. any delay caused by any instructions of the Customer in respect of the Products and/or Services or failure of the Customer to give Unifabs adequate or accurate information or instructions in respect of the Products and/or Services.
- 10.4. In respect of Manufacturing Services and Products, Unifabs shall invoice the Customer on or at any time after completion of delivery of the Products. In respect of CAD Drawing

Services, Unifabs shall invoice the Customer on or at any time after completion of the CAD Drawing Services.

10.5. The Customer shall pay each invoice submitted by Unifabs:

10.5.1. within thirty (30) days of the end of the month in which the Products and/or Services are provided; and

10.5.2. in full and in cleared funds to a bank account nominated in writing by Unifabs, and

time for payment shall be of the essence of the Contract.

10.6. All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by Unifabs to the Customer, the Customer shall, on receipt of a valid VAT invoice from Unifabs, pay to Unifabs such additional amounts in respect of VAT as are chargeable on the supply of the Services or Products at the same time as payment is due for the supply of the Services or Products.

10.7. If the Customer fails to make a payment due to Unifabs under the Contract by the due date, then, without limiting Unifabs's remedies under clause 14, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 10.7 will accrue each day at 4% a year above the base rate of Barclays Bank plc from time to time, but at 4% a year for any period when that base rate is below 0%.

10.8. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## **11. INTELLECTUAL PROPERTY RIGHTS**

11.1. All Intellectual Property Rights in or arising out of or in connection with the Products (other than Intellectual Property Rights in any Unifabs Materials) shall pass to the Customer, subject to the Customer paying for the Products in accordance with these Conditions.

11.2. All Intellectual Property Rights in or arising out of or in connection with the CAD Drawings produced by Unifabs as part of the CAD Drawing Services and the Services (other than Intellectual Property Rights in any materials provided by the Customer) shall be owned by Unifabs.

11.3. The Customer grants Unifabs a fully paid-up, non-exclusive, royalty-free non-transferable licence to use, copy and modify any CAD Drawings provided by the Customer and/or any other materials provided by the Customer to Unifabs for the term of the Contract for the purpose of providing the Products and/or Services to the Customer.

## **12. CONFIDENTIALITY**

- 12.1. Each party undertakes that it shall not at any time during the Contract, and for a period of five (5) 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 (including, but not limited to, in the case of the Customer, CAD Drawings produced by Unifabs as part of the CAD Drawing Services), except as permitted by clause 12.2.
- 12.2. Each party may disclose the other party's confidential information:
- 12.2.1. to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12; and
  - 12.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## **13. LIMITATION OF LIABILITY**

- 13.1. The restrictions on liability in this clause 13 apply to every liability.
- 13.2. Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:
- 13.2.1. death or personal injury caused by negligence;
  - 13.2.2. fraud or fraudulent misrepresentation; and
  - 13.2.3. breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 13.3. Subject to clause 13.2, Unifabs's total liability to the Customer arising under or in connection with the Contract, whether in contract, tort (including negligence), misrepresentation, restitution or otherwise, shall not exceed the total price for the Products and/or Services provided under such Contract.
- 13.4. Subject to clause 13.2, neither party shall be liable for the following heads of loss:
- (a) loss of profits;
  - (b) loss of sales or business;
  - (c) loss of agreements or contracts;

- (d) loss of anticipated savings;
- (e) loss of use or corruption of software, data or information;
- (f) loss of or damage to goodwill; and
- (g) indirect or consequential loss.

13.5. Unifabs has given commitments as to compliance of the Products and Services with relevant specifications in clause 5 and clause 7. In view of these commitments, the terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and sections 3, 4 and 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

13.6. This clause 13 shall survive termination of the Contract.

#### **14. TERMINATION**

14.1. Without affecting any other right or remedy available to it, Unifabs may terminate the Contract by giving the Customer not less than one (1) month's written notice.

14.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

14.2.1. the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within fourteen (14) days after receipt of notice in writing to do so;

14.2.2. the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

14.2.3. the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

14.2.4. the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.3. Without affecting any other right or remedy available to it, Unifabs may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

14.4. Without affecting any other right or remedy available to it, Unifabs may suspend the supply of Services or all further deliveries of Products under the Contract or any other contract

between the Customer and Unifabs if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 14.2.2 to clause 14.2.4, or Unifabs reasonably believes that the Customer is about to become subject to any of them.

## **15. CONSEQUENCES OF TERMINATION**

### **15.1. On termination of the Contract:**

15.1.1. the Customer shall immediately pay to Unifabs all of Unifabs's outstanding unpaid invoices and interest and, in respect of Services and Products supplied but for which no invoice has been submitted, Unifabs shall submit an invoice, which shall be payable by the Customer immediately on receipt;

15.1.2. the Customer shall return all of Unifabs Materials and any Products which have not been fully paid for. If the Customer fails to do so, then Unifabs may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.

15.2. Termination or expiry of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

15.3. Any provision of the Contract that expressly or by implication is intended to have effect after termination or expiry shall continue in full force and effect.

## **16. FORCE MAJEURE**

16.1. Neither party shall be in breach of the Contract nor liable for delay in performing or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control (a **Force Majeure Event**).

16.2. If the Force Majeure Event prevents, hinders or delays the affected party's performance of its obligations for a continuous period of more than four (4) weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving one (1) week's written notice to the affected party.

## **17. DISPUTE RESOLUTION PROCEDURE**

17.1. If a dispute arises out of or in connection with the Contract or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause 17:

17.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Managing Director of Unifabs

and equivalent individual of the Customer shall attempt in good faith to resolve the Dispute;

- 17.1.2. if the Managing Director of Unifabs and equivalent individual of the Customer are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the parties agree to enter into mediation in good faith to settle the Dispute in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties within fourteen (14) days' service of the Dispute Notice, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, referring the dispute to mediation. A copy of the ADR notice should be sent to CEDR. Unless otherwise agreed between the parties, the mediation will start not later than thirty (30) days after the date of the ADR notice.
- 17.2. The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 18.10, which shall apply at all times.
- 17.3. If the Dispute is not resolved within sixty (60) days after service of the ADR notice, either party fails to participate or ceases to participate in the mediation before the expiry of that sixty (60) day period, or the mediation terminates before the expiry of that sixty (60) day period, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 18.10.

## **18. GENERAL**

### **18.1. Assignment and other dealings**

- 18.1.1. Unifabs may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 18.1.2. The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of Unifabs.

### **18.2. Notices.**

- 18.2.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) sent by email to the address specified in the Order Acknowledgement.
- 18.2.2. Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other] next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 18.2.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

18.2.3. This clause 18.2 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

18.3. **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 18.3 shall not affect the validity and enforceability of the rest of the Contract.

18.4. **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

18.5. **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

18.6. **Entire agreement.**

18.6.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

18.6.2. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or



negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.

- 18.7. **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 18.8. **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 18.9. **Governing law.** The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 18.10. **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.