



**ASHWORTH EUROPE LIMITED
CONDITIONS OF BUSINESS**

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1. Definitions

In these Conditions the following expressions shall have the following meanings:

“the Company” means Ashworth Europe Limited “the Customer” means the person, firm or corporation with whom the Company contracts for the sale of the Goods upon the terms of these Conditions “the Goods” means the products which are to be manufactured by the Company and sold to the Customer pursuant to the Contract. “The Contract” means the contract for the sales of the Goods by the Company to the Customer incorporating these Conditions arising from the Company’s acceptance of the Customer’s Order. “Working day” means any day of the week except a day which is a Saturday, a Sunday or a bank, public or statutory holiday.

2. General

(a) Any quotation or estimate given by the Company is an invitation to the Customer to place and thereby make an offer open to acceptance by the Company and no order placed in response to or any other acceptance of a quotation or estimate shall give rise to a contract binding upon the Company.

(b) These Conditions are the only conditions upon which the Company transacts business and shall be incorporated in the Contract to the exclusion of all other terms and conditions including any terms or conditions specified or referred to in any order placed by the Customer. Any reference in any document forming part of or evidencing the Contract (including any order, design, drawing, specification or similar document) to any terms or conditions of purchase or business of the Customer shall not have the effect of incorporating any such terms or conditions in the Contract. All representations whether written or oral made prior to the acceptance of the Customer’s order by the Company are expressly excluded from the Contract, unless otherwise agreed in writing by both parties.

(c) No variation of these Conditions shall have effect unless it is agreed to by the Company in a document signed by a director of the Company issued to the Customer.

3. Prices

(a) All prices are exclusive of Value Added Tax which will be charged at the rate applicable.

(b) Prices stated in quotations/estimates (whether written or oral), acceptances of orders or other documents issued by the Company prior to despatch of the Goods are not binding upon the Company and the price charged shall be the price so stated adjusted to take account of any increases or decreases in the cost of manufacture of the Goods subsequent to such statement of the price unless the price so stated was also stated to be fixed and the Customer has complied in all respects with the terms and conditions specified by the Company subject to which the price was stated to be fixed.

(c) In the case of Goods to be delivered to a destination in the United Kingdom unless expressly stated to the contrary in the Contract the price for the goods is ex works (incoterms 1990). Where so requested the Company may arrange carriage of the Goods to that destination by a third party or by the Company’s own transport, the costs of which shall be borne by the Customer.

(d) The Customer will be charged for cases and other packing materials used in the delivery of the Goods.

4. Passing of Risk

The Goods shall be at risk of the Customer:

(a) If they are delivered to the Customer’s own premises by the Company’s own transport from time to time at which they are unloaded from such transport.

(b) In any other case from the time at which they are loaded on the vehicle on which they are to leave the Company’s premises en route to the Customer whether such vehicle is the Customer’s or a third party’s vehicle.

5. Inspection

(a) All goods supplied under the Contract will be carefully inspected in course of manufacture and where applicable, shall be submitted to the Company’s standard tests at its works before dispatch. If the customer requests any other testing, unless otherwise agreed, that testing shall take place at the Company’s works and any additional costs or expenses incurred by the Company shall be charged to the Customer as an addition to the price of the Goods. If the Customer

requests that testing should be done in his presence or that of his representative then upon the Company giving notice of availability of the Goods for testing the Customer or his representative shall attend at the Company's works for testing of the Goods within 7 days of that notice. If the Customer fails to do so or if within 14 days of the Customer having done so the Customer does not notify the Company that the Goods are not in accordance with the Contract specifying the matters complained of the Customer shall be conclusively deemed to have accepted that the Goods are in accordance with the Contract and shall not thereafter be entitled to reject the Goods or to claim damages or compensation from the Company on the grounds of anything which such testing revealed or would have revealed if the Customer or his representative had attended the testing.

(b) The Customer shall inspect the Goods immediately upon their arrival at the destination to which they are to be delivered pursuant to the Contract for the purpose of ascertaining:-

(i) that the number of items and packages and the quantities are as specified and the Goods are as described in the Company's Delivery Note;

(ii) whether the Goods have been damaged in transit;

(iii) that the Goods are those specified in the Company's order stated on the Company's Delivery Note. Any discrepancy between the Goods delivered and those described in the Company's Delivery Note or specified in the Customer's order and any damage to the Goods in transit must be notified to the Company in writing within three working days of the Customer's receipt of the Goods. In the case of non-delivery of the Goods the Customer must notify the Company in writing within three working days of the receipt by the Customer of the Company's Delivery Note. Without prejudice to the provisions of Condition 4 no claim in respect of non-delivery or damage in transit will be entertained by the Company unless the provisions of this Condition are complied with by the Customer.

(c) Where the Goods are not manufactured by the Company and are delivered direct to the Customer by, or collected by the Customer from, the manufacturer, the Company shall not be liable for any loss or damage to the Goods whatsoever and whensoever occurring.

6. Cancellation of Orders

The Customer shall not be entitled to cancel an order which has been accepted by the Company except upon terms which re-imburse the Company for its loss of profit and all costs charges and expenses (including costs of tooling and purchase of raw materials) incurred by the Company in respect of the order up to the date of receipt by the Company of written notification of cancellation from the Customer.

7. Payment

(a) Unless the Customer has a credit account with the Company the contract price for the Goods shall be payable with the Customer's order or against a pro-forma invoice.

(b) Where the Customer has a credit account with the Company, payment of the Goods shall be made not later than 30 days following the date on which the Company issued its invoice in respect of the sale of Goods to the Customer unless the Company agreed in writing to extend additional credit to the Customer. The time stipulated for payment shall be of the essence of the Contract and failure to pay within the period specified shall entitle the Company on the expiration of 14 days notice in writing to the Customer to suspend further performance of the Contract pending payment and in addition the Company shall be entitled without liability wholly or partly to cancel the Contract or any other contract between the Company and the Customer without prejudice to any other remedy available to the Company.

(c) Customers wishing to open a credit account with the Company must furnish references which unless otherwise stated shall be one bank reference and two trade references.

(d) Where Goods are delivered by instalments, the Customer shall pay for each instalment in accordance with the terms of this Condition.

(e) Unless otherwise agreed in writing the Customer shall not be entitled to set off against any monies due to the Company under the Contract, any amount claimed by or due to the Customer from the Company whether pursuant to the Contract or on any other account whatsoever.

(f) The Company shall be entitled to interest (as well before as after any judgment) on any part of the price not paid by its due date from that date until actual payment at the rate of 4% per annum above the Bank of England's base lending rate prevailing from time to time during such period.

(g) The Company may, by notice in writing to the Customer, declare all other sums owing by the Customer to the Company (whether under the Contract or any other contract or any other account) which at the date of the notice are not immediately due and payable to be immediately due and payable and the Customer shall pay the same to the Company accordingly.

8. Title to the Goods

(a) Title to and property in the Goods shall remain vested in the Company (notwithstanding their delivery and the passing of the risk therein to the Customer) until:

(1) the price of the Goods; and

(2) all other money due from the customer to the Company on any other account or pursuant to any other contract, has been paid discharged or satisfied in full.

(b) Until the title to and property in the Goods pass to the Customer the following provisions shall apply:-

(i) The Company may at any time without prior notice to the Customer repossess and shall resell the Goods if any of the events specified in Condition 15 occurs or if the sum due from the Customer to the Company under the Contract or on any other account or pursuant to any other contract is not paid on the due date for payment. For the purpose of exercising its rights under this sub-paragraph the Company, its employees or agents together with any vehicle considered by the Company to be necessary shall be entitled at any time without prior notice to the Customer to free and unrestricted entry upon and access to the Customer's premises and/or other locations where any of the Goods are situated.

(ii) The Customer shall store and insure the Goods in a proper manner in conditions which adequately protect and preserve them without charge to the Company and ensure that they are clearly identified as belonging to the Company. The Company shall be entitled to examine the Goods in storage at any time during normal business hours and upon giving the Customer reasonable notice of its intention to do so and to enter upon any premises owned or occupied or access to which is controlled by the Customer for that purpose.

(iii) The Customer shall not be entitled to pledge or in way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Customer does so all monies owing by the Customer to the Company shall forthwith become due and payable

(iv) The rights and remedies conferred upon the Company by this Condition 8 are in addition to and shall not in any way prejudice, limit or restrict any other rights or remedies of the Company under the Contract.

9. Performance of the Goods

(a) Any figures or statements in the Contract or in any other document supplied by the Company as to the performance or capacity of the Goods are based upon the assumption that they will be used in conditions suitable for their proper and effective operation and are only approximate.

(b) If in the Contract the Company expressly guarantees the accuracy of such figures or statements then, in the event of the Goods after commissioning failing to achieve them, the Company shall be entitled to a reasonable period and to reasonable facilities to enable it to bring the Goods up to the guaranteed figures or statements and the contractual time for delivery of the Goods shall be extended for such reasonable period. If by the Contract the Company undertakes only that the Goods will comply with such figures or statements subject to a margin or tolerance then, in the event of the Goods after commissioning failing to achieve and comply with such undertaking the Company shall be entitled to a reasonable period and to reasonable facilities to bring the Goods up such figures or statements subject to such margin or tolerance, and the contractual time for delivery of the Goods shall be extended for such reasonable period.

(c) Subject to the provisions of (a) and (b) above, all weights, dimensions and other figures or statements as to performance or capacity contained in the Contract or in any other documents supplied by the Company before or after the Contract shall be approximate only.

(d) The descriptions and illustrations contained in the Company's catalogues, price lists and other advertising matter are intended merely to present a general idea of the goods described therein and none of them shall form part of the Contract.

10. Performance of the Contract

(a) Dates or periods for delivery are approximate. If having used its reasonable endeavours to comply with any date or dates specified in the Contract for the dispatch or delivery of the Goods to the Customer the Company is unable to do so such failure shall not constitute a breach of contract by the Company entitling the Customer to terminate the Contract and/or to claim damages against the Company and the Company shall be entitled to an extension of the time fixed for the delivery which is reasonable in all the circumstances.

(b) If the Company so agrees the Customer may collect the Goods, in which case the Customer shall collect them within 3 days of being notified that they are ready for collection failing which the Company may dispatch the Goods at the Customer's risk and expense or store them in which event the Customer shall pay the Company's reasonable storage charges and the Goods shall be stored at the Customer's risk. If the Customer requests the Company to delay dispatch of the Goods and the Company agrees to do so the Customer shall pay the Company's reasonable storage charges and the Goods shall be stored at the Customer's risk as from the date upon which the Goods are ready for dispatch.

11. Acceptance of the Goods by the Customer

The Customer shall be deemed to have accepted the Goods and it shall be conclusively agreed that they are in accordance

with the Contract unless within 10 working days of receipt of the Goods the Customer notifies the Company in writing of any defect in materials or workmanship or failure to comply with designs, drawings, specifications or other data supplied by the Customer or any other failure of the Goods to conform with the Contract which would be apparent upon such inspection and testing as if it is reasonable for the Customer to undertake within such 10 working days.

12. Guarantee

(a) If the Goods are to be manufactured entirely in accordance with designs, drawings, specifications and other data supplied by the Customer and provided that the Goods are so manufactured the Company shall not be liable to the Customer in contract or in tort (including breach of statutory duty) for any loss or damage the Customer may suffer because the Goods subsequently prove to be unsuitable for the purpose or purposes for which the Customer required them or prove not to be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended).

(b) Where the Goods supplied or any part thereof are not of the Company's own manufacture the guarantee below shall not apply but the Company will use all reasonable endeavours to pass on to the Customer the benefit of any guarantee or warranty given by the supplier of such Goods to the Company.

(c) Subject to (a) above and to the provisions of Condition 11 if the Customer establishes to the reasonable satisfaction of the Company that:

(i) there is a defect in the materials or workmanship of the Goods;

(ii) there is a failure on the part of the Company to manufacture the Goods in accordance with the designs, drawings, specifications or other data supplied by the Customer;

(iii) there is some other failure on the part of the Company in relation to the Goods to conform with the Contract; then the Company shall as its option either:

(aa) replace the Goods with goods which in all respects are in accordance with the Contract;

or

(bb) repair or make good such defect or failure free of charge (including all costs of transportation of the Goods to and from the parties for that purpose) to the Customer;

subject to every case to the remaining provisions of this Condition.

(d) Paragraph (c) of this Condition ("the Guarantee") shall not apply:

(i) unless the Customer notifies the Company in writing of the alleged defect or failure immediately upon its first becoming aware thereof and in any event within 6 months of the date upon which the risk in the Goods passed to the Customer under the provisions of Condition 4;

(ii) unless the Customer as soon as reasonably practicable after first becoming aware of the alleged defect or failure returns the Goods in each other case where it is practicable to do so the Company, carriage paid, for inspection examination and testing and in any other permits the Company to have access to the goods at the Customer's premises for such purposes;

(iii) if the alleged defect or failure is caused by other parts of any component or assembly into which the Goods are incorporated by the Customer;

(iv) if the alleged defect or failure arises from any drawing, design or specification supplied by the customer;

(v) if the alleged defect or failure arises from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the company's approval;

(vi) if the total price for the Goods has not been paid by the due date for payment.

(e) if the Company elects to replace the Goods it shall at its own expense deliver the replacement goods to the Customer at the address at which the defective goods were located and the title to the defective goods shall (if it has vested in the Customer) re-vest in the Company and the Customer shall make any such arrangements as may be necessary for the purpose of delivering up the defective goods to the Company. If the Company elects to repair or make good the Goods and such work is to be carried out at the Customer's premises the Customer shall permit the Company to have access to the Goods on such premises as the Company may require for that purpose.

(f) The Guarantee is in substitution for any other legal remedy of the Customer in respect of the alleged defect or failure and the liability of the Company shall in all such cases and for all such purposes be limited to the obligations imposed by the Guarantee. Any other condition, warranty, representation or undertaking on the part of the Company as to the quality of the Goods or their fitness or suitability for any purpose however and whenever expressed or which may be implied by statute custom of the trade or otherwise is hereby excluded and the provisions of Sections 13 to 15 inclusive of the Sale of Goods Act 1979 (as amended) shall not apply to the Contract except where the Customer deals as consumer within Section 12 of the Unfair Contract Terms Act 1977. Except as and to the extent provided by the Guarantee the Company shall not be liable to the Customer in contract or in tort (including breach of statutory duty) for any loss or damage direct, indirect or consequential (including economic loss of any kind) which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company its employees or agents.

(g) Nothing contained in this Condition shall operate so as:

(i) to exclude the liability of the Company for death or personal injury resulting from the negligence of the Company its employees or agents;

(ii) to exclude the conditions and warranties implied by Section 12 of the Sale of Goods Act 1979 (as amended);

(iii) to impose on the Company any liability in respect of any representation suggestion or comment with regard to the Goods made by the Company, its employees or agents in the course of any negotiations between the Company and the Customer leading to the making of the Contract unless in the case of any such representation the Company has expressly agreed in writing that it shall be a term of the Contract.

13. Sub-Contracting

The Company shall be entitled to sub-contract the manufacture of the Goods in whole or in part.

14. Customer's Designs, Drawings, Specifications and other data

(a) The customer shall be solely responsible for the accuracy of its designs, drawings, specifications and other data (if any) supplied to the Company by the Customer, its employees or agents and in conformity with which the Company is to manufacture the Goods notwithstanding that the Company may have examined, inspected, studied or commented to the Customer upon any such designs, drawings, specifications or other data.

(b) The Customer shall indemnify the Company against all actions, proceedings, claims, costs and expenses which may be brought against or incurred by the Company by reason of its manufacturing and supplying the Goods in accordance with such designs, drawings, specifications or other data whether or not it is alleged in such actions, proceedings and claims that any patent, trade mark, design, copyright design, right confidential information or other intellectual property or other exclusive right of any third party has been infringed.

(c) If the Company is required in connection with the manufacture of the Goods to carry out any research or development work all intellectual property rights therein shall be the absolute property of the Company and the Customer shall keep confidential all information disclosed by the Company to it concerning such research and development work and shall not exploit such information for its own purposes without the prior written consent of the Company provided that the foregoing provision shall not prevent the Customer from using the Goods for whatever purpose it may think fit.

15. Breach of Contract by or Insolvency of the Customer

If any of the following events occurs or in the opinion of the Company is reasonably likely to occur:

(a) the Customer commits any breach of the Contract; or

(b) any distress or execution is levied upon any of the goods or property of the Customer and is not paid out within 7 days; or

(c) the Customer (or where the Customer is a partnership any partner thereof) offers to make any arrangements with or for the benefit of its or his creditors generally or a petition is presented to make the Customer or any such partner bankrupt; or

(d) the Customer (being a limited company) has an Administrative Receiver or a Receiver and Manager appointed of the whole or any part of its undertaking property or assets or a petition is presented or any order is made or a resolution is passed for the winding up of the Customer or for the appointment of an Administrator thereof the Customer's authority to sell goods title to which is vested in the Company shall cease and the Company may without prejudice to any rights or remedies it may have against the Customer forthwith suspend further performance of the Contract or by notice in writing to the Customer terminate the Contract as it thinks fit. Notwithstanding any such suspension or termination, the Customer shall pay the Company in accordance with the Contract for all Goods despatched by the Company prior thereto and shall indemnify the Company against any loss liability or expense incurred by the Company in connection with the Contract including (without prejudice to the generality of the foregoing) loss of profit, liabilities and expenses in connection with raw materials and tooling obtained or produced for the purposes of the Contract and the cost of labour and overhead expenses reasonably attributable to the Contract.

16. Force Majeure

If the Company is delayed or prevented from performing the Contract or any part thereof by circumstances beyond its reasonable control including (but without limiting the generality of the foregoing) strikes, lockouts, or other industrial action, inability to obtain materials or labour, power or machinery breakdown or failure, fire, flood, civil commotion or any cause of whatever kind and whenever occurring, then the Company may suspend further performance of the Contract for so long as it is so delayed or prevented and such suspension shall not constitute a breach of the Contract on the part of the Company. The Company shall notify the Customer in writing of any such suspension of performance of the Contract and if such suspension continues for more than 12 weeks either the Company or the Customer may by notice in writing to other terminate the contract but without prejudice to the Company's right to be paid in accordance with the Contract for any part of the Goods which may have been despatched to the Customer prior to the suspension of performance by the

Company and to be reimbursed all other costs, charges and expenses incurred by the Company pursuant to the Contract up to the date of such notice of termination where it is given by the Company and up to the date of receipt thereof by the Company where it is given by the Customer.

17. Lien

Without prejudice to Clause 8 hereof, and to any other remedies of the Company, the Company shall in respect of all unpaid debts due from the Customer have a general lien on all goods and property of the Customer in its possession and shall be entitled on the expiration of 14 days' notice to the Customer to dispose of such goods and property as it thinks fit and to apply any proceeds towards reduction of such debts.

18. Waiver

The rights and remedies of the Company in respect of the Contract or in respect of any failure by the Customer to observe or comply with the terms thereof shall not be diminished waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company nor by any failure of or delay by the Company in asserting or exercising any such rights or remedies.

19. Law and Jurisdiction

The Contract shall be governed by and construed in all respects in accordance with English Law and the Company and the Customer submit themselves to the exclusive jurisdiction of the English Courts.

20. Headings

The headings to these Conditions are inserted for ease of reference and shall not affect their construction.

21. Notices

Any notice authorised or required to be given pursuant to these Conditions shall in the case of a notice to the Company be sent to its registered office and shall in the case of a notice to Customer be sent to the Customer at its registered office if the Customer is a company and in any other case to the address of the Customer last known to the Company. Any such notice may be given by post or facsimile or email transmission. To prove service in the case of a notice given by post it shall be sufficient to show that the notice was despatched by first class recorded delivery service in a correctly addressed and adequately stamped envelope and to prove service in the case of a notice given by facsimile or email transmission it shall be sufficient to show that it was made to the correct telephone number or email address. Service shall be deemed to have been effected 24 hours after despatch by post or facsimile or email transmission.