



# C&F Tooling Ltd.

Cashla, Athenry, Co. Galway,  
H65 V243, Ireland (Registered office)  
V.A.T. no. 4883930L  
Registered in Ireland, Company No. 137939

Tel. +353-91-790868  
Fax. +353-91-790873  
www.cftooling.ie

**GLOBAL DESIGN AND MANUFACTURE OF PRECISION SHEET METAL ASSEMBLIES**

## Terms and Conditions of Sale

- 1. Sale and Purchase.** These Terms and Conditions of Sale ("Terms and Conditions") are the only terms which govern the sale of any goods, materials, products or services (the "Products") by C&F Tooling Limited (the "Seller") to the buyer of such Products (the "Customer"). SELLER'S ACCEPTANCE OF CUSTOMER'S ORDER IS CONDITIONED UPON CUSTOMER'S ASSENT TO THESE TERMS AND CONDITIONS, AND ANY INCONSISTENT PROVISIONS OF ANY PURCHASE ORDER OR OTHER WRITING ARE HEREBY REJECTED AND SHALL NOT CONSTITUTE A PART OF THE CONTRACT OF SALE. CUSTOMERS' PLACEMENT OF AN ORDER, ACCEPTANCE AND RECEIPT OF THE GOODS, OR EITHER OF THEM, SHALL CONSTITUTE ASSENT TO THESE TERMS AND CONDITIONS. Except to the extent otherwise expressly agreed in a writing signed by the Managing Director of Seller, these Terms and Conditions and Seller's quotation, invoice, proposal and confirmation of sale, if any, constitute the entire agreement ("Agreement") between Customer and Seller regarding the sale of Products. These Terms and Conditions supersede all prior or contemporaneous understandings, agreements, negotiations, representations, warranties and communications, whether written or oral, between the parties regarding the sale of the Products. These Terms and Conditions prevail over any of Customer's terms and conditions of purchase regardless of whether or when Customer has submitted its request for quote, purchase order or its own set of terms and conditions. Any different or conflicting terms and conditions submitted from Customer to Seller, in any form, whether in conjunction with a request for quote, purchase order, confirmation or otherwise, shall not be effective and are deemed a nullity, regardless of when Customer submitted such terms and conditions. Seller's acceptance of Customer's purchase order(s) is expressly conditional on Customer's assent to these Terms and Conditions. Seller rejects all such additional or conflicting terms and conditions submitted by Customer. Seller's Terms and Conditions shall be deemed to control during the entire period in which Seller and Customer discuss and/or transact business. SELLER'S PERFORMANCE OR FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY CUSTOMER COMMUNICATION OR DOCUMENT SHALL NOT BE DEEMED TO WAIVE, MODIFY OR AMEND ANY PROVISION HEREIN OR CONSTITUTE SELLER'S ASSENT TO ANY SUCH ADDITIONAL, DIFFERENT AND/OR INCONSISTENT TERMS.
- 2. Purchase Price.** As consideration for the sale of the Products, Customer shall pay Seller the purchase price identified the Agreement (the "Purchase Price").
- 3. Payment of Purchase Price and Other Charges; Credit Terms.** Credit terms extended to Customer are subject to the discretion of Seller, and Seller may at any time require payment in full, in advance of or after the sale of the Products. Unless Seller agrees to other credit

terms in writing signed by an authorised officer of Seller, open account terms are net 45 days from the date of Seller's invoice. Amounts owing to Seller but unpaid after the date those amounts were due shall accrue a service charge of 2.5% per month, compounded monthly. Customer shall not withhold payment of any amounts due and payable to Seller, by way of set-off, recoupment, or otherwise.

4. **Delivery and Performance.** The delivery of the Products (and performance of services) will be scheduled by mutual agreement between the parties. SELLER SHALL NOT BE LIABLE FOR DELAYS IN DELIVERY OR PERFORMANCE PROVIDED IT IS USING GOOD FAITH EFFORTS TO PERFORM ITS OBLIGATIONS. SELLER ALSO SHALL NOT BE RESPONSIBLE FOR ANY DELAYS IN DELIVERY DUE IN WHOLE OR IN PART TO CIRCUMSTANCES NOT COMPLETELY WITHIN ITS CONTROL. Any claim of shortage must be made to Seller no later than 48 hours after Customer's receipt of the portion of the Products at issue.
5. **Risk of Loss.** Risk of loss for damage to the Products shall pass to Customer FOB Seller's manufacturing facility.
6. **Title.** Title to the Products shall not pass to the Customer until the Purchase Price is paid in full.
7. **Taxes.** The Purchase Price stated in the Agreement is exclusive of any VAT or other taxes or tariffs with respect to the purchase of the Products, and Customer shall be solely responsible for payment of all taxes.
8. **Warranty; Warranty Disclaimers.** Seller warrants its Products to be free of defects in material and workmanship under normal use for a period of 24 months following date of delivery to Customer. Seller's warranty obligation does not extend to instances of misuse, abuse, improper care or storage, negligence, alteration, accident, use of incompatible parts or supplies, or lack of specified maintenance of the product, and such acts shall relieve Seller of all obligations under the foregoing warranty. Seller warrants that it will repair or replace, at Seller's election, any Product that does not conform to the specifications identified in the Agreement, provided that Seller is notified of the non-conformance no later than ninety (90) days following Customer's receipt of the Product. Repair or replacement of defective components are the sole remedies for breach of Seller's warranty. Other than said warranty, the Products are being sold to Customer "as is", and **SELLER HEREBY DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
9. **Disclaimer of Consequential Damages; Limitations on Remedies.** **IN NO EVENT WILL SELLER, OR ITS AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE IN CONTRACT, TORT (INCLUDING, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE), BREACH OF STATUTORY DUTY, MISREPRESENTATION OR ANY OTHER THEORY FOR ANY LOSS, DAMAGE, COSTS OR EXPENSES OF AN INDIRECT OR CONSEQUENTIAL NATURE OF ANY KIND ARISING OUT OF OR RELATING TO THE PRODUCTS OR THE AGREEMENT, INCLUDING BUT NOT LIMITED TO LOSS OF USE, DOWNTIME, LOST PROFITS, COVER, RECALL COSTS, LOSS OF GOODWILL, FREIGHT EXPENSES, INDEPENDENT CONTRACTOR EXPENSES, ATTORNEYS' FEES, LEGAL EXPENSES AND EMPLOYEE WAGES AND BENEFITS OR ANY OTHER INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE HOWSOEVER CAUSED INCLUDING THE**

**REPLACEMENT OF EQUIPMENT AND PROPERTY AND/OR CLAIMS OF CUSTOMER'S END USERS FOR SUCH DAMAGES. IN NO EVENT SHALL SELLER'S LIABILITY TO CUSTOMER OR ANY THIRD PARTY, ARISING OUT OF OR RELATING TO THE PRODUCTS OR THE AGREEMENT, WHETHER FOR BREACH OF WARRANTY, BREACH OF CONTRACT, OR ARISING IN TORT OR OTHERWISE, EXCEED THE AMOUNT OF THE PURCHASE PRICE FOR THE PRODUCT TO WHICH THE CLAIM RELATES.**

10. **Default; Remedies.** Customer shall be in default under the Agreement for failure to (i) timely pay Seller's invoice(s) or (ii) to perform any other obligation of Customer under the Agreement, or (iii) if Customer is subject to any bankruptcy or receivership proceeding or makes an assignment for the benefit of creditors. In the event of default, Seller shall have all rights and remedies available to it at law or in equity.
11. **No Assignment.** Customer may not assign any rights or delegate any duties arising out of or relating to the Agreement without the prior written consent of Seller, which shall not be unreasonably withheld. Any attempted assignment or delegation without such consent shall be void and of no effect.
12. **No Waiver.** No waiver of any breach of the Agreement shall be deemed effective unless in a writing signed by the waiving party. No waiver of one breach shall be deemed a waiver of any other breach, or a waiver of the same breach that continues beyond the agreed-upon waiver period.
13. **Force Majeure.** Seller shall not be liable for failure to perform or delays in performance caused by acts of God, war, armed conflict, acts of terrorism, fire, explosions, floods, strikes, work stoppages, slow-downs, other labour difficulties, shortages or interruptions of power and/or fuel, shortages or interruptions of materials, shortages or interruptions of labour, shortages or interruptions in transportation, traffic, unanticipated and/or significant increases in Seller's costs, accidents, disasters, catastrophes, customs and border delays, embargoes, economic sanctions compliance, other delays, disease, epidemic, pandemic, compliance with any order or directive of any government agency, official or court, or other event or circumstance beyond Seller's exclusive and reasonable control. In the event of any of the foregoing, Seller's performance (i) shall be excused and/or (ii) the time for Seller's performance shall be extended to such time as may be reasonably necessary to enable Seller to profitably perform.
14. **Confidential Information.** All non-public, confidential or proprietary information, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations information, customer lists, pricing, discounts or rebates, disclosed by Seller to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with the Agreement, is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Customer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section 14. This Section 14 does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

15. **Intellectual Property.** Seller shall retain sole ownership of all right, title, and interest in and to all of its intellectual property, including, without limitation, content and materials on its website, ideas, methods, trademarks, service marks, trade names, symbols, logos, copyrights, patents, trade secrets, and know-how (collectively, the “Intellectual Property”), and no licenses to any Intellectual Property are created hereunder.
16. **Online Publication.** Seller’s Terms and Conditions may be published on Seller’s website, and if so published shall be deemed to be incorporated into all documents between Seller and Customer, with or without further notice or reference, including but not limited to all correspondence, offers, quotations, acceptances, purchase orders and invoices.
17. **Entire Agreement; Amendments.** The Agreement constitutes the entire agreement between the parties with respect to the matters contemplated therein, and supersedes all prior, contemporaneous and/or inconsistent agreements, understandings, and negotiations in the manner set forth above. The Agreement may be amended or modified only by a writing signed by the Managing Director of Seller.
18. **Severability.** If any provision or part-provision of this Agreement shall be 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 shall not affect the validity and enforceability of the rest of this Agreement. If one Party gives notice to the other of the possibility that any provision or part- provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.
19. **Governing Law, Exclusive Jurisdiction.** This Agreement shall be governed by, construed, and enforced in the accordance with the laws of Ireland and subject to the exclusive jurisdiction of the Irish Courts without reference to conflict of law principles.
20. **Dispute Resolution.** If there are any disputes, controversies or claims between the Parties in connection with any part of this this Agreement (a “Dispute”), such Dispute shall be referred to mediation which shall be commenced by either Party giving to the other Party a notice in writing (the “Mediation Notice”) requiring that the disputing Parties shall attempt to settle the conflict by mediation. If there is any point on the conduct of the mediation including as to the nomination of the mediator upon which the disputing Parties cannot agree within 14 days after service of the Mediation Notice, the appointment of a mediator shall be requested from CEDR. Disputing Parties may not terminate the mediation until each disputing Party has made its opening presentation, and the mediator has met each disputing Party separately for at least 1 hour.

If the matter is not resolved by mediation, then the dispute will be referred to Arbitration. A single Arbitrator shall be appointed by Chairman of the Chartered Institute of Arbitrators Ireland on the application of either Party. Arbitration shall be conducted under the UNCITRAL Rules. The Arbitrator shall apply Irish Law. The arbitration hearing shall commence no later than 120 days following notice by either Party of the demand for arbitration. The arbitration shall be heard in Dublin Ireland and shall be conducted in English. The decision will detail the reasoning of the arbitrator. The decision of the

Arbitrator decision shall be final. The costs of arbitrator shall be shared equally by the Parties, who shall each pay  $\frac{1}{2}$  of the estimated costs at least 10 days prior to the arbitration hearing. Failure to prepay their  $\frac{1}{2}$  of the estimated costs shall result in the arbitrator deciding against such Party.