



Beyond just Tolerance.

Terms and Conditions of Purchase

1. DEFINITIONS

1.1 In these Conditions the following words have the following meanings:

"**Company**" means The European Shoe Machinery Company Limited (company number 3159789), 63-65 Carrington Street, Kettering, Northampton, NN16 0BY.

"**Company Materials**" has the meaning given in clause 9.

"**Conditions**" means these standard terms and conditions of purchase as set out in this document as amended from time to time in accordance with clause 3.6 and (unless the context requires this not to be the case) includes any additional terms and conditions agreed in writing by the Company.

"**Contract**" means the contract for the purchase of the Goods and/or Services.

"**Delivery Address**" means the delivery address stated in the Order.

"**Goods**" means the goods (including any instalment of the goods or any part of them) described in the Order.

"**Order**" means the Company's purchase order to which these Conditions are referenced or annexed.

"**Price**" means the price of the Goods and/or Services.

"**Services**" means the services (or any part of them) described in the Order.

"**Specification**" means any plans, drawings, data or other information relating to the Goods and/or Services.

"**Supplier**" means the person, firm, company or other entity to whom the Order is addressed.

"**VAT**" means value added tax chargeable for the time being.

1.2 Any reference in these Conditions to any legislation or a provision of any legislation shall be interpreted so as to include a reference to that legislation or provision as it may be amended, re-enacted or extended at the relevant time. This will also include subordinate legislation as amended or re-enacted.

1.3 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.4 A reference to writing or written is to include faxes and e-mails unless otherwise stated in these Conditions.

1.5 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. APPLICATION OF CONDITIONS

2.1 All quotations given, Orders accepted and all Contracts entered into are subject to these Conditions.

2.2 These Conditions shall be incorporated into any Contract between the Company and the Supplier to the exclusion of any terms or conditions stipulated or referred to by the Supplier. Any dealings with the Company following receipt by the Supplier of notice of these Conditions shall automatically be deemed acceptance of these Conditions notwithstanding the absence of formal acknowledgement.

2.3 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.

2.4 These Conditions shall be considered as drafted with the joint participation of the parties and no provision of these Conditions shall be construed adversely to a party on the ground that such party was responsible for the preparation of these Conditions or that provision.

3. BASIS OF PURCHASE

3.1 The Order is an offer by the Company to purchase the Goods and/or Services on these Conditions from the Supplier.

3.2 No Order shall be valid unless it is signed by a duly authorised representative of the Company.

3.3 The Order shall be deemed to be accepted on the earlier of:

3.3.1 the Supplier issuing a written acceptance of the Order; and

3.3.2 the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

3.4 The Company may withdraw the Order at any time before it is aware that it has been accepted by the Supplier.

3.5 The Order shall lapse unless unconditionally accepted by the Supplier in writing within 72 hours of its receipt.

3.6 No variation to the Order or these Conditions shall be binding unless it has been agreed in writing and signed by the Company.

4. SPECIFICATION, INSPECTION AND TOOLS

4.1 The Supplier shall ensure that the quantity, quality and description of the Goods and performance of the Services shall be as specified in the Order and/or in any Specification supplied to the Supplier or referred to by the Company or agreed in writing by the Supplier.

4.2 Any Specification supplied by the Company to the Supplier or specifically produced by the Supplier for the Company in connection with the Contract shall be the exclusive property of the Company.

4.3 The Supplier shall comply with all relevant regulations or other legal requirements concerning the design, manufacture, packaging, packing and delivery of the Goods and the performance of the Services.

4.4 The Supplier shall not unreasonably refuse any request made by the Company to inspect and test the Goods during manufacture, processing or storage either at the Supplier's premises or the premises belonging to any third party prior

- to dispatch, and the Supplier shall provide the Company or its agent with all facilities reasonably required by the Company for inspection and testing.
- 4.5 If, as a result of any inspection or testing carried out in accordance with clause 4.4, the Company is not satisfied that the Goods will comply in all respects with the Contract, and the Company informs the Supplier within 48 hours of such inspection or testing of that fact, then the Supplier shall take such steps as are necessary to ensure compliance as soon as possible.
- 4.6 The Goods shall be marked in accordance with the Company's instructions and any applicable regulations or requirements of the carrier, and the Goods shall be properly packed and secured so as to reach their destination in an undamaged condition.
- 4.7 If the Company provides any tools or jigs to the Supplier in order for the Supplier to be able to manufacture the Goods, the Supplier acknowledges that such tools and jigs shall remain the Company's property, and shall clearly mark such tools and jigs and identify them as being the Company's property. The Supplier shall be responsible for all risk of loss of or damage to or deterioration of the tools and jigs while such tools and jigs are in the Supplier's possession, and shall insure the tools and jigs at its own cost against all risks which would normally be covered by a prudent business person to at least their replacement value.
5. PRICE OF THE GOODS AND SERVICES
- 5.1 The Price of the Goods and the Services shall be as specified in the Order and, unless specified otherwise in the Order, the Price shall be:
- 5.1.1 exclusive of any applicable VAT (which the Company shall pay at the rate required by law after receipt of the Supplier's valid VAT invoice); and
- 5.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than VAT.
- 5.2 The Price may not be increased by the Supplier (whether as a result of increased material, labour or transport costs, any fluctuation in rates of exchange or for any other reason) without the prior written consent of the Company.
- 5.3 The Company shall be entitled to benefit from any discount for prompt payment or bulk purchase discount customarily granted by the Supplier, and the Price shall be adjusted accordingly.
- 5.4 If the Company fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Company shall pay interest on the overdue amount at the rate of 4% per annum above the Barclays Bank plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until the actual payment of the overdue amount, whether before or after judgment. The Company shall pay the interest together with the overdue amount. This clause shall not apply to payments the Company disputes in good faith.
- 5.5 The Company may at any time, without limiting any of its other rights or remedies, set-off any liability of the Supplier to the Company against any liability of the Company to the Supplier.
6. TERMS OF PAYMENT
- 6.1 The Supplier shall be entitled to invoice the Company on or at any time after delivery of the Goods and/or completion of the Services and each invoice shall quote the number of the Order.
- 6.2 Unless otherwise stated in the Order, the Company shall pay the Price of the Goods and/or Services within 60 days of the later of:
- 6.2.1 the end of the month of receipt by the Company of a VAT invoice; or
- 6.2.2 acceptance of the Goods and/or Services in question by the Company.
7. DELIVERY AND PERFORMANCE
- 7.1 The Goods shall be delivered to the Delivery Address on the date or within the period stated in the Order, in either case during the Company's usual business hours, or as instructed by the Company. The Services shall be performed on the date or within the period stated in the Order, in either case during the Company's usual business hours, or as instructed by the Company.
- 7.2 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 7.3 Where the date of delivery of the Goods and/or performance of the Services is to be specified after the placing of the Order, the Supplier shall give the Company reasonable written notice of the relevant date.
- 7.4 The time of delivery of the Goods and/or completion of the Services is of the essence of the Contract.
- 7.5 The Supplier shall not deliver the Goods in instalments without the Company's prior written consent. If the Goods are to be delivered by instalments, the Contract shall be treated as a single contract and not as a series of separate contracts. They may, however, be invoiced and paid for separately. Should the Supplier fail to deliver any one instalment on time or at all or should there be any defect in an instalment then this shall entitle the Company to the remedies set out in clause 14.
- 7.6 The Company shall be entitled to reject any Goods delivered which do not comply with the terms of the Contract, and the Company shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 7.7 As soon as practicable after the Order is accepted the Supplier shall supply the Company with any instructions or other information that the Company may need to enable it to accept delivery of the Goods.
- 7.8 The Company shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Company.
- 7.9 If the Goods are not delivered on the due date then, without prejudice to any other remedy, the Company shall be entitled to deduct from the Price or (if the Company has paid the Price) to claim from the Supplier (in which case the Supplier shall

promptly upon request comply) by way of liquidated damages for delay such percentage of the Price as is set out in the Order for every week's delay as a genuine pre-estimate of the Company's loss.

8. RISK AND TITLE IN THE GOODS

- 8.1 Risk of damage to or loss of the Goods shall pass to the Company upon delivery of the Goods to the Company in accordance with the Contract.
- 8.2 Title to the Goods shall pass to the Company upon the earlier of delivery or payment by the Company for the Goods.

9. COMPANY MATERIALS

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Company to the Supplier ("Company Materials") and all rights in the Company Materials are and shall remain the exclusive property of the Company. The Supplier shall keep the Company Materials in safe custody at its own risk, maintain them in good condition until returned to the Company, and not dispose or use the same other than in accordance with the Company's written instructions or authorisation.

10. WARRANTIES AND LIABILITY

10.1 The Supplier warrants to the Company that the Goods:

- 10.1.1 will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for their normal purpose, any purpose made known to the Supplier in writing on or before the time the Order is placed, and any purpose that the Supplier has represented to the Company that the Goods are fit for purpose;
- 10.1.2 will be free from defects in design, material and workmanship;
- 10.1.3 will correspond with any relevant Specification or sample; and
- 10.1.4 will comply with all statutory requirements and regulations relating to them.

10.2 The Supplier warrants to the Company that, in providing the Services, the Supplier shall:

- 10.2.1 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade; and
- 10.2.2 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract.

10.3 The Supplier shall indemnify the Company in full against all liability, loss, damages, costs and all other reasonable expenses (including legal expenses) awarded against or incurred or paid by the Company as a result of or in connection with:

- 10.3.1 breach of any warranty given by the Supplier in relation to the Goods and/or the Services;
- 10.3.2 any claim made against the Company by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects are attributable to the acts or the omissions of the Supplier, its employees, agents or sub-contractors;
- 10.3.3 any claim that the Goods infringe, or their importation, use or resale infringes, the patent, copyright, design right, trademark or other intellectual property rights of any other person, except to the extent that the claim necessarily arises from compliance with any Specification supplied by the Company;
- 10.3.4 any liability under the Consumer Protection Act 1987 in respect of the Goods; and
- 10.3.5 any act or omission by the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods and/or Services, as the case may be.

11. INTELLECTUAL PROPERTY

All intellectual property rights in any drawings, documents and other information supplied by the Company to the Supplier, or specifically produced by the Supplier for the Company in connection with the Contract, are reserved to the Company. The Supplier shall not disclose, reproduce, sell, loan, exhibit, publish or give away any such drawings, documents or other information without the prior written consent of the Company and the Supplier shall not use them in any way except in relation to the Goods and/or Services in respect of which they are issued.

12. TERMINATION

12.1 The Company shall be entitled to cancel the Contract in respect of all or part only of the Goods and/or Services by giving notice to the Supplier at any time in which case the Company's only liability shall be to pay to the Supplier the Price for the Goods and/or Services in respect of which the Company has cancelled the Contract, less the Supplier's net saving of cost arising from cancellation.

12.2 The Company shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time if:

- 12.2.1 the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of solvent amalgamation or reconstruction);
- 12.2.2 an encumbrancer takes possession of, or a receiver is appointed over, any of the Supplier's property or assets;
- 12.2.3 the Supplier ceases, or threatens to cease, to carry on business; or
- 12.2.4 the Company reasonably believes that any of the events mentioned above is about to occur in relation to the Supplier and the Company notifies the Supplier of this belief.

12.3 If the Company terminates the Contract in accordance with clause 12.2, then the Company shall be entitled to any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services has been accepted by it:

- 12.3.1 to reject either all or part of the Goods and/or Services and return the rejected Goods to the Supplier at the Supplier's risk and at the Supplier's expense and the Supplier shall promptly pay the Company a full refund or the returned Goods and/or the rejected Services; and
- 12.3.2 to claim from the Supplier any damages that may have been incurred in consequence of the Supplier's breach of the Contract.

13. CONFIDENTIALITY

- 13.1 The Supplier shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Company or its agents and any other confidential information concerning the Company's business or products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to only those of its employees, agents or sub-contractors who need to know the same for the purpose of complying with the Supplier's obligations to the Company. The Supplier shall ensure that its employees, agents or sub-contractors are subject to the same obligations of confidentiality as are included in these Conditions and the Supplier shall ensure that they comply with such obligations.
- 13.2 This clause 13 shall survive termination of the Contract.

14. REMEDIES

- 14.1 Without prejudice to any other right or remedy which the Company may have, if any Goods are not supplied in accordance with, or if the Supplier fails to comply with, any of the terms of the Contract then the Company shall be entitled to any one or more of the following remedies at its discretion, whether or not any part of the Goods has been accepted by the Company:
 - 14.1.1 to cancel the Contract;
 - 14.1.2 to reject either all or just some of the Goods and return the rejected Goods to the Supplier at the Supplier's risk and expense on the basis that a full refund for the returned Goods shall be paid to the Company by the Supplier forthwith;
 - 14.1.3 at the Company's option, to give the Supplier the opportunity at its own expense either to correct any defect in the Goods or to supply replacement Goods and carry out any other work that may be necessary to ensure that the terms of the Contract are fulfilled;
 - 14.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Supplier;
 - 14.1.5 to carry out, at the Supplier's expense, any work which is necessary to make the Goods comply with the Contract; and
 - 14.1.6 to claim from the Supplier any damages that may have been incurred in consequence of the Supplier's breach of the Contract.
- 14.2 Without prejudice to any other right or remedy which the Company may have, if any Services are not supplied in accordance with, or if the Supplier fails to comply with, any of the terms of the Contract then the Company shall be entitled to any one or more of the following remedies at its discretion, whether or not any part of the Services has been accepted by the Company:
 - 14.2.1 to cancel the Contract;
 - 14.2.2 to reject either all or just some of the Services on the basis that a full refund for the rejected Services shall be paid to the Company by the Supplier forthwith;
 - 14.2.3 at the Company's option, to give the Supplier the opportunity at its own expense either to correct any defect in the Services or to re-perform the Services and carry out any other work that may be necessary to ensure that the terms of the Contract are fulfilled;
 - 14.2.4 to refuse to accept any further performance of the Services but without any liability to the Supplier;
 - 14.2.5 to carry out, at the Supplier's expense, any work which is necessary to make the Services comply with the Contract; and
 - 14.2.6 to claim from the Supplier any damages that may have been incurred in consequence of the Supplier's breach of the Contract.

15. GENERAL

- 15.1 The Contract is personal to the Supplier and the Supplier's rights or obligations under the Contract may not be assigned, transferred, subrogated or delegated.
- 15.2 Failure or delay by the Company to enforce or partially enforce any provision of the Contract shall not be construed as a waiver of any of the Company's rights under the Contract.
- 15.3 Any waiver by the Company of any breach of, or default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 15.4 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 15.4 shall not affect the validity and enforceability of the rest of the Contract.
- 15.5 If any provision or part-provision of the Contract 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.
- 15.6 Nothing in the Contract is intended to confer any benefit on any third party, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, and no third party shall have the right to enforce any rights under the Contract, except where otherwise agreed in writing.
- 15.7 The Contract shall be governed by the laws of England and Wales and, subject as provided hereafter, both parties agree to submit to the exclusive jurisdiction of the courts of England and Wales in respect of any dispute or claim arising out of or relating to the Contract or the relationship between the Supplier and the Company. Nothing in this clause 15.7 shall limit

the right of the Company to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the taking of proceedings in any other jurisdiction, whether concurrently or not, to the extent permitted by the law of such jurisdiction.

16. COMMUNICATIONS

- 16.1 All communications between the parties about the Contract must be in writing and delivered by hand, sent by prepaid first class post or sent by fax or e-mail.
- 16.2 Communications addressed to the Company shall be marked for the attention of the Managing Director and shall be sent to the Company's registered office or to the fax or e-mail address or any other address that the Company may publish or notify to the Supplier from time to time.
- 16.3 Communications addressed to the Supplier shall be sent to your registered office or to the fax or e-mail address or such other address as the Supplier notifies to the Company from time to time.
- 16.4 Communications shall be deemed to have been received:
 - 16.4.1 if sent by prepaid first class post, 5 days after posting (exclusive of the day of posting);
 - 16.4.2 if delivered by hand, on the day of delivery; and
 - 16.4.3 if sent by fax or e-mail transmission prior to 2.00 p.m. UK time on any day, at the time of transmission and if sent after 2.00 p.m. UK time, on the next day.
- 16.5 For the purposes of clause 16.4 any reference to a "day" shall not include Saturdays, Sundays and bank or public holidays in England.

