

CARESSA KAHN - TERMS OF BUSINESS

1. Interpretation

1.1 In these Terms and Conditions

“**Buyer**” means the person from whom a specification or request referred to in Condition 2 is received or who accepts quotation of the Seller for the sale of the Goods or whose order for the goods is accepted by the Seller, as the case requires;

“**Goods**” means the goods (including any instalment of the goods or any parts of them) referred to in the specification and request referred to in Condition 2 which the Seller is to develop and/or supply in accordance with these conditions or specified in the order form or other document to which these Conditions are annexed;

“**Seller**” means whichever of L. Kahn Manufacturing Company Limited (registered in England under number 479484) and Caressa London the Contract is made with;

“**Conditions**” means these Terms of Business and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;

“**Contract**” means the contract for the development and/or the sale and purchase and sale of the Goods, as the case requires;

“**Writing**” includes facsimile transmission, e-mail and comparable means of communication.

1.2 Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended the relevant time.

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

2. Request and specification

2.1 Upon receipt of a written request and/or specification the Seller will develop (and if required produce a specification for) and produce a quotation for the manufacture of the Goods and (if so requested by the Buyer) a sample of the Goods. The price(s) in the quotation will be valid for a period of 3 months and if an order for purchase of the goods is received (and accepted) by the seller within that period such price(s) will apply until the earlier of completion of production of the Goods comprised in that order and the expiry of 9 months from the date of the quotation.

2.2 If the Buyer does not place an order for the Goods within 6 months of the date of the quotation the Seller reserves the right to charge the Buyer for the costs and expenses of the Seller in developing a specification and a quotation for and producing a sample of the Goods.

2.3 The seller reserves the right to charge the Buyer for the cost to the seller of acquiring or developing new, or modifying existing, tooling for the purpose of producing samples of the Goods.

2.4 The Seller shall discuss and agree with the Buyer a quality control and testing procedure.

3. Basis of the Sale

3.1 The Seller shall sell and the buyer shall purchase the Goods in accordance with any written quotation of the seller which is accepted by the buyer or any written order of the buyer which is accepted by the seller, subject in either case to these conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

3.2 No variation to these conditions shall be binding unless agreed in writing by the authorised representative of the Seller.

3.3 The seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

3.4 Any advice or recommendation given by the Seller (or its employees or agents to the Buyer or its employees or agents) as to the storage, application or use of the Goods which is not confirmed in Writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

3.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price, list, acceptance of offer, invoice or other document or information issued by the Seller shall be subjected to correction without any liability on the part of the Seller.

4 Orders and Specifications

4.1 No order submitted by the Buyer for purchase of the Goods shall be deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative.

4.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specifications) submitted by the Buyer and for giving the Seller all necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

4.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

4.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

4.5 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU requirements or where the Goods are to be supplied to the Seller's specification which do not materially affect their quality or performance.

4.6 Where the Goods are supplied for delivery outside of the United Kingdom the Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of duties there on.

4.7 No order which has been accepted by the Seller may be cancelled or the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and the materials used), damages charges and expenses incurred by the Seller as a result of cancellation.

5. Price of Goods

5.1 Except as otherwise stated in these Conditions all prices quoted are valid for 30 days only or until earlier acceptance by the Buyer after which time they may be altered by the Seller without giving notice to the buyer.

5.2 The Seller reserves the right, by giving notice to the Buyer at anytime before delivery, to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increases in the costs of labour, materials or other costs of manufacture) of more than 5 per cent.

Any change of delivery dates, quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

5.3 Except as otherwise stated under the terms of any quotation or order the buyer shall be liable to pay to the Seller's charges for transport, packaging and insurance ("transport costs" to the place of the destination specified in the order).

5.4 The price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller.

5.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods but full credit will be given to the Buyer provided they are returned undamaged to the seller before the due date for payment.

6. Terms of Payment

6.1 Subject to any special terms agreed in Writing between the Buyer and the Seller, the Seller shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods and, if the Goods are delivered in instalments after the delivery of each instalment in respect of the Goods comprised in the instalment. If the Goods are to be collected by the Buyer or the Buyers wrongfully fails to take delivery of the Goods the Seller shall be entitled to invoice the Buyer for the price any time after the Seller has notified the Buyer that the Goods are ready for collection or (as the case may be) the Seller has tendered delivery of Goods. If any of the Goods have not been delivered within 12 months after the date of order (otherwise because of the default of the Seller) the seller shall be entitled to send an invoice in respect of the Goods. If the payment by cheque is accepted that acceptance is conditional upon payment in full on first presentation. The time of the payment shall be of the essence of the Contract. Receipts for payment will be issued only upon request.

6.2 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller the Seller shall be entitled to:-

6.2.1 Cancel the contract or suspend any further deliveries to the Buyer;

6.2.2 Appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

6.2.3 Charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 2 per cent per annum above Reserve Bank Plc's base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

7. Delivery

7.1 Any dates quotes or agreed for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

7.2 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

7.3 If the Seller fails to deliver the Goods (or any instalment) for any reason (other than any cause beyond the seller's reasonable control of the Buyer's fault) and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to [the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar Goods to replace those not delivered over the price of the Goods].

7.4 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may:-

7.4.1 Store the goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

7.4.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

8 Risk and Property

8.1 Risk of damage or loss of the Goods shall pass to the Buyer.

8.1.1 In the case of Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or

8.1.2 In the case of Goods to be delivered otherwise than at the Seller's premises at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.

8.2 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions, the ownership of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.

8.3 Until such time as the ownership in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property but the Buyer shall be entitled to resell or use Goods in the ordinary course of its business.

8.4 Until such time as the ownership of the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the goods to the seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are and repossess the Goods.

8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness for any of the Goods which remain the property of the Seller but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

9. Warranties and Liability

9.1 All warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

9.2 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or their failure to correspond with description or specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure and the buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract. In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject them.

9.3 Where any valid claim in respect of any of the Goods which is based in any defect in the quality or condition of the Goods or their failure to meet description is notified to the Seller in accordance with these Conditions the Seller shall be entitled to replace the Goods (or the part in question) free of charge or at the Seller's sole discretion, refund to the buyer the price of the Goods (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

9.4 Except in respect of death or personal injury caused by the Seller's negligence the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent) or any implied warranty, condition or other term or any duty at common law or under express terms of the Contract for any consequential loss or damage (whether for loss of profit or otherwise howsoever), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

9.5 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligation in relation to the Goods if the delay or failure was due to any cause beyond the seller's reasonable control.

10 Insolvency of the Buyer

10.1 This conditions applies if:

10.1.1 The Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

10.1.2 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

10.1.3 The Buyer ceases or threatens to cease, to carry on business; or

10.1.4 Anything analogous to any of the foregoing under the law of any jurisdiction occurs; or

10.1.5 The Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly

10.2 If paragraph 10.1 applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Seller and, if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. General

11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.3 The contract and any interest therein is not assignable by the Buyer.

11.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

11.5 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement.

12.6 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Court.