

**MASTERCOTE UK LIMITED**  
**TERMS AND CONDITIONS FOR THE SUPPLY OF SERVICES**  
**The Customer's attention is particularly drawn to the provisions of clause 6 and clause 8.**

**1. INTERPRETATION**

1.1 Definitions. In these Conditions, the following definitions apply:

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

**Charges:** the charges payable by the Customer for the supply of the Services in accordance with clause 5.

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 11.8.

**Contract:** the contract between Mastercote UK LTD and the Customer for the supply of Services in accordance with these Conditions.

**Customer:** the person or firm who purchases Services from Mastercote UK LTD.

**Customer Materials:** the materials specified in the Order to be supplied by the Customer to Mastercote UK LTD and against which the Services will be provided.

**Finished Customer Materials:** the Customer Materials following provision of the Services.

**Force Majeure Event:** has the meaning set out in clause 11.1.

**Mastercote UK Ltd:** Mastercote UK LTD registered in England and Wales with company number 06826581.

**Order:** in the Customer's purchase order form, or the Customer's written acceptance of a quotation by Mastercote UK LTD, or overleaf, as the case may be.

**Services:** the services supplied by Mastercote UK LTD to the Customer as set out in the Specification.

**Specification:** the description or specification of the Services provided in writing by Mastercote UK LTD to the Customer.

**Substandard Customer Materials:** Customer Materials that Mastercote UK LTD deem not to fulfil expected quality requirements.

1.2 Construction:

In these Conditions, the following rules apply:

- a) a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- b) a reference to a party includes its successors or permitted assigns;
- c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- d) 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; and
- e) a reference to writing or written includes faxes.

**2. BASIS OF CONTRACT**

2.1 The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when Mastercote UK LTD issues written acceptance of the Order at which point, and on which date the Contract shall come into existence (**Commencement Date**).

2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Mastercote UK LTD which is not set out in the Contract.

- 2.4 Any samples, drawings, descriptive matter or advertising issued by Mastercote UK LTD, and any descriptions or illustrations contained in Mastercote UK LTD's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 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.
- 2.6 Any quotation given by Mastercote UK LTD shall not constitute an offer and is only valid for a period of 60 Business Days from its date of issue.

### **3. SUPPLY OF SERVICES**

- 3.1 Mastercote UK LTD shall supply the Services to the Customer in accordance with the Specification in all material respects.
- 3.2 Mastercote UK LTD shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services.
- 3.3 Mastercote UK LTD reserves the right to make changes to the Services or Specification which are necessary to comply with any applicable law, recommendation or safety or regulatory requirement, or if the change will not materially affect the nature or quality of the Services, and Mastercote UK LTD shall notify the Customer in any such event.

### **4 CUSTOMER'S OBLIGATIONS**

- 4.1 The Customer shall:
- a) ensure that the terms of the Order are complete and accurate;
  - b) deliver or (if Mastercote UK LTD agrees to collect) make the Customer Materials available to Mastercote UK LTD in a timely fashion;
  - c) co-operate with Mastercote UK LTD in all matters relating to the Services;
  - d) provide Mastercote UK LTD, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities (including premises or facilities of the Customer's clients) as reasonably required by Mastercote UK LTD; and
  - e) provide MASTERCOTE UK LTD with such information and materials as MASTERCOTE UK LTD may reasonably require in order to supply the Services and ensure that such information is accurate in all material respects.
- 4.2 If Mastercote UK LTD'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):
- a) Mastercote UK LTD shall without limiting its other rights or remedies have the right to suspend performance of the Services 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 to the extent the Customer Default prevents or delays Mastercote UK LTD's performance of any of its obligations;
  - b) Mastercote UK LTD shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from Mastercote UK LTD's failure or delay to perform any of its obligations as set out in this clause 4.2; and
  - c) the Customer shall reimburse Mastercote UK LTD on written demand for any costs or losses sustained or incurred by Mastercote UK LTD arising directly or indirectly from the Customer Default.

### **5. DELIVERY**

- 5.1 Mastercote UK LTD shall ensure that:
- a) each delivery of the Finished Customer Materials is accompanied by a delivery note which shows the date of the Order, all relevant Mastercote UK LTD and Customer reference numbers, the type and quantity of the Finished Customer Materials, and, if the Finished Customer Materials are being delivered by instalments, the outstanding balance of the Finished Customer Materials remaining to be delivered; and
  - b) if Mastercote UK LTD requires the Customer to return any packaging materials to Mastercote UK LTD, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as Mastercote UK LTD shall reasonably request.

- 5.2 Unless otherwise agreed by the parties, the Customer shall collect the Finished Customer Materials from Mastercote UK LTD's premises at 52-54 Wendover Road, Rackheath Industrial Estate, Norwich, NR13 6LH or such other location as may be advised by Mastercote UK LTD prior to delivery (**Delivery Location**) within two Business Days of Mastercote UK LTD notifying the Customer that the Finished Customer Materials are ready.
- 5.3 Delivery of the Finished Customer Materials shall be completed on the completion of loading of the Finished Customer Materials at the delivery Location.
- 5.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. Mastercote UK LTD shall not be liable for any delay in delivery of the Finished Customer Materials that is caused by a Force Majeure Event or the Customer's failure to provide the Mastercote UK LTD with adequate delivery instructions or any other instructions that are relevant to the supply of the Finished Customer Materials.
- 5.5 If the Customer fails to take delivery of the Finished Customer Materials within two Business Days of Mastercote UK LTD notifying the Customer that the Finished Customer Materials are ready, then, except where such failure or delay is caused by Mastercote UK LTD's failure to comply with its obligations under the Contract in respect of the Finished Customer Materials:
- a) Delivery of the Finished Customer Materials shall be deemed to have been completed at 9.00 am on the second Business Day after the day on which Mastercote UK LTD notified the Customer that the Finished Customer Materials were ready; and
  - b) Mastercote UK LTD shall store the Finished Customer Materials until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 5.6 If ten Business Days after the day on which Mastercote UK LTD notified the Customer that the Finished Customer Materials were ready for delivery the Customer has not taken delivery of them, Mastercote UK LTD may resell or otherwise dispose of part or all of the Finished Customer Materials and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Finished Customer Materials or charge the Customer for any shortfall below the price of the Finished Customer Materials.
- 5.7 Mastercote UK LTD may deliver the Finished Customer Materials 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.
- 5.8 The risk in the Finished Customer Materials shall pass to the Customer on completion of delivery.

## **6. QUALITY**

- 6.1 Mastercote UK LTD warrants that the Services will be performed using all reasonable skill and care.
- 6.2 Subject to clause 6.3, if:
- a) the Customer gives notice in writing to Mastercote UK LTD within a reasonable time of discovery that some or all of the Finished Customer Materials do not comply with the warranty set out in clause 6.1;
  - b) Mastercote UK LTD is given a reasonable opportunity of examining such Finished Customer Materials; and
  - c) the Customer (if asked to do so by Mastercote UK LTD) returns the relevant Finished Customer Materials to Mastercote UK LTD's place of business at the Customer's cost, Mastercote UK LTD shall, at its option, repair the Finished Customer Materials or re-perform the Services as specified in the Order, or refund the price of the defective Finished Customer Materials in full.
- 6.3 Mastercote UK LTD shall not be liable for the Finished Customer Materials' failure to comply with the warranty set out in clause 6.1 or any additional warranty specified in the Order or any Specification in any of the following events:
- a) the defect arises because the Customer failed to follow Mastercote UK LTD's oral or written instructions as to the pre-treatment, storage, commissioning, installation, use and maintenance of the Finished Customer Materials or (if there are none) good trade practice regarding the same;
  - b) the defect arises as a result of Mastercote UK LTD following any drawing, design or Specification supplied by the Customer;
  - c) the Customer alters or repairs such Finished Customer Materials without the written consent of Mastercote UK LTD;
  - d) the defect in the Finished Customer Materials arises as a result of Substandard Customer Materials supplied to Mastercote UK LTD by the Customer, or any third party in the course of Mastercote UK LTD fulfilling the Order.

- e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - f) the Finished Customer Materials differ from their description or any applicable Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 6.4 Except as provided in this clause 6, MastercoteUK LTD shall have no liability to the Customer in respect of the Finished Customer Materials' failure to comply with the warranty set out in clause 6.1.
- 6.5 These Conditions shall apply to any repaired or replacement Finished Customer Materials supplied by Mastercote UK LTD.
- 6.6 This clause 6 shall survive termination of the Contract.

## **7. CHARGES AND PAYMENT**

- 7.1 The Charges for the Services shall be Mastercote UK LTD's quoted price as specified in Mastercote UK LTD's quotation, estimate, Order or order acknowledgement form.
- 7.2 Mastercote UK LTD shall invoice the Customer on completion of the Services.
- 7.3 The Customer shall pay each invoice submitted by Mastercote UK LTD:
- a) on the last Business Day of the month following the month in which the invoice is dated (**Due Date**); and
  - b) in full and in cleared funds to Mastercote UK LTD at HSBC, Sort Code: 40-47-38, Acc. No. 31364642, and time for payment shall be of the essence of the Contract.
- 7.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by Mastercote UK LTD to the Customer, the Customer shall, on receipt of a valid VAT invoice from Mastercote UK LTD, pay to Mastercote UK LTD such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 7.5 Without limiting any other right or remedy of Mastercote UK LTD, if the Customer fails to make any payment due to Mastercote UK LTD under the Contract by the due date., Mastercote UK LTD shall have the right to charge interest on the overdue amount at the rate of 4%per annum above the then current Barclays Bank PLC's base rate accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 7.6 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against Mastercote UK LTD in order to justify withholding payment of any such amount in whole or in part. Mastercote UK LTD may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by Mastercote UK LTD to the Customer.

## **8. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE**

- 8.1 Nothing in this Clause 8 shall limit the Customer's payment obligations under the Contract.
- 8.2 Nothing in these Conditions shall limit or exclude Mastercote UK LTD's liability for:
- a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - b) fraud or fraudulent misrepresentation; or
  - c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).
- 8.3 Subject to clause 8.1:
- a) Mastercote UK LTD shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
  - b) Mastercote UK LTD's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the Charges.

8.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

8.5 This clause 8 shall survive termination of the Contract.

## 9. TERMINATION

9.1 Without limiting its other rights or remedies, Mastercote UK LTD may terminate this Contract with immediate effect by giving written notice to the Customer if:

- a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- b) the Customer 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), obtaining a moratorium, 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;
- c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- d) the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- e) the other party (being an individual) is the subject of a bankruptcy petition or order;

9.2 Without limiting its other rights or remedies, Mastercote UK LTD may suspend provision of the Finished Customer Materials under the Contract or any other contract between the Customer and Mastercote UK LTD if the Customer becomes subject to any of the events listed in clause 9.1(b) to clause 9.1(d), or Mastercote UK LTD reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.

9.3 Without limiting its other rights or remedies, Mastercote UK LTD 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.

9.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.

9.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

## 10. CONSEQUENCES OF TERMINATION

3.1 On termination of the Contract for any reason:

(a) the Customer shall immediately pay to MastercoteUK LTD all of Mastercote UK LTD's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, Mastercote UK LTD shall submit an invoice, which shall be payable by the Customer immediately on receipt;

(b) the Customer shall, subject to payment pursuant to clause 10 (a), immediately collect all Customer Materials and Finished Customer Materials;

(c) the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall not be affected, 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; and

(d) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## 11. GENERAL

11.1 Force majeure:

a) Mastercote UK LTD shall not 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 (**Force Majeure Event**).

b) or the purposes of this Contract, Force Majeure Event means an event beyond the reasonable control of Mastercote UK LTD including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of Mastercote UK LTD or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule,

regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

- c) If the Force Majeure Event prevents Mastercote UK LTD from providing any of the Services for more than ten weeks, Mastercote UK LTD shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

11.2 Assignment and subcontracting:

- a) Mastercote UK LTD may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.
- b) The Customer shall not, without the prior written consent of Mastercote UK LTD, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

11.3 Notices:

Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.

11.4 Waiver:

A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

11.5 Severance:

If a court or any other competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

11.6 No partnership:

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

11.7 Third parties:

A person who is not a party to the Contract shall not have any rights under or in connection with it.

11.8 Variation:

Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract, shall only be binding when agreed in writing and signed by Mastercote UK LTD.

11.9 Governing law and jurisdiction:

This Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.