

# CREDIT ACCOUNT APPLICATION

Sales person:

FAO: CREDIT CONTROL DEPARTMENT FAX to 0044 1773 876252

EAA code:

COMPANY NAME:

CONTACT:

TRADING STYLE (If different to the above):

COMPANY REG NUMBER:

VAT NUMBER:

REGISTERED OFFICE:

INVOICING ADDRESS:

TELEPHONE NO:

FAX NO:

E-MAIL ADDRESS:

EXPECTED MAXIMUM CREDIT REQUIRED £

Names and addresses of trade and bank references who may be approached are:

(Please quote fax numbers for trade referees).

TRADE 1.

FAX:

TRADE 2.

FAX:

(Trade referees should be able to speak for a credit amount similar to that stated above)

**TO: SAPA PROFILES UK LTD**

Unless varied in writing by Sapa Profiles UK Ltd., all transactions will be subject to Sapa Profiles UK Ltd's Terms and Conditions of Sale at the time of order.

We acknowledge receipt of Sapa Profiles UK Ltd's current Terms & Conditions of Sale.

I/we note that subject to satisfactory credit assurances being received, the payment terms are strict net monthly.

We agree to pay in accordance with those terms for any goods or services you supply to us.

Authorised Signatory:

Print Name:

Position:

Date:

(N.B. if a partnership, all partners should sign)

CREDIT CONTROL USE

CREDIT LIMIT:

PAYMENT TERMS:

ACCOUNT NUMBER:

SIGNED:

DATE:

## 1 Definitions

In these Conditions "Buyer" means the party with whom the Seller contracts; "Contract" means the contract made between the Seller and the Buyer for the supply of the Goods and/or Services which is subject to these Conditions; "Services" means any services to be performed by the Seller either in connection with the Goods or separately and "Goods" means all or any of the goods, works, or materials to be supplied by the Seller. "Re-instatement" shall mean the cleaning or refurbishment of dies by the Seller.

## 2 Application of Conditions

(a) The Contract will be on these Conditions to the exclusion of all other terms, conditions and warranties including any terms and conditions which the Buyer purports to apply under any purchase order, confirmation of order or similar document, whether or not such document is referred to in the Contract. The signing by the Seller of the Buyer's documentation shall not imply any modification of these Conditions.

(b) Each order or acceptance of a quotation for Goods or Services will be deemed to be an offer by the Buyer to purchase Goods or Services subject to these Conditions. The Contract is formed when any order is accepted by the Seller by way either of a written confirmation of order issued by the Seller or where no such document is issued by the Seller despatching the Goods or commencement of performance of the Services.

(c) No employee, agent or representative of the Seller has any authority to give any representation, guarantee or warranty relating to the Goods or the Services unless such representation, guarantee or warranty is expressed in writing and signed on behalf of the Seller by a duly authorised officer of the Seller.

(d) Variations of these Conditions are not binding unless agreed in writing by authorised officers of each of the Seller and the Buyer.

(e) Subject to paragraph (c) above the Buyer acknowledges that it has not been induced to enter into the Contract by any representation, guarantee or warranty made by the Seller, its employees, agents or representatives. The Seller is not seeking to exclude its liability (if any) for fraudulent misrepresentation.

(f) Quotations are subject to withdrawal at any time before receipt of an unqualified order from the Buyer and shall be deemed to be withdrawn if not so accepted within 30 days from the date of such unqualified order.

(g) Acceptance of delivery of the Goods or commencement of the performance of the Services will be deemed conclusive evidence of the Buyer's acceptance of these Conditions.

(h) The Buyer can only cancel the Contract, or an order once it is accepted, with the Seller's prior written consent.

## 3 Delivery

(a) The Seller shall deliver the Goods to the Buyer at the place stipulated overleaf and the Seller shall be entitled to deliver the Goods in one or more instalment unless otherwise expressly agreed. If delivered in instalments, each delivery shall constitute a separate Contract. Failure by the Seller to deliver any one or more instalments 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. Each separate instalment will be invoiced and paid for in accordance with these Conditions. The Services shall be performed at the Seller's premises unless otherwise specified overleaf.

(b) Any time quoted by the Seller for delivery of all or any of the Goods and/or performance of all or any of the Services is an estimate only and time shall not be of the essence. The Seller shall not be liable for any failure to meet any such estimate, nor for any loss, of whatever nature, resulting directly or indirectly therefrom. The Seller reserves the right to deliver all or any of the Goods and/or Services in advance of the estimated date.

(c) The Buyer should inspect the Goods on delivery to the Buyer. In the event of the Buyer claiming there is a shortage of Goods against the quantity advised by the Seller the Buyer shall notify the Seller of such shortage within three working days of the date of delivery. If Goods are lost, damaged or destroyed in transit the Buyer should make a written claim within 10 working days of the date of despatch. The Seller upon confirming the shortfall, loss, damage or destruction undertakes at its option either to deliver up to the Buyer a sufficient quantity of the Goods to make up such a shortfall, loss or damage or to credit the Buyer where applicable with the invoiced value of the undelivered Goods. The Buyer shall not have the right to reject deliveries of the Goods which are either 10% or less in excess of or lower than the quantity or weight ordered.

(d) If the Buyer fails to take delivery of the Goods or accept performance of the Services on the dates specified overleaf or if the Buyer has failed for fourteen days to give delivery instructions after the same have been requested by the Seller, the Seller may, without prejudice to its other rights and remedies, dispose of the Goods and charge the Buyer with the cost of storage from the date the Goods were tendered for delivery, the cost of any additional transport and a sum equal to any loss suffered by the Seller in any resale caused by the Buyer's default.

(e) The Buyer shall ensure the prompt discharge, turn-around and re-despatch of all transport vehicles and returnable receptacles, containers etc. used in delivering any consignment under the Contract, and will indemnify the Seller against any loss arising from delay in such discharge, turn-around and re-despatch. All returnable containers and packing materials may be charged for. If charged for, credit will be given if they are returned in a condition satisfactory to the Seller, to the Seller's works, carriage paid within 30 days following delivery of the relevant Goods.

(f) Where the Buyer takes delivery of extrusions in skips or stillages these skips and stillages must be returned to the Seller within 4 weeks of delivery [unless otherwise contracted with the Buyer.] Returned skips or stillages will be inspected by the Seller and must be returned in a good and useable condition. Failure to return skips or stillages within 4 weeks of delivery or in a poor condition will entitle the Seller:

- (i) to levy a charge on the Buyer of the full cost of replacement.(reference cost: £100 July 2008) per skip or stillage, such sum being a reasonable pre-estimate of the Seller's loss; and
- (ii) to enter upon the Buyer's premises at any time with or without notice to recover possession of the skips and stillages
- (iii) to recover from the Buyer any additional costs (including legal costs) incurred by the Seller in recovering the skips and stillages.

#### **4 Price and Payment**

(a) The prices quoted overleaf are based on the cost of labour, materials and energy ruling at the date of the Seller's confirmation of order or where no confirmation of order is issued on the date on which the Contract is formed and the Seller reserves the right to increase such prices, should the costs of labour, materials or energy change between such date and the date of delivery, by notice to the Buyer.

(b) Unless otherwise expressly stated in writing, all prices are exclusive of VAT, which shall be charged where appropriate at the rate prevailing at the relevant tax point.

(c) The Seller shall be entitled to invoice the Buyer for the price of the Goods and Services on or at any time after the Seller has tendered delivery of the Goods and payment of all charges under the Contract shall be made in full and in cash by the last day of the month following the month in which delivery was made. For the purposes of this Condition time of payment is of the essence and interest at the annual rate of 4% over the base rate of Barclays Bank plc may be charged on a daily basis on all amounts outstanding after the due date until the actual date of payment (both before and after judgement).

(d) Any period of credit afforded to the Buyer pursuant to these Conditions shall immediately terminate in the event of the Seller exercising its rights under Condition 11 hereof and all sums owing from the Buyer to the Seller shall then immediately become due and payable.

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

(f) The Seller shall have the right, by notifying the Buyer, to suspend deliveries under the Contract and/or under any other contract the Seller may have with the Buyer (even though the Buyer may not be in arrears with any payment) if the Seller considers that the amount outstanding to the account of the Buyer (whether due for payment or not) has reached the limit to which the Seller is prepared to allow credit to the Buyer whether or not such limit has been notified to the Buyer.

(g) If any amounts are outstanding after the due date for payment or if the Seller reasonably believes that payments will not be made by the due date, then in addition to the Seller's other rights under the Contract, the Seller may suspend deliveries or further deliveries of Goods until the outstanding amount has been received by the Seller. Additionally all amounts due to the Seller under the Contract or any other contract the Seller may have with the Buyer (even though amounts due under such other contracts are not then due for payment) shall become immediately due and payable notwithstanding any other previously agreed payment terms.

#### **5 Dies**

(a) The Seller shall produce such dies as may be required by the Buyer upon receipt of an appropriate drawing or sample from the Buyer. The price (if any) of producing such dies and the terms for payment will (unless otherwise varied in writing) be as stated on the confirmation of order. Title to the die will rest in and remain with the Seller. A die print shall be supplied by the Seller and approved by the Buyer. The supply by the Seller of a sample from the die does not deem the Contract to be one of sale by sample for the purposes of Section 15 of the Sale of Goods Act 1979 (as amended) and the Seller excludes Section 15 of the Sale of Goods Act 1979 (as amended).

(b) All intellectual property rights (including design right, registered designs, trademarks, patents, copyright and rights in confidential information) in or relating to the Goods (including dies) or Services or created in performing the Services ("the Rights") shall remain the property of the Seller and may be used by the Buyer in accordance with Condition 5(d). To the extent necessary the Buyer hereby assigns all such Rights becoming owned by the Buyer to the Seller and if required by the Seller shall execute any necessary documents to vest title in and to the Rights in the Seller or to give effect to the Seller's rights set out in Condition 5(b).

(c) Any rights in any specification, drawing, print and/or other materials supplied by the Buyer shall remain with the Buyer. The Buyer hereby acknowledges that any intellectual property rights that it may have in and to any specification, drawing, print and/or other materials supplied to the Seller for the purposes of the Contract and/or any other contract with the Seller shall in no way inhibit the Seller from developing, manufacturing and/or using similar but non-identical dies and products.

(d) The Seller grants the Buyer a non-exclusive licence of the Rights (with a right to sub-licence) in order that the Buyer may make use of the Goods or, as the case may be, the Services and, where appropriate, use the Goods to make other products ("Manufactured Products"). This licence shall terminate immediately without notice in the event that in the sole opinion of the Seller any of the events in Condition 11(a) have occurred or are about to occur. If the right arises for the Seller to terminate the Contract for any reason then the Buyer shall where requested by the Seller assign to the Seller all intellectual property rights that it owns in any Manufactured Products and until such time as such assignment becomes effective grant the Buyer exclusive rights to manufacture or license the manufacture of Manufactured Products.

(e) The Seller will ordinarily retain any die manufactured pursuant to a Contract from the Buyer for a period of up to 2 years from the date of the last order for goods relating to that die. However, the Seller reserves the right to dispose of any die not in use without notice as it deems appropriate and shall not be liable to the Buyer for any damages claims and/or costs of any kind whatsoever in respect of the said disposal. In addition the Seller reserves the right to charge a fee should the Buyer request Re-instatement of a die or alternatively if the Seller deems Re-instatement of a die to be necessary to complete the Buyer's order. Any die that is manufactured by the Seller is manufactured for use on the Seller's own machinery and as such, the Seller gives no warranty as to the compatibility of a die with another's machinery.

## **6 Specifications**

(a) All descriptions and illustrations contained in the Seller's catalogues, price lists and advertisements or otherwise communicated to the Buyer are approximate only and are intended merely to present a general idea of the goods described therein, and nothing contained in any of them shall form any part of the Contract.

(b) Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Buyer, it is hereby agreed that such sample was so exhibited and inspected solely to enable the Buyer to judge for himself the quality of the bulk and not so as to constitute a sale by sample. The Seller excludes Section 15 of the Sale of Goods Act 1979 (as amended).

(c) The Seller may make any changes to the specification, design, materials or finishes of the Goods which either are required to conform with any applicable safety or other statutory or regulatory requirements, or do not materially affect their quality or performance.

## **7 Title and Risk**

(a) Risk in the Goods shall pass to the Buyer immediately on delivery to the Buyer or into custody on the Buyer's behalf whichever is the sooner.

(b) Notwithstanding delivery and the passing of risk, property in and title to the Goods shall remain with the Seller until the Seller has received payment of the full price of (i) all Goods and/or Services the subject of the Contract and (ii) all other goods and/or services supplied by the Seller to the Buyer under any other Contract whatsoever.

(c) Until property in and title to the Goods passes to the Buyer, the Buyer shall be entitled to deal with the Goods in the ordinary course of its business provided that if the Goods are altered or any goods become attached to the Goods or if any part of the Goods is replaced such alteration attachment or replacement shall not affect the Seller's property in and title to the Goods. Further, the Buyer will keep the Goods properly stored, protected, insured and separate from all or any other Goods whether belonging to the Seller and the Buyer or any other third party and will not remove, alter, modify, or deface the Goods and/or any identification mark placed on the Goods and/or their packaging.

(d) The Buyer's right to possession and power to deal with the Goods shall terminate immediately if any of the circumstances set out in Condition 11 occur or amounts due to the Seller are not paid by their due date. In such circumstances the Buyer shall place the Goods at the disposal of the Seller and the Buyer grants to the Seller an irrevocable licence to enter at any time any premises owned or occupied by the Buyer or in the Buyer's possession for the purpose of repossessing and removing any Goods the ownership of which has remained vested in the Seller. The Seller shall not be responsible for and the Buyer will indemnify the Seller against liability for any damage occurring during such repossession and removal where such damage could not reasonably have been avoided.

(e) The Seller will be entitled to recover payment for the Goods notwithstanding that property in and title to the Goods has not passed from the Seller.

(f) Where the Seller is unable to determine whether any goods are the Goods in respect of which the Buyer's right to possession and power to deal has terminated, the Buyer will be deemed to have sold all Goods of the kind sold by the Seller in the order in which they were invoiced to the Buyer.

## **8 Warranties**

(a) In the event of the Buyer receiving defective Goods and/or Services which do not comply with the specification the Buyer shall within seven days of the date of delivery or in the case of a latent defect not later than six months from the date of delivery of the Goods notify the Seller thereof and shall at the option of the Seller either afford the Seller the right of inspection of the Goods and/or Services or shall at the request of the Seller return the goods to the Seller for inspection.

(b) If the defect is in the opinion of the Seller due to faulty workmanship or materials or to some other factor within its control, the Seller shall at its option either replace the same or credit the Buyer with the Contract value of such defective Good(s) once the Seller is in possession of the said Goods or make good by reimbursement the Contract value attributable to the Services or by reperformance of the Services any defective workmanship in the performance of the Services.

(c) The Seller shall not be required to replace or credit any defective Goods if (i) the Goods have been improperly used, or (ii) any instructions as to storage of the Goods have not been complied with or the Goods have been otherwise inappropriately stored, or (iii) the Goods have been manufactured in accordance with the Buyer's specification and the defect arises from such specification, or (iv) the Buyer has failed to notify the Seller of any defect or latent defect within the respective periods set out in Condition 8(a) above.

(d) The Seller does not accept responsibility for damage, destruction or loss during carriage arranged by the Buyer. Where carriage is arranged by the Seller, any damage or destruction shall be notified by the Buyer to the Seller within three working days of the date of delivery and in the event of loss within ten days of the notified date of arrival of the consignment.

(e) Except to the extent that it may be rendered void or unenforceable under any statute this Condition 8 shall apply to any Contract made between the Buyer and the Seller to the exclusion of any term, condition, representation or warranty express or implied by statute common law or otherwise and to the exclusion of the rights of the Buyer in contract or in tort as to the satisfactory quality workmanship or fitness for purpose of the Goods.

(f) All recommendations and advice as to methods of storing, assembling, applying or using Goods or the purpose for which Goods may be applied are given without responsibility on the part of the Seller.

## **9 Liability**

(a) The Seller's aggregate liability to the Buyer in contract tort (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the Buyer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of any part of the Contract by the Seller its employees, agents or representatives is limited to the price which relates to the Goods or Services under the Contract that are the subject of any claim.

(b) Subject to Condition 9(a) the Seller shall not be liable to the Buyer in contract tort (including without limitation negligence) and/or breach of statutory duty for any economic loss, loss of profit, loss of business, loss of goodwill, loss of revenue, loss of anticipated savings, loss of use, loss of contract or any other similar loss which the Buyer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of any part of the Contract by the Seller, its employees, agents or representatives.

(c) Nothing in these Conditions shall operate so as to exclude the Seller's liability (if any) to the Buyer in respect of death or personal injury caused by the negligence of the Seller's its employees, agents or representatives; for breach of the Seller's obligations under Section 12 of the Sale of Goods Act 1979 (as amended) and/or Section 2 of the Sale and Supply of Goods and Services Act 1982 and/or Section 2(3) of the Consumer Protection Act 1987; or for fraud or fraudulent misrepresentation; or for any other matter for which it would be illegal for the Seller to exclude or attempt to exclude its liability.

## **10 Intellectual Property**

(a) Subject to Condition 5(b) and in the absence of an agreement in writing to the contrary, the Seller shall retain all rights in any patents, copyright and other intellectual property rights subsisting in any Goods, invention, drawing and/or design made or created wholly or partly by an employee or agent of the Seller in connection with the Contract.

(b) Where the Seller supplies the Goods or Services in accordance with a specification, drawing and/or other documentation provided by the Buyer, the Buyer, by entering into the Contract warrants that the use of any specification, drawings and/or documentation shall not cause the Seller to infringe any patent, copyright, registered trade mark or other intellectual property right owned by a third party and the Buyer shall (without prejudice to the other rights and remedies of the Seller) fully indemnify the Seller against all loss, damages, action, claim, demand, costs, charges, expenses and other liabilities awarded against or incurred by the Seller as a result of or in connection with such infringement whether actual or alleged and, any other liability of any other kind to any third party including without limitation for defective Goods, personal injury or death to the extent that it arises from the specification, drawings, documentation and/or any other instruction from the Buyer.

(c) The Goods are sold and the Services are performed subject to the rights of any third party whether in respect of any patent, trademark, registered design, copyright or other intellectual property rights, confidential undertaking or similar matter, and the Buyer will in this respect accept such title to the Goods as the Seller may have.

## **11 Termination and Suspension**

(a) The Seller may immediately terminate the Contract forthwith or suspend future deliveries if the Buyer: passes a resolution or presents a petition for winding-up, bankruptcy or for the appointment of an administrator, the appointment of a receiver and/or manager or administrative receiver over the whole or any part of its undertaking and assets; makes a proposal for a voluntary arrangement within the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with or the calling of any meeting of its creditors generally (otherwise in furtherance of a scheme for amalgamation or reconstruction); the levying of execution or distress on any of its assets; the failure to pay its proper debts as and when due and anything analogous to any of the foregoing under the law of the jurisdiction where the Buyer is established.

(b) Without prejudice to any other rights or remedies under the Contract the Seller may at its option forthwith on written notice suspend deliveries or terminate the Contract wholly or in part and any other contract with the Buyer in the event that the Buyer does not make any payments by the date on which they become due under the Contract or any other contract between the Buyer and the Seller and/or if the Buyer commits any breach of any contract (including without limitation the Contract) with the Seller.

(c) If the Buyer terminates the Contract for reasons other than those provided for in Condition 11(a) which affect the Seller or due to a material breach entitling the Seller to terminate the Contract the Buyer shall be liable to the Seller for any costs or charges incurred by the Seller by reason of such termination together with all costs incurred by the Seller up to the date thereof and any difference between the price set out overleaf and the price at which the Seller is able to sell the Goods elsewhere and the Seller shall have a general lien for any such sum on all and any property of the Buyer in its possession including, but not limited to, any dies.

(d) In the event of a suspension of deliveries or performance (whether under this Condition or under Condition 4) the Seller shall be entitled as a condition of resuming performance, to require pre-payment, or such security as it may deem appropriate.

## **12 Contracts for Services**

(a) If the Contract is for or to include Services to be performed by the Seller the Seller shall only be obliged to carry out Services during normal working hours and shall be entitled to charge for any overtime worked upon request by the Buyer.

(b) Where Services are performed at the premises of the Buyer, the Buyer shall provide free of charge : (i) proper and safe storage and protection of all goods, tools, plant, equipment and materials on site; (ii) free and safe access to the site and place where the Services are to be performed; and (iii) all facilities and services necessary to enable such Services to be performed safely and expeditiously.

### **13 Export Terms**

(a) Any term or expression which is defined in the provisions of Incoterms shall import the respective obligations of buyer and seller into these Conditions, but in the event of conflict these Conditions shall prevail.

(b) Where the Goods are supplied for export from the United Kingdom, the provisions of this Condition 13 shall (subject to any special terms agreed in writing between the Seller and the Customer) apply notwithstanding any other provision of these Conditions.

(c) Unless otherwise agreed in writing between the Seller and the Buyer, where the Goods are delivered within the UK they shall be delivered CIP and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979 (as amended). Where the Goods are supplied for export from the United Kingdom the Seller and the Buyer shall agree the terms of delivery in writing notwithstanding any other provision of these Terms. In addition 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 any duties on them.

(d) All taxes and duties incurred by reason of the export of the Goods from the United Kingdom shall be borne by the Seller and all import duties, sales taxes and any other duties, taxes, levies or impositions whatever shall be borne by the Buyer.

### **14 General**

(a) No failure or delay on the part of the Seller to exercise any of its rights under the Contract shall operate as a waiver of nor shall any waiver by the Seller of any breach by the Buyer of any of its obligations under the Contract affect the rights of the Seller in the event of any further or continuing breach.

(b) Each and every obligation contained in these Conditions shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any such obligation.

(c) If any of the provisions of these Conditions shall be held to be invalid or unenforceable, such invalidity and unenforceability shall not affect the remaining provisions.

(d) The Seller shall not be liable for any inability, whether in whole or in part to comply with its obligations under the Contract due to strikes, lockouts or other industrial disputes, protest, act of God, war or national emergency, act of terrorism, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, explosion, flood, storm, epidemic or default of suppliers or subcontractors or any other cause whatsoever beyond its reasonable control. In the case of partial inability to comply with its obligations under the Contract, the Seller reserves the right to supply the Buyer on a pro rata basis, proportionate to supplies to the Buyer and the Seller's other customers.. Time for delivery shall be extended by a period corresponding to the period of such inability provided that either party may give notice to the other cancelling deliveries which should have been made during a period of force majeure in the event that such period extends beyond 30 consecutive days.

(e) The Contract is personal to the Buyer, who shall not assign or in anyway part with the benefit without the Seller's prior written consent.

(f) Any notice or legal process given under the Contract shall be in writing and shall be given to the Seller or the Buyer as the case may be at their respective addresses set out overleaf or at such other address as either party may notify to the other. Any notice or process sent by post shall be deemed to have been delivered or served 24 hours after the same shall have been posted in a properly addressed pre-paid envelope and proof of posting shall be sufficient proof of service.

(g) The Contract shall be construed and governed in all respects in accordance with English law and the parties hereby submit to the jurisdiction of the English Courts save in the case of a Buyer who has no assets in the jurisdiction of the English Courts, and who is established in a country which will not enforce the judgment of the English Courts. In those circumstances, the Seller may, if it chooses, refer any disputes arising out of the Contract to arbitration under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, such arbitration to take place in London.

(h) Nothing in these Conditions shall confer on any third party any benefit or the right to enforce any of these Conditions.