



TERMS & CONDITIONS OF SALE

QF 332 Iss 01

1. CONSTRUCTION OF CONTRACT

These Conditions shall apply to all contracts (“Contract”) between NYLACAST LLC (hereinafter referred to as “the Company”) and any person firm or company (hereinafter called “the Customer”) for the supply of goods or the carrying out of work by the company. The Company contracts upon the terms of these Conditions only, and any printed or other standard terms emanating from the Customer shall not apply. Neither these conditions nor any other Contract documents shall be modified without the written agreement of the Company and in order that the Contract shall be a complete statement of the agreement between the parties with regard to the supply of goods or the carrying out of work by the Company, the Customer must ensure that any representation or instruction on which it wishes to rely has been accepted by the Company in writing. No order is deemed to be accepted or any Contract made with the Company until a verification of such order or Contract has been made by the Company in writing. The Contract shall consist of any of the following: Customer’s purchase order, Company’s quotation or proposal, the Conditions, and Company’s invoice verification thereof.

2. PRICE VARIATION

Quotations given by the Company in writing remain open for acceptance by the Customer for a period of 60 days, but quotations are based on the Company’s current costs of production at the time submitted to Customer and unless agreed in writing are subject to amendment on or at any time before or after acceptance by Customer to meet any rise or fall in such costs. The Company’s statement that its costs have risen or fallen in such circumstances shall be conclusive as to the existence of such a rise or fall.

(a) Exceptional Raw Material and Energy Cost Escalation

Exceptional cost changes (raw materials & energy). Our prices are based on raw material and energy costs prevailing on the date of the quotation. If, after the quotation date and before we commence manufacture of the Goods (or place any non-cancellable orders for materials/components specifically for the Goods), our direct costs of raw materials and/or energy attributable to the Goods increase by more than 10% in aggregate due to events outside our reasonable control and beyond what it was reasonable to foresee or mitigate, we may propose a price adjustment limited to the evidenced increase directly attributable to the Goods. We will give the Customer written notice before manufacture starts, explaining the basis of the adjustment and providing reasonable supporting evidence (e.g. supplier notifications/invoices, tariff changes, or relevant published indices). If the Customer objects in writing within 5 Business Days of the notice, then (provided manufacture has not started and no such non-cancellable orders have been placed) either party may cancel the order for the affected Goods; the Customer will pay any reasonable, evidenced costs properly incurred up to cancellation (including any non-cancellable commitments made before the objection). Once manufacture has started or non-cancellable orders have been placed, the adjusted price shall apply and the Customer may not cancel on the basis of the adjustment.





TAX

Other than as stated in the applicable Contract which is accepted by the Company in writing, prices do not include any federal, state or local property, license, privilege, sales, service use, excise, value added, gross receipts, or other taxes which may now or hereafter be applicable to, measured by or imposed upon or with respect to the transactions between the parties, products or services, their purchase, sale, replacement, value, or use, or any services performed in connection therewith, the property or facility, spare parts, equipment, or upon the production, manufacture, storage, sale, transportation, delivery, use, or consumption of products or services, and all such taxes, charges, or fees shall be paid directly by Customer, or, if paid by Company, shall be invoiced to Customer as a separate item and immediately paid by Customer to the Company. The Customer agrees to pay or reimburse the Company, its subcontractors or suppliers any taxes which the Company, its subcontractors or suppliers are required to pay or collect, or which are required to be withheld. Customer shall be solely responsible for paying all sales, use, transfer, or other taxes, fees, duties, or other charges imposed by any governmental authority in connection with the Contract, the products or services, and any other documents or instruments executed by the parties to effectuate the transactions contemplated hereby.

3. DELIVERY

- (a) The time for the performance of the Company's obligations under the Contract shall commence from the date upon which the Company notifies the Customer of Company's receipt of all the necessary information and documentation to enable it to supply the goods or carry out the work ordered by the Customer without interruption. If, in the judgment of the Company, the financial condition of Customer at any time prior to final delivery does not justify the terms of payment specified, the Company may require payment in advance or the Company may (at its option) cancel any outstanding order, whereupon Customer shall pay Cancellation Charges (as defined below) to the Company.
- (b) Once all necessary information and documentation mentioned in clause 4(a) has been supplied to the Company, and/or the Company has incurred any costs and/or has commenced production of goods, the Customer cannot change its requirements, designs or specifications without reimbursing the Company for all liabilities, loss of profit and increased administration and legal costs already incurred on an indemnity basis. If Customer wishes to cancel any time prior to shipment of the goods, Customer shall pay to the Company five (5%) percent of the total amount due under the Contract to be cancelled, less the sum of the payments received by the Company on the Contract as of the date of proposed cancellation ("Cancellation Charges"). Upon receipt of payment of the said Cancellation Charges, and subject to the Customer's compliance with its other obligations to the Company, the Company will permit the cancellation.
- (c) Any date for delivery specified in respect of goods sold or to be sold by the Company shall be treated only as an estimate given in good faith, and such delivery is not a term of the Contract, and it is specifically hereby agreed that time for delivery is not of the essence.





Any failure to deliver by or on such date shall not entitle the Customer to cancel or terminate the Contract or make Company liable for damages previously agreed by the Company in writing.

- (d) Any delivery time specified shall be extended by any period or periods during which the manufacture or delivery of the goods or other work by the Company in connection with the Contract is delayed due to fire, explosion, flood, storm, tempest, sabotage, strikes, official and unofficial riot, invasion, acts of war (whether war be declared or not), terrorism, pandemic, shortage of labour power or materials, delay by the Company's suppliers or carriers, civil commotion, accidents, plant breakdown, technical difficulty, seizure, or other action by or in compliance with an order or an apparently competent authority and any other event or circumstance beyond the control of the Company. Notwithstanding such delays the Customer shall take and pay for at the rate of the Contract price such of the goods as shall be tendered by the Company and be ready for delivery.
- (e) From the time of the dispatch of the goods from the Company' premises the risk of any loss of or damage to or deterioration of the goods from whatever cause whether because of the Company's negligence or otherwise shall be borne by the Customer. Goods shall be conclusively deemed to have been delivered in full quantity and in good condition unless particulars of the shortage or defect alleged are notified in writing by the Customer to the Company within 7 days of the date of receipt (as recorded in the delivery documentation) by the Customer of the goods.
- (f) The Company shall be entitled to charge for and be paid all delivery and insurance costs incurred and not specifically included in the Contract price.

5. VOLUME VARIATION

Subject to the terms below, if Customer seeks to vary an order for which it has provided an estimate for requirements, Customer must: 1) provide written notice to the Company; and 2) the Company must agree in writing to accept the request, which agreement shall be subject to receipt of Cancellation Charges and other reasonable conditions. In addition, where the Customer has submitted an order, it shall not:

- (a) Within 60 days of the proposed delivery date of any order, be entitled to vary such order, and any order under which goods are due for delivery in 60 days or less shall be considered as a binding order.
- (b) Within 90 days of the proposed delivery date of any order, be entitled to vary such order unless the Customer agrees to pay any costs arising from or related to the increase or decrease in raw materials to be used by the Company's suppliers of such raw materials, and the Customer shall pay to the Company the Company's costs arising from or related to these requirements.





6. RETENTION OF TITLE

(a) Title

The title to any goods supplied by the Company to the Customer shall not pass from the Company to the Customer unless and until the Company has received payment in cash in cleared funds in full for such goods and for any work done by the Company on behalf of the Customer and for any other debts owed by the Customer to the Company or its affiliates on any account whatsoever.

(b) Storage of the Goods

Until payment for all goods supplied and for all work done has been made in full, including payment of any interest, and other amounts due, the Customer shall store all goods supplied by the Company in such a way as to enable them to be identified as the property of the Company and shall hold and insure at full replacement value (for the benefit of Company) such goods as bailee for the Company. The Customer shall not dispose or part with the possession of such goods until the title has passed, save that the Customer may sell the goods in the normal course of business and proceeds of sale and/or insurance shall be held in trust for the Company.

(c) Risk

The risk to any goods supplied by the Company shall pass to the Customer when they are dispatched from the Company's premises either for delivery to the Customer or because of collection by the Customer. The Customer shall keep such goods fully insured at full replacement value for the benefit of Company until title has passed to the Customer.

(d) Recovery of the Goods

The Customer agrees to the Company filing UCC-1 financing statements as any goods supplied to the Customer without any Customer signature. If the Customer does not pay

to the Company any sums due under any Contract between the parties, the Company may repossess and uplift any goods supplied to the Customer and thereafter to resell the same and for this purpose the Customer hereby grants an irrevocable right and licence to the Company's employees and agents to enter upon all or any of its vehicles or premises in which such goods or other products are stored with or without vehicles during normal business hours. This right shall continue to subsist notwithstanding the termination of the Contract for any reason and is without prejudice to any accrued rights of the Company thereunder or otherwise.

- (e) **Recovery of Proceeds of Sale or Insurance of Goods in the Event of Non-Payment** If the Customer re-sells any goods supplied by the Company, notwithstanding that payment to the Company has not been made and that title to such goods has not passed to the Customer, the proceeds of any such re-sale equivalent to all sums owing ("the Proceeds") shall belong to the Company until payment has been received in full. The Customer will hold the Proceeds in a fiduciary capacity in trust and keep them in a separate account, to be remitted forthwith to the Company.





(f) **Termination of Customer's Rights**

The Customer's right to possession of goods owned by the Company shall cease forthwith upon the occurrence of any of the events in clause 11 of these Conditions.

(g) **Mitigation**

All mitigation/recovery activities by the Company under the Contract between the parties are agreed to be entirely without prejudice to any additional claims it may have against the Customer for any failure by the Customer to complete its obligations under the Contract.

7. PAYMENT

- (c) The invoice price is to be paid by the Customer no later than 30 days from the date of invoice (unless alternative payment period is agreed in writing between the Company and the Customer). The Company shall make the goods available for collection by the Customer from the Company's premises and accordingly the prices of all goods are based on delivery 2020 FCA Incoterms. If the Customer delays taking delivery of the goods beyond the agreed delivery date, the goods may be invoiced and payment due 30 days thereafter, and the Company reserves the right to charge the Customer reasonable storage or delivery costs for any goods ready for collection. Payment shall be made to the Company and the Company's official receipt shall be the only acknowledged discharge of the debt. The Customer shall not be entitled to withhold payment of any amount due to the Company by reason of any payment credit set off counterclaim allegation of incorrect or defective goods or work or for any reason whatsoever which the Customer may allege excuses it from performing any obligation under the Contract. Interest shall accrue on any amount that remains outstanding after the period of 30 days at the rate of 2.5% per month calculated from day to day or at the rate of interest prescribed by law, whichever is less.
- (d) If the Customer does not take delivery of all the goods ordered by the Customer in a Contract less than 12 months after the date of the Contract, then the Company may in its sole discretion terminate such a Contract immediately. On such termination all monies payable to the Company by the Customer under such a Contract will be immediately due irrespective of whether all goods ordered by the Customer in a Contract have been supplied to the Customer. This clause 7 (b) shall not apply if the Customer does not receive all deliveries less than 12 months after the date of the Contract due to the Company's noncompliance with the delivery date provided by the Company.
- (e) The Company and the Customer agree that the price for the goods is based on the Customer purchasing a minimum number of goods from the Company ("the Minimum Purchase Commitment"). If the Customer fails to order and purchase the Minimum Purchase Commitment from the Company within 12 months from the date of this Contract the Customer shall pay to the Company, the difference between the total price of goods purchased by the Customer pursuant to the Contract and the total sum payable under the Minimum Purchase Commitment. In such circumstances, the Company may also terminate the Contract on notice with immediate effect and without liability thereof.
- (f) Time for payment of the goods shall be of the essence.
- (g) No payment shall be deemed to have been received until the Company has received payment in full and cleared funds.





- (h) The Customer shall pay for the goods in the invoiced currency unless otherwise agreed by the Company in writing.
- (i) Any charges incurred for Bank transfers (including but not limited to wire and conversion charges) is the responsibility of the Customer. If the Customer's payment does not cover such charges, the Company has the right to invoice such Bank charges to the Customer, which will be due and payable immediately.

8. PERFORMANCE

The Company accepts no liability for any loss or damage arising by reason of the failure of the goods to comply with any written estimate as to the performance thereof provided that the Company shall be given reasonable opportunity to remedy any defect as to estimated performance and in the event that such defect shall not be so remedied, then the Customer's sole remedy is that the Company shall without prejudice to its exclusion of liability hereunder give (at Company's option) credit to or reimburse the Customer for the cost of the goods on the return thereof to the Company.

9. ASSIGNMENT OF THE RIGHTS AND OBLIGATIONS

The Customer shall not assign, sub-contract, delegate, transfer, place in trust or dispose of the Contract and/or any of its rights or obligations under it without the prior written consent of the Company.

10. LIMITED WARRANTY

(a) Subject to receipt of payment in full, the Company warrants to Customer only (not to its customers, assignees, or other third party), for a period of six (6) months from date of delivery, any new goods sold by it to be free from material defects in material and workmanship. If Customer or any party not authorized in writing by the Company operates, alters, repairs, maintains, or otherwise interferes with any part of the goods provided by or on behalf of the Company, all warranties under the Contract are automatically voided.

(b) The Company's liability in respect of the Contract for defective goods shall solely be limited to replacing, repairing or issuing credit at Company's option for any goods returned by the Customer within the aforesaid period which the Company, in its sole, considers to be defective.

(c) The Company shall have no liability to the Customer under any circumstances for any:

- (i) loss of profits and/or damage to goodwill.
- (ii) pure economic and/or other similar losses.
- (iii) special damages.
- (iv) aggravated, punitive and/or exemplary damages.





(v) business interruption, loss of business, loss of contracts, loss of opportunity and/or production; or

(vi) consequential losses and/or indirect losses.

(d) Nothing in the Contract shall exclude or limit the Company's liability for death or personal injury due to its gross negligence or wilful misconduct, or any liability which is due to its fraud or any other liability which is not permitted to exclude or limit as a matter of law.

11. CANCELLATION

The Company may cancel this Contract in the event of:

(a) If the Customer:

(i) fails to make any payment when due.

(ii) breaches the terms of this Contract (and if curable the breach has not been remedied within 14 days of notice requiring it to be remedied).

(iii) persistently breaches any one or more terms of the Contract.

(iv) ceases or threatens to cease to carry on business.

(v) if Customer (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due, (ii) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, (iii) makes or seeks to make a general assignment for the benefit of its creditors, or (iv) applies for or has appointed a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business

(vi) if, without obtaining the Company's prior written consent, (i) Customer sells, leases or exchanges a material portion of Customer's assets, (ii) Customer merges or consolidates with or into another Person, or (iii) a change in Control of Customer occurs.

(b) If the Company terminates this Contract pursuant to clause 11(a) then.

(i) all costs, expenses, work in progress, overheads and loss of profits incurred by the Company in connection with the Contract shall forthwith become payable by the Customer as a debt due from the Customer to the Company.

(ii) The Customer shall cease to sell goods belonging to the Company in the normal course of the Customer's business.

(iii) any goods of the Company kept by the Customer shall at the Company's option forthwith be delivered up by the Customer to the Company or to the Company's





nominee who shall be given access to the goods to remove the same and the Customer shall pay the Company for such goods, and.

- (iv) the price of any goods delivered by the Company to the Customer, or any goods ordered by the Customer in respect of which the Company has notified the Customer that such goods are available for delivery to the Customer shall become due and payable forthwith.

12. INDEMNITY

Subject to the limitations provided for in Subsection (c) below:

- (a) The Company agrees to defend, indemnify and hold harmless Customer (including its officers, directors, employees, subcontractors and agents) from and against any and all liabilities (including third party liabilities), claims, injuries (including death resulting therefrom), property damage, fine, penalty or assessment by any public agency, insofar as not prohibited by law, cost or expense (including costs of defense, settlement and reasonable attorneys' fees), which (i) are directly caused by any grossly negligent act or omission of THE COMAPNY or any third party acting by, through or under the Company, or its agents, employees or contractors, associated with or arising from the Company's obligations under the Contract or its use and occupancy of the Facility Site, or (ii) are caused jointly by any grossly negligent act or omission by THE COMAPNY or any third party acting by, through or under the Company, or its agents, employees or contractors and any act or omission by any third party or parties, but only to the extent of the fault of THE COMAPNY or any third party acting by, through or under the Company, or its agents, employees or contractors relative to the fault of such third party or parties for obligations under the Contract or the use and occupancy of the Facility Site. In no event shall the Company be obligated to defend, indemnify or hold the Customer harmless for matters caused by any act or failure to act by the Customer.
- (b) Customer agrees to defend, indemnify and hold harmless the Company (including its officers, directors, employees, subcontractors and agents) from and against any and all liabilities (including third party liabilities), claims, injuries (including death resulting therefrom), property damage, fine, penalty or assessment by any public agency, insofar as not prohibited by law, cost or expense (including costs of defense, settlement and reasonable attorneys' fees), which are directly caused by any negligent act or omission of Customer, its agents, employees or contractors, associated with or arising from Customer's obligations under the Contract and/or conditions of the Property not caused by the Company. In no event shall the Customer be obligated to defend, indemnify or hold the Company harmless for matters caused by any negligent or intentional act or failure to act by the Company.
- (c) The provisions set forth in this Section shall survive the expiration or termination of the Contract.

13. INTELLECTUAL PROPERTY RIGHTS

- (a) Any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications for them) in the goods or in any computer programs, moulds, tools (physical or virtual), designs, drawings, or goods or data (IPR) owned by the Company or created by the Company in the course of the performance of the Contract or otherwise





used in the manufacture of the goods shall remain the Company's property unless otherwise expressly agreed by the Company in writing.

- (b) The Company grants, on full payment for the goods the non-exclusive right for the Customer and bona fide purchasers from the Company to use, for the operation of the goods for their intended purpose only, (i) any software supplied with, or embedded in, the goods, and (ii) technical manuals and instructions relating to operation and maintenance of the goods.
- (c) The Customer hereby grants to the Company, a non-assignable non-exclusive, royaltyfree licence to use any intellectual property rights (including, without limitation, patents, registered and unregistered designs, trademarks and service marks (registered or not) and copyright and any applications for them) owned by or licensed to the Customer to the extent necessary for the Company to supply the whole or any part of the goods in accordance with the Contract.
- (d) Except as expressly stated in this clause 13, nothing in the Contract shall be deemed to have given the Customer a licence or any other right to use any of the IPR of the Company.

14. GENERAL LIEN

Without prejudice to other remedies, the Company shall in respect of all unpaid debts due from the Customer have a general lien on all goods and property in its possession (whether worked on or not) and shall be entitled on the expiration of 14 days' notice to the Customer to dispose of such goods or property as it thinks fit and to apply any proceeds towards such debts.

15. FORCE MAJERURE

- (a) Neither party hereto shall be considered in default in the performance of its obligations (except for Customer's payment obligations, which are not subject to excusable delay) hereunder or be liable in damages or otherwise for any failure or delay in performance which is due to strike, lockout, concerted act of workers or other industrial disturbance, fire, explosion, flood, or other natural catastrophe, civil disturbance, terrorism, riot, or armed conflict whether declared or undeclared, curtailment, shortage, rationing, allocation, or failure of normal sources of supply of materials, transportation, energy, or utilities, inability or delay in obtaining or maintaining any easement, rights-of-way, permit or license, accident, act of God, pandemic, supply chain disruption, sufferance of or voluntary compliance with an act of government and government regulation (whether or not valid), embargo, or due to any other cause whether similar or dissimilar to any of the causes or categories of causes described above and which is beyond the reasonable control of the party affected.
- (b) The following shall also excuse the Company's delay or the Company's non-performance, and Customer shall remain liable to make payments and otherwise perform under the Contract: (i) An outage of the Facility caused by failure of Customer to supply necessary





utilities or support services for the Facility; (ii) direction from Customer from time to time to suspend or cease operations; (iii) negligent, wilful, or reckless acts by Customer or third parties (other than the Company's employees and contractors); or (iv) Customer's failure to require or take product or services.

16. DELIVERY QUANTITY TOLERANCE

All delivered orders are subject to a delivery quantity tolerance. This is aimed at minimising procedural administrative charges incurred through raising subsequent actions where there would be minimal value, in real terms, in doing so.

Quantity ordered	Tolerance
0 - 1000	+/-1 %
1000 - 5000	+/-2 %
Over 5000	+/-3 %

The Company shall be deemed to have fulfilled its Contract if the Goods delivered fall within these tolerance limits.

17. CHANGES TO DATE OF REQUESTED ORDER

If an order is in WIP or in finished stock ready for dispatch to a previously agreed dispatch date the Customer can be refused the right to reschedule the dispatch date to a later date.

18. DELIVERY

Except as stated to the contrary in the Contract, delivery terms shall be FCA Company's US facility (per Incoterms 2020), the Customer is required to make available proof of delivery in the form of certificate of shipment/Bill of lading/air waybill. If such documentation is not available, the Customer is liable to take responsibility for any retrospective Tax and/or penalties incurred during a Tax audit. In respect of an Overseas Customer unable to provide requisite information there is also the risk of incurring Tax charges for the said order and future orders placed with the Company.

19. SUPPLY OF DRAWINGS

It is the responsibility of the Customer to provide the Company with the requisite drawings, when issuing an order. The Customer must inform the Company of any changes and, as such, any changes will be subject to a re-cost.

20. CREDIT APPLICATION

The award of a credit account to a customer is subject to satisfactory credit checks conducted by the Company. Credit limits can be retracted at any point and the Company can require payment from a customer on a pro-forma basis.





21. CONFLICT

In the event of a conflict between these standard terms and conditions and any specific Customer Contract that has been agreed in writing by the Company, the written agreed Customer Contract will prevail.

22. GENERAL

- (a) Any notice under this Contract shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at the address set out on the first page of this Contract or such other address as that other party may from time to time notify in writing.
- (b) This Contract contains the whole Contract between the parties, and it supersedes any written or oral Contract between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered this Contract based on any representation that is not expressly incorporated into this Contract.
- (c) The Contract shall be governed by and construed in accordance with the internal laws of the Commonwealth of Pennsylvania without giving effect to any choice or conflict of law provision or rule (whether of the Commonwealth of Pennsylvania or any other jurisdiction) and excluding the U.N. Convention on Contracts for the International Sales of Goods.
- (d) Customer's remedies set forth in the Contract are exclusive of any remedy available to Customer by operation of law or equity.
- (e) Should any provisions of the Contract become unenforceable, invalid, or be declared illegal, then that provision shall be considered severed from the rest of the Contract and shall not affect the validity of the remainder of the Contract.
- (f) The Contract is intended solely for the benefit of the Customer and the Company and (except as stated in the Contract) their respective successors and permitted assigns and is not intended to confer any benefits upon, or create any rights in Favor of, any other person or entity.
- (g) In the Contract, the singular shall include the plural and the use of any gender shall include all genders, as the context requires, and the words "include," "includes" and "including" shall mean include, includes, or including, without limiting the generality of the description preceding such term and are used in an illustrative sense and not a limiting sense.
- (h) Any provision of the Contract that by its nature is intended to survive termination or expiration of the Contract shall so survive, including but not limited to, the indemnification and confidentiality obligations set forth herein.

