

## Tooling Loan Agreement Terms & Conditions

### 1 Definitions & Interpretation

- (a) The following definitions apply:
- Commencement Date:** the commencement date specified in the Tooling Loan Agreement Summary.
- Conditions:** these Tooling Loan Agreement Terms & Conditions.
- Tooling Loan Agreement Summary:** the front pages of the Tooling Loan Agreement.
- Delivery Location:** the delivery address for the Tooling specified in the Tooling Loan Agreement Summary.
- Documentation:** all drawings, operating, installation and maintenance manuals, instructions, service records, instructions, technical specifications and other documentation with respect to the Tooling.
- Group:** in relation to a company, that company, each and any subsidiary or holding company from time to time of that company, and each and any subsidiary from time to time of a holding company of that company.
- holding company and subsidiary:** mean a "holding company" and "subsidiary" as defined in section 1159 of the Companies Act 2006 and a company shall be treated, for the purposes only of the membership requirement contained in subsections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) another person (or its nominee), whether by way of security or in connection with the taking of security, or (b) its nominee.
- Insurance Value:** the insurance value of the Tooling specified in the Tooling Loan Agreement Summary.
- Maintenance & Service Protocols:** our and the relevant manufacturer's published procedures, requirements and protocols (or if there are none, those required in line with good industry practice) for routine service, maintenance and repair of the Tooling from time to time.
- Manufacturer's Warranty:** has the meaning given in clause 6 below.
- Supply Arrangements:** refers to the separate contractual arrangements between you and us for the supply by you to us (or our relevant Group company) of products manufactured using the Tooling, as referred to in clause 5 below.
- Tooling:** refers to the tooling (such as tools, gauges, devices, equipment, jigs, moulds, mask works, and fixtures) and/or other manufacturing equipment, together with all related Documentation, listed in the Tooling Loan Agreement Summary, and all substitutions, replacements or renewals of such tooling, equipment and all related parts thereof and accessories provided.
- Tooling Loan Agreement:** the Tooling Loan Agreement Summary and these Conditions.
- Total Loss:** means the Tooling is, in our reasonable opinion (or the opinion of relevant insurer), damaged beyond repair, lost, stolen, seized or confiscated.
- we/us/our:** refers to Ideal Boilers Limited (or the relevant Group company of Ideal Boilers Limited) as identified in the Tooling Loan Agreement Summary.
- Year:** the period of 12 months starting on the Commencement Date, or on a relevant anniversary of that date.
- you/your:** the company or business named as our supplier in the Tooling Loan Agreement Summary.

- (b) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns. A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (c) Unless the context otherwise requires, words in the singular shall include the plural and vice versa, and a reference to one gender shall include a reference to either gender.
- (d) A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment, and includes any subordinate legislation for the time being in force made under it.
- (e) A reference to **writing** or **written** includes email but not fax.
- (f) References to clauses are to the clauses of these Conditions. Headings in these Conditions or the Tooling Loan Agreement Summary shall not affect the interpretation of the provisions to which they relate.
- (g) Any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

### 2 What the Tooling Loan Agreement covers

- (a) By signing the Tooling Loan Agreement Summary, we and you agree that for the life of the Tooling Loan Agreement:
- (i) we will loan the Tooling to you for use in your business; and
- (ii) you will use the Tooling exclusively to manufacture products for supply to us in accordance with the Supply Arrangements; and
- (in each case) on the terms and subject to these conditions of the Tooling Loan Agreement.
- (b) These Conditions and those on the Tooling Loan Agreement Summary (together with any other documents referred to in them) make up the whole agreement between us relating to its subject matter. No other terms (including any standard terms you introduce) will apply unless we have agreed to them in writing on or after the date of the Tooling Loan Agreement. The terms and conditions of the Tooling Loan Agreement shall prevail and take precedence over any inconsistency with or conflicting provision in any other documents, except as may be specifically agreed in writing by us.
- (c) You and we each warrant to each other that it has full capacity and authority to enter into and perform the Tooling Loan Agreement, and that those signing the Tooling Loan Agreement Summary are duly authorised to bind the party for whom they sign. You also confirm that the information set out in the Tooling Loan Agreement Summary is accurate.

### 3 Term

- (a) The Tooling Loan Agreement will start on the Commencement Date, and will continue until terminated by you or us on giving notice in writing to the other (unless otherwise terminated by you or us in accordance with these Conditions). Upon termination of the Tooling Loan Agreement your right to loan the Tooling from us will end (without

affecting the duties and liabilities you had with us at the time) and you will no longer have the right to use or keep the Tooling and you must return this to us in accordance with clause 12.

### 4 Loan of Tooling

- (a) We will loan the Tooling to you without charge, subject to these Conditions.
- (b) In relation to the Tooling you must:-
- (i) use the Tooling only for manufacturing products for supply to us and not for any other purpose whatsoever without our prior written approval;
- (ii) arrange for the Tooling to be properly serviced, maintained and repaired in accordance with relevant Maintenance & Service Protocols and all applicable legal requirements, (including environmental protection regulations and occupational safety and health regulations) and that only manufacturer-approved spare parts are fitted in or to the Tooling;
- (iii) make sure that the Tooling is deployed and operated properly according to our (or the relevant manufacturer's) safe operating instructions and used only for your business for the purposes for which it is designed and not for any unlawful purpose;
- (iv) take such steps and comply with all reasonably appropriate safety and user protocols in relation to all Tooling (including instructions provided by us) as a safe and prudent operator would deem to be necessary to ensure, so far as is reasonably practicable, that the Tooling is at all times safe and without risk to health when it is being set, used, cleaned or maintained, and to ensure that it is regularly checked to ensure it is safe and fully operational at all relevant times;
- (v) let us inspect the Tooling during our regular annual audits and at all other reasonable times during the period of the Tooling Loan Agreement as long as we give you reasonable notice;
- (vi) not alter, improve or add anything to the Tooling, or remove any mechanical or pneumatic components or safety device on the Tooling, without our written permission;
- (vii) not sell, lend, sub-let or give away the Tooling or try to do so, or use the Tooling as security for a loan or any other obligation;
- (viii) not transfer or assign any of your rights or obligations under the Tooling Loan Agreement to anyone else or try to do so without our written permission;
- (ix) be solely responsible for and indemnify us, our employees, agents and contractors at all times from and against:-
- (1) loss, theft, destruction of or damage to the Tooling from whatever cause arising and whether or not such loss, theft, destruction or damage results from your negligence or that of your employees or agents; and
- (2) all claims, demands, proceeds (civil or criminal), penalties, fines, liabilities, losses, damages, costs and expenses of whatsoever nature which may be brought against us or which we may suffer, incur or sustain in connection with our ownership of the Tooling or arising out of the Tooling Loan Agreement.
- This indemnity will survive and remain in full force and effect should the Tooling Loan Agreement be terminated.
- (x) comply with all the terms of the insurance policy referred to in clause 10 and provide us with any assistance we may require to pursue any claim which we may have under the policy;
- (xi) not fix or attach the Tooling to any land or building so that it becomes part of such land or building;
- (xii) keep the Tooling in your possession and under your control at all times do not remove it from the Delivery Location or your manufacturing location (the address of which you must notify to us immediately if we ask you to) without our prior written consent;
- (xiii) not allow the Tooling to be confiscated, seized or taken out of your possession or control under any distress, execution or other legal process, but if the Tooling is so confiscated, seized or taken, you must notify us and at your own expense use your best endeavours to procure an immediate release of the Tooling and indemnify us on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation;
- (xiv) ensure that at all times the Tooling remain identifiable as being our property and that you will ensure the same is marked immediately upon delivery by you (where the Tooling is supplied to you) or upon purchase by us (where the Tooling is manufactured by you or your Group company) with a non-removeable tag or other identification mark which identifies us as the owner of the Tooling, and our Tooling identification number if we provide one. You agree not to remove or obscure any such identifying tag/marks attached to the Tooling and immediately replace the tag/marks should the this become damaged or illegible;
- (xv) not purchase, design or fabricate any additional or replacement Tooling for us without our prior written approval; and
- (xvi) not without our prior written consent allow the creation of any mortgage, charge, lien or other security interest in respect of the Tooling (or any of it), nor permit to be done any act or thing which will or may jeopardise our right, title and/or interest in the Tooling.
- (c) Upon request, you shall promptly supply us with the following in relation to the Tooling: i) a report of all Tooling in your possession (including possession by any of your sub-contractors), which shall include such information which we deem necessary, including the Tooling description, the name of manufacturer and the serial number; ii) drawings; iii) photographs; iv) its location and/or v) such other information as we deem necessary for identification and/or operation of the Tooling.
- (d) If, in order to perform the work required by us, you order from your subcontractor or suppliers any parts, material or other goods that require the use of any of the Tooling (or Documentation) for their production, you shall be fully responsible as provided in the Tooling Loan Agreement for any of the Tooling (or Documentation) which you may loan to your subcontractor(s) and/or supplier(s). You must obtain our prior written consent and authorisation to re-consign any Tooling to such subcontractors and/or supplier(s). You shall enter into loan or consignment agreement with your subcontractors and/or supplier(s) on terms no less onerous than the terms of the Tooling Loan Agreement, and such agreement will not diminish our rights nor enlarge our responsibilities, as defined in the Tooling Loan Agreement, with respect to Tooling or Documentation loaned by you to your subcontractors and/or supplier(s).

- (e) You must place the following ownership statement on all design, process, technical or other documentation generated by you in the performance of work for us relating to the design, build or use of the Tooling: *This Document is the property of Ideal Boilers Limited. Its use is authorised only for responding to a Request for Quotation or for performance of work for Ideal Boilers Limited.*
- 5 Third Party Manufactured Tooling - Delivery, Inspection & Risk**
- (a) Where the Tooling is manufactured by a third party, you shall arrange with the manufacturer concerned for the Tooling to be delivered by the manufacturer to you at the Delivery Location(s) specified in the Tooling Loan Agreement Summary. You are responsible for managing such supply arrangements on our behalf with the relevant manufacturer in accordance with our requirements and the terms of the relevant supply agreement(s). We are not responsible for such supply arrangements with the third party manufacturer (including delivery requirements), and will have no liability to you under the terms of such arrangements.
- (b) Risk of loss, theft, damage or destruction of the Tooling will pass to you upon delivery.
- (c) You are responsible for any applicable customs duties and other fees payable at your Delivery Location(s). If in order to acquire or use the Tooling you are required to be registered with any governmental authority, it is your responsibility to obtain and maintain such registration and to pay any associated costs, expenses or taxes.
- (d) Where the Tooling is to be delivered to you, you agree to inspect all Tooling on delivery and accept it only if it is satisfactory. You must promptly notify us if any Tooling is not satisfactory and follow our instructions regarding unsatisfactory Tooling. If we have not received any notice to the contrary within 7 days after delivery, or you put the Tooling into operational use (whichever is the earlier) you are deemed to have accepted the Tooling as being satisfactory.
- (e) Where the Tooling is manufactured by you (or your Group company), the terms of such supply, including those regarding delivery, warranty and payment terms, shall be subject to separate agreement in writing between you and us. The risk of loss, theft, damage or destruction of the Tooling will remain with you notwithstanding title passing to us at the time of purchase.
- 6 Suitability & Defects of Tooling**
- (a) You are responsible for choosing the Tooling and for making sure that it is fit and suitable for manufacture of the products concerned.
- (b) You acknowledge that the Tooling was not manufactured by us (or any member of our Group), and that you are entitled only to such warranty or guarantee or other benefit (**Manufacturer's Warranty**) as we receive from any relevant third party manufacturer or supplier in relation to defects in the Tooling. No warranties or representations are made by us with respect to the Tooling, including the warranties of merchantability and fitness for a particular purpose.
- (c) Where any defect in the Tooling appears during the term of the Tooling Loan Agreement you must notify us such defect immediately you become aware of it (and in any event in writing within three (3) days of the defect occurring) and we (or one of our Group members) must be permitted to make a full examination of the alleged defect. Where the Tooling was manufactured by a third party manufacturer and the defect in the Tooling which appears will or may fall within the scope of the Manufacturer's Warranty, you are responsible for using all reasonable endeavours to ensure that the third party manufacturer concerned remedies, free of charge, such defect in the Tooling by repairing or replacing (at our option), any Tooling or part(s) thereof.
- (d) You are responsible for repairing or replacing (at our option) any Tooling or part(s) thereof at your own cost where:
- the Tooling (or any part(s)) is lost, damaged or destroyed except to the extent you can reasonably demonstrate to us that such loss, damage or destruction is caused by circumstances beyond your control;
  - the Tooling is damaged as a result of misuse, neglect, accident, mishandling, incorrect or failure to repair or maintain the Tooling, improper installation, unauthorised modification, or use contrary to operating instructions;
  - the Tooling defect arose out of any information, design or any other assistance supplied or furnished by you (or on your behalf); and
  - the Tooling was manufactured by you (or your Group company) and the defect is attributable to defective material, workmanship or design.
- 7 Supply Arrangements - products**
- (a) All products purchased by us (or our Group companies) from you shall be supplied subject to our standard purchasing terms and conditions, including all payment terms specified therein, unless otherwise agreed by us with you in writing.
- (b) You must continue to supply us with products in accordance with the Supply Arrangements even if the Tooling cannot be used for any reason.
- (c) We are entitled to charge you for the costs and expenses we may have to pay to enforce the terms of the Tooling Loan Agreement. You must pay these charges when we demand them.
- 8 Intellectual Property**
- (a) Title, ownership, and all rights by way of copyright, patents, trademarks, trade secrets and any other intellectual property rights in the Tooling (or any part thereof) and any copy, portion, or modification thereof, shall not transfer to you (or your customers) and shall remain our property (or that of our licensors). You must not remove, alter, or obscure any printed or displayed legal notices contained on or in the Tooling.
- 9 Limitation of Liability**
- (a) Without prejudice to clause 9(b), our maximum aggregate liability for breach of the Tooling Loan Agreement (including any liability for the acts or omissions of our employees, agents and sub-contractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall in no circumstances exceed the aggregate insurance value of all Tooling (identified in the Tooling Loan Agreement Summary) loaned to you under the Tooling Loan Agreement.
- (b) Nothing in the Tooling Loan Agreement shall exclude or in any way limit:
- either party's liability for death or personal injury caused by its own negligence;
  - either party's liability for fraud or fraudulent misrepresentation; or
  - any other liability which cannot be excluded by law.
- (c) Without prejudice to clause 9(b), in no event will we be liable to you in contract, tort or otherwise including any liability for negligence for:
- any loss of revenue, business, anticipated savings or profit or any loss of use or value; or
  - downtime costs, loss of data or data restoration costs, or
  - for any indirect or consequential loss,
- in each case, however caused, and even if foreseeable. (**anticipated savings** denotes any expense which you expected to avoid incurring or to incur in a lesser amount than would otherwise have been the case.)
- (d) We will not be liable for performance delays or for non-performance due to causes beyond our reasonable control.
- 10 Title to Tooling & Insurance**
- (a) The Tooling shall at all times remain our property, and you will have no right, title or interest in or to any of it (except the right to possess and use of the Tooling subject to the terms of the Tooling Loan Agreement).
- (b) You must insure each of the Tooling with a reputable insurance company for the Insurance Value against loss or damage at all times from all insurable risks (including third party and public liability claims, and against vandalism, malicious mischief and theft) during the term of the Tooling Loan Agreement and any further term during which the Tooling is in your possession, custody or control until such time as the Tooling is redelivered to us. You must arrange for the insurance company to name us as the loss payee on the insurance policy. If we ask, you must show us evidence that is acceptable to us of the insurance policy. If you do not show us evidence of the insurance policy which is acceptable to us when we ask, we have the right to arrange such insurance for you and you appoint us your agent to do so. We do not have to do this unless we choose to. You will pay the full cost of any insurance which we arrange and we will recharge the full amount of the insurance premiums to you.
- (c) You must notify us immediately in the event of any loss or damage to the Tooling and you may not settle any claims without our agreement. You agree to hold any insurance proceeds which you receive on trust for us.
- (d) If the Tooling (or any of it) is a Total Loss, you must (i) (if we request in writing that you do so) within 30 days of such event replace the Tooling at your own expense and continue with the Tooling Loan Agreement in which case we will give you any insurance money we receive for the Tooling up to the value of the Tooling replacement cost, or (ii) (at our option) we may retain the amount of any insurance settlement we obtain from the insurers.
- Except as set out in clause 10(d)(ii), the Total Loss will not affect the Tooling Loan Agreement which will continue in force and any replacement Tooling will become our property.
- 11 Events of default**
- (a) If :-
- you fail to pay any sum due to us under the Tooling Loan Agreement or any other agreement (including amounts due under the Supply Arrangements) with us within 14 days of our demanding payment; or
  - the Supply Arrangements are terminated by either you or us in writing for any reason; or
  - you do not keep to any of the terms of the Tooling Loan Agreement or any other agreement with us after we have given not less than 10 days to remedy the breach, if we think that the breach is remediable; or
  - you make any statement, representation or warranty under or in relation to the Tooling Loan Agreement or any other agreement with us which is or becomes materially incorrect; or
  - you are subject to a change in voting control in respect of yourself or any holding company which controls you or a material part of your assets is transferred to another party; or
  - you are unable to meet your debts as they fall due; or
  - you enter into an arrangement with your creditors, are subject to insolvency proceedings or enter liquidation or have a receiver, administrative receiver or administrator appointed or you stop trading; or
  - you (being a partnership) are dissolved or have a judicial factor appointed to you or become subject to any of the events set out in paragraph (vii) above;
- then in every such case an **event of default** will be deemed to have occurred.
- (b) On the occurrence of an event of default we may by notice in writing to you immediately or at any time afterwards terminate the Tooling Loan Agreement and your right to loan the Tooling from us (without affecting the duties and liabilities you had with us at the time). You will no longer have the right to use or keep the Tooling and you must return this to us in accordance with clause 12.
- 12 Return or Recovery of Tooling**
- (a) When the Tooling Loan Agreement terminates (and your loan of the Tooling ends), you must return the Tooling to us at a place we choose in the UK. You will have to pay to do this and the Tooling must be in the same original, complete working order as when you accepted it, taking account of normal wear and tear resulting from proper use. The Tooling must be complete with any and all Documentation. The Tooling must also be in a condition which is compliant with any additional return conditions we may agree with you.
- (b) Before you return the Tooling, you must be able to show to our satisfaction that the Tooling meet the conditions set out in 12(a) above. We may choose to appoint an expert to supervise the demonstration. You will have to pay for the cost of any work needed to bring the Tooling up to the standard we need as well as any experts' costs.
- (c) If we ask, you must provide free and secure storage for the Tooling for up to three months after the end of the Tooling Loan Agreement. During this period you must provide enough power and other facilities to keep the Tooling in full working order. You must also insure the Tooling. During this period you must allow us and any possible buyer to inspect the Tooling.
- (d) You must arrange to disconnect, de-install and de-commission the Tooling and pack this according to our (or the manufacturer's) instructions, and good industry practice. You will be responsible for insurance and transporting the Tooling, including all spares, documents, cabling and other items to a place which we choose in the UK. We will not be responsible for any articles or property left in or attached to the Tooling which we may sell or dispose of as your agent.
- (e) We may, by using our authorised representatives, without notice and at your expense, retake possession of the Tooling after the Tooling Loan Agreement ends for any reason and for this purpose may enter your premises or any other premises at which the Tooling is located.

**13 Joint and individual liability**

If you are a partnership all partners will be liable jointly and individually for all your duties under the Tooling Loan Agreement (and when "you" and similar words are used in the Tooling Loan Agreement, they refer to any of the partners as well as all of them and notice to one partner is good notice to them all).

**14 Notices**

Any notice which has been served under the Tooling Loan Agreement must be a written notice and may be personally delivered or sent by post, or fax, or email. A notice will be taken to have been delivered on the same date it is sent by fax or delivered by hand, or one working day after it has been sent by email, or two days after the date of posting it.

**15 Our rights**

If we do not enforce all of our rights under the Tooling Loan Agreement, or if we delay in doing so, we do not give up any of these rights or the rights which we have if you break the Tooling Loan Agreement again.

**16 Confidential Information**

Neither you nor we shall, during and after termination of the Tooling Loan Agreement, without the prior written consent of the other, use or disclose to any other person any information of the other which is identified as confidential or which is confidential by its nature. It is agreed that you and we shall upon demand (and on termination of the Tooling Loan Agreement) surrender to the other all materials relating to such confidential information in its or its personnel's, agents' or representatives' possession.

**17 Miscellaneous**

(a) This Agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in

accordance with English law (including non-contractual disputes). The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Tooling Loan Agreement or its subject matter (including non-contractual disputes).

- (b) The benefits of the Tooling Loan Agreement will be freely assignable by us in whole or in part and we may delegate to any person all or any of the rights, remedies, powers or privileges conferred on us under it or provided by law.
- (c) If any part of the Tooling Loan Agreement (including these Conditions) is found to be unenforced that will not affect the rest of the agreement in any way.
- (d) The Contracts (Rights of Third Parties) Act 1999 will not apply to the Tooling Loan Agreement.
- (e) You and we each acknowledge that, in entering into the Tooling Loan Agreement, no reliance has been placed on, and neither you nor we shall have any right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Tooling Loan Agreement. You and we agree that the only liability in respect of those representations and warranties that are set out in the Tooling Loan Agreement (whether made innocently or negligently) shall be for breach of contract. Nothing in this clause shall limit or exclude any liability for fraud or for fraudulent misrepresentation.
- (f) No variation of the Tooling Loan Agreement shall be effective unless it is in writing and signed by both you and us (or our authorised representatives).