

Sculptors @ Foundries

Standard forms of

Contract

and

Order Confirmation

Draft – 23 August 2006

CONTRACT

**** NB ****

This standard-form Contract, when signed, is intended to create a binding legal relationship between the Parties. The Parties should consider seeking legal advice before using and signing it. None of the bodies engaged in the preparation of this standard-form Contract accepts any liability for its use or the consequences of its use by any other person.

THIS CONTRACT is dated 200.. and is made between the **FOUNDRY** and the **SCULPTOR**

1 Definitions and Interpretation

1.1 This Contract incorporates the Order Confirmation

1.2 In this Contract the following expressions have the following meanings:

Commencement Date – the date so defined and specified in the Order Confirmation, being the date for delivery of the Sculptor’s Original to the Premises

Delivery Date – the date so defined and specified in the Order Confirmation, being the date for delivery by the Foundry of the Product (or the first casting thereof)

Delivery Location – the place so defined and specified in the Order Confirmation, being the place for delivery by the Foundry of the Product (or the first casting thereof), but if no other place is so specified then the place for delivery shall be deemed to be the Premises

Foundry – the Party so defined, and whose particulars appear, in the Order Confirmation

Mould – any mould taken from the Sculptor’s Original in the execution of the Work

Order Confirmation – the written confirmation of the order by the Sculptor to the Foundry, a copy of which has been signed by the Parties for identification and is attached to this Contract

Party – each of the parties to this Contract

Payment Schedule – the schedule for the payment of the several instalments of the Price specified in the Order Confirmation

Premises – the premises of the Foundry, at the address specified in the Order Confirmation or such other address as the Foundry shall notify to the Sculptor

Price – the price for the Product specified in the Order Confirmation

Price Validity Period - the period during which the Price remains fixed under this Contract, being specified in the Order Confirmation

Product – the final casting, or each final casting (as the case may be), resulting from the Work

Sculptor – the Party so defined, and whose particulars appear, in the Order Confirmation

Sculptor's Original – the Sculptor's original work which is the subject of this Contract, and which is so defined and shortly described in the Order Confirmation

Specification – the technical documentation relating to the execution of the Work so defined and shortly identified in the Order Confirmation

Storage Period – the period so defined in the Order Confirmation, being the period during which the Foundry will store the Mould(s) on behalf of the Sculptor and free of storage charge

VAT – Value Added Tax

Work – the work to be performed by the Foundry in making and delivering the Product in accordance with this Contract

2 Delivery and custody of Sculptor's Original

- 2.1** The Sculptor shall be responsible for the delivery of the Sculptor's Original to the Premises on or before the Commencement Date, and acknowledges that failure so to do will result in a corresponding postponement of the Delivery Date and possible increase in the Price

- 2.2 The Foundry will take all reasonable care of the Sculptor's Original during the execution of the Work, but the Sculptor acknowledges that damage (which may include destruction) may be caused to the Sculptor's Original during the several processes comprised in the Work, and that the Foundry shall not be liable to the Sculptor for any such damage unless caused by the Foundry's default or negligence
- 2.3 Upon the completion of the Work the Foundry may require the Sculptor at his own expense to remove the Sculptor's Original from the Premises

3 Execution of Work by Foundry

- 3.1 The Foundry shall use all reasonable endeavours to carry out the Work and to produce the Product (a) in accordance with the Specification and (b) using its own discretion and judgement in respect of any aspect of the Work which is not defined in the Specification and (c) in any event using all the skill and care which may reasonably be expected of a commercial foundry undertaking similar work
- 3.2 If and to the extent that the Specification stipulates that the Foundry shall consult the Sculptor before proceeding to carry out a particular stage of the Work (including, but not by way of limitation, the patination of the Product), the Foundry shall give reasonable notice to the Sculptor of the Foundry's intention to carry out that stage and shall give the Sculptor a reasonable opportunity to be so consulted (including an opportunity, if the Sculptor so wishes, to attend at the Premises for that purpose)
- 3.3 The Foundry shall use all reasonable endeavours to complete the Work and to deliver the Product not later than the Delivery Date, Provided that the Foundry shall not be liable for any delay in delivery resulting from any cause beyond the reasonable control of the Foundry (including, but not by way of limitation, fire, flood or other normally insured peril)

4 Delivery and Installation

- 4.1 Unless a survey has been carried out before the date hereof and the report consequent thereon is expressly noted in the Specification, the Parties acknowledge that a survey may be required as a pre-condition of the installation of the Product, at the expense of the Sculptor, and the Parties shall use all reasonable endeavours to ensure that any such survey is implemented and its recommendations followed in such manner as to permit the due performance by the Parties of their obligations hereunder

- 4.2 The Foundry shall deliver the Product to the Sculptor at the Delivery Location
- 4.3 If delivery in accordance with this Contract shall be effected otherwise than at the Premises, any associated transport costs and any costs of installation shall be borne by the Sculptor, in addition to the Price
- 4.4 The Sculptor shall be responsible for obtaining any public or private permit for the installation of the Product, and shall indemnify the Foundry against any additional cost liability or expense incurred by the Foundry as a result of the Sculptor's failure to obtain any such permit

5 Variations of Work

- 5.1 The Foundry shall not alter the Sculptor's Original or vary the Specification without the prior written consent of the Sculptor, Provided that in the event of any shortage or non-availability of relevant materials or other unreasonable or unforeseen difficulty in executing the Work in accordance with the Specification the Sculptor shall not unreasonably refuse his consent to a written request by the Foundry to make a reasonable consequent variation to the Specification, but the Sculptor shall be entitled to refuse his consent if the variation would involve an increase in the Price or a delay in the Delivery Date or would result in the Product being materially inferior or different
- 5.2 The Sculptor may from time to time by notice in writing to the Foundry request the variation of either or both of the Work and the Specification, and the Foundry shall not unreasonably refuse its consent to any such request, Provided that (as the Sculptor acknowledges) the Foundry shall be entitled both to require reasonable consequent variations of all or any of the Price, the Payment Schedule and the Delivery Date and to refuse to implement the variation requested by the Sculptor until any such reasonable consequent variations have been agreed by the Sculptor

6 Price and Payment

- 6.1 The Sculptor shall pay the Price in accordance with the Payment Schedule
- 6.2 The Sculptor shall also pay any variations of the Price made in accordance with this Contract, including the cost of any survey reasonably required pursuant to **clause 4.1**

- 6.3 The Sculptor shall pay, in accordance with the relevant legislation, any VAT or other similar tax which may be due in respect of the supply or provision of the Work
- 6.4 The Sculptor acknowledges that unlawful delay in the payment of the Price in accordance with the Payment Schedule will entitle the Foundry to withhold performance of its subsequent obligations hereunder
- 6.5 The Sculptor also acknowledges that, to the extent that the Product involves more than one casting, the Price specified in the Order Confirmation for subsequent castings will remain fixed only during the Price Validity Period, and thereafter will fall to be agreed anew by the Parties

7 Retention and transfer of title

- 7.1 The Sculptor shall at all times retain title to the Sculptor's Original, and the Sculptor may repossess the Sculptor's Original at any time
- 7.2 The Foundry shall retain title to the Mould(s) until the Sculptor shall have paid the instalment(s) of the Price due under the Payment Schedule up to the date of completion of the making of the Mould(s), but subject to payment as aforesaid having been made by the Sculptor title to the Mould(s) shall pass to the Sculptor upon the completion of the making thereof, and the Foundry shall not be entitled to prevent the Sculptor from taking possession of the Mould(s) merely on the grounds that future instalments of the Price remain to be made under the Payment Schedule
- 7.3 The Sculptor's rights under **clauses 7.1** and **7.2** are subject to (a) the proviso that such repossession or taking possession by the Sculptor shall not impede the Foundry's ability to perform its obligations hereunder relating to the execution of the Work and (b) the acknowledgement and exclusion of liability contained in **clause 2.2**
- 7.4 The Foundry shall retain title to the Product until the Sculptor shall have paid the Price in full (or, in the case of a multi-cast Product, until the instalments of the Price due up to the date of the particular casting have been paid)

8 Copyright

- 8.1 The Sculptor warrants that he owns the unencumbered copyright in the Sculptor's Original, and that the execution of the Work by the Foundry will

not infringe the copyright or other intellectual property right of any third party

- 8.2** As between the Foundry and the Sculptor, copyright in the Sculptor's Original and in any Mould or Product derived therefrom shall at all times remain vested in the Sculptor

9 Storage

- 9.1** While the Sculptor's Original remains in the lawful possession of the Foundry and while the Sculptor shall not have been lawfully required by the Foundry to repossess the same pursuant to **clause 2.3**, the Foundry shall keep the Sculptor's Original in a safe location, without charge to the Sculptor
- 9.2** Until the expiry of the Storage Period, the Foundry shall keep the Mould(s) in a safe location, without charge to the Sculptor
- 9.3** Until the date fourteen days after the Delivery Date, the Foundry shall also keep the Product in a safe location, without charge to the Sculptor
- 9.4** With effect from the relevant date specified in the foregoing provisions of this **clause 9** the Foundry shall be entitled, upon giving prior notice to the Sculptor, to require the Sculptor to repossess the Sculptor's Original, the Mould(s) or the Product (as the case may be), and if the Sculptor shall fail to repossess the same within a reasonable period thereafter, then the Foundry shall be entitled to dispose thereof at its discretion, subject only to the Foundry accounting to the Sculptor for any surplus proceeds from such disposal after the reimbursement of all sums due to the Foundry

10 Insurance

- 10.1** Unless otherwise agreed in writing by the Parties, the insurance of the Sculptor's Original, the Mould(s) and the completed Product shall at all times remain the sole responsibility of the Sculptor, and any loss or damage caused to the Mould(s) or the Product by any normal insurable risks, and not due to the default or negligence of the Foundry, shall be at the sole risk of the Sculptor
- 10.2** If the Foundry shall agree in writing to accept responsibility for the insurance of either or both of the Mould(s) and the completed Product, the Sculptor acknowledges that any such insurance shall be limited (a) in value to the cost of reinstatement of the relevant item (and therefore excluding any greater artistic, intrinsic or other premium value attributable thereto) and (b)

in time to the period during which the Foundry shall be obliged to keep the relevant item pursuant to **clause 9**

11 Interest

If any instalment of the Price is not paid in accordance with the Payment Schedule, it shall attract interest (as well before as after judgement) at 3 % above the base lending rate per annum set from time to time by the Bank of England, calculated on a daily basis and with quarterly rests

12 Financial exclusions and limitations

12.1 The liability of each Party to the other hereunder, for whatsoever reason, shall not exceed in aggregate the Price

12.2 Neither Party shall be liable to the other hereunder for any indirect or consequential loss, of whatsoever nature

13 Default and termination

If either Party

- (a) shall become insolvent or
- (b) shall commit a material breach of its obligations hereunder and shall fail to remedy such breach (if capable of remedy) within one month after being requested in writing so to do by the other Party

then (in either case) the other Party shall be entitled forthwith to terminate this Contract by written notice given to the insolvent or defaulting (as the case may be) Party, whereupon this Contract shall determine, but without prejudice to the accrued rights and remedies prior to such determination

14 Notices

14.1 Any notice expressly required to be given under or in respect of this Contract in writing shall be sent to the address of the receiving Party specified in the Order Confirmation, or to such other address as that Party may from time to time notify in writing to the other Party, and

any such notice sent by registered post or recorded delivery shall be conclusively presumed to have been duly given and received

14.2 Any other notice shall, whenever reasonably possible, also be given in writing as aforesaid, but may be given electronically or orally, as time and convenience may permit or require, and the Parties shall use their reasonable endeavours to facilitate communications between themselves

15 Disputes

Disputes which cannot be resolved by the Parties in direct negotiation shall be settled by arbitration in accordance with the Arbitration Acts for the time being in force, and either Party shall be entitled to apply to the President of the Institute of Arbitrators for the appointment of an arbitrator

16 Governing law and jurisdiction

This Contract shall be governed by the Laws of England, and the Parties accept the exclusive jurisdiction of the Courts of England

AS WITNESS the hands of the Parties or their duly authorised representatives on the date above written

.....
for the **Foundry**

.....
the **Sculptor**

ORDER CONFIRMATION

**** NB ****

This Order Confirmation is intended to be incorporated in the Contract (when signed) between the Foundry and the Sculptor.

Foundry **Name**
 Address
 Co Reg No (if incorporated).....

Sculptor **Name**
 Address

Commencement Date
[ie date by when Sculptor's Original will be delivered to Foundry]

Delivery Date
[ie date for delivery by Foundry of completed (first) casting of Product. If multiple dates for multi-cast Product, dates all to be specified]

Delivery Location
[specify where the Product is to be delivered, if not at the Foundry's premises]

Payment Schedule
[specify percentages of Price, or quantified amounts, and relevant dates for payment during execution of contract. e.g. x% deposit payable on Delivery Date, y% interim payments on specific interim dates or dates of individual castings, balance on (final) Delivery Date, etc]

Price (£ sterling, net of VAT)
[ie either price for single cast Product, or price per casting for multi-cast Product, as appropriate, etc]

Price Validity Period
[ie, for multi-cast Product, period during which Price remains fixed, but after which Price may be renegotiated by Parties]

Product
[specify medium and quantity of reproductions of Sculptor's Original, and any other principal details of end Product]

Sculptor's Original
[short description of Sculptor's original work]

Specification
[identify any specification, drawings, photographs relating to method of execution of contract, material, patination etc, including survey report(if any)]

Storage Period
[specify period commencing on Delivery Date during which Foundry will continue to store mould on behalf of Sculptor, free of storage charge]

Insurance
[if either Mould(s) or Product are to be insured by Foundry, specify here, or insurance will remain sole responsibility of Sculptor under Contract]

.....
for the Foundry

.....
the Sculptor

Date