

CONDITIONS OF PURCHASE

1. CONFLICTING CONDITIONS

In the case of conflict between the conditions printed on this Order and any conditions purported by the Seller to be incorporated into the Order including but not limited to any conditions printed on the quotation forms, advice notes, invoices or similar documents issued by the Seller then the conditions on this Order Form shall prevail. The execution of this Order or any part thereof by the Seller shall be deemed to be an acceptance of the terms and conditions herein.

2. ACCOUNTS

Payment will be made through the Accounts Department of MKW Engineering Limited (hereinafter called "the Company") at Stargate Industrial Estate, Ryton, Tyne and Wear, NE40 3EX within 60 days of the receipt of the relevant invoice but so that no invoice shall be deemed to be validly issued unless issued after the delivery of the goods to which it relates. Any queries in connection with accounts should be sent to the address set out above. The Company reserves the right to deduct from any moneys due or becoming due to the Seller the amount of any bona fide contra accounts which the Company may have against the Seller for materials supplied, or for services rendered by the Company to the seller in connection with this or any other contract.

3. ALTERATIONS

- (a) No alterations in quantity, quality, specification or price may be made without the Company's prior written approval.
- (b) All prices should be fixed and firm for the duration of the delivery period quoted on the Company's order.

4. INSPECTION AND RIGHT OF ACCESS

- (a) The Company, its customers or its customer's representatives shall be entitled to a right of access to the Seller's premises or the Seller's sub-contractors' premises at all reasonable times for the purpose of checking progress and carrying out or witnessing tests and/or procedures.
- (b) The Seller shall give the Company 7 days advance notice in writing of any tests. Reasonable facilities shall be provided at the Seller's expense for the Company or Company's representative. The Seller shall provide the Company with such certificates as the Company may require. Such inspection does not relieve the Seller of any liability nor does it imply acceptance of the goods or work as stated in this order.

5. DELIVERY

- (a) Delivery shall be effected carriage paid as stated in this Order or at such other place of delivery as may be required by the Company's representatives. Title to the goods shall pass to the Company when delivered to the Company or Company's representatives.
- (b) Delivery shall be effected at the time or times specified by the Company either in this Order or otherwise, in any case time being of the essence of the contract. If delivery is not so effected then the Company shall have the right to cancel this order but without prejudice to its rights of action for breach of contract or otherwise. If the goods are to be delivered by instalments the Order will be treated as a single order and not severable. The Company reserves the right to return to the Seller at the Seller's expense any goods or

materials delivered prior to the date stipulated by the Company and to withhold payment for any goods or materials so delivered.

- (c) The Buyer shall be entitled to reject any goods not delivered in accordance with this Order and shall not be deemed to have accepted any goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any patent defect in the goods has become apparent.
- (d) The Seller shall immediately replace goods if in a damaged condition upon being called upon to do so by the Company. Such goods shall be replaced without extra charge with goods in a condition complying with the requirements stated in this Order.
- (e) In the event of any special measures being necessary for unloading, the Seller shall ensure that the Company is given 7 days advance notice in writing of any such measure. If no such notification is given then the Company shall have the right to cancel this Order but without prejudice to the Company's rights of action for breach of contract or otherwise.

6. DELIVERY NOTES

The Seller shall furnish the Company with a delivery note for all goods supplied under this Order. For goods delivered to an address other than that of the Company, the Seller shall furnish the Company with a copy delivery note signed by an authorised signatory as proof of delivery to the place nominated by the Company.

7. HAZARDOUS GOODS

Any goods and/or materials which are hazardous shall be marked with the appropriate international danger symbols and the name of the goods or materials in English. In

addition the Seller shall provide advice and precautionary leaflets (in English) in respect of any such goods and/or materials where appropriate (in particular in relation to the handling of the goods) and shall observe all United Kingdom and International agreements relating to the packing, labelling and carriage of hazardous goods.

8. MARKING

In accordance with EC Machinery Directive, where applicable, it shall be the Seller's responsibility to ensure that all goods, machinery, plant and equipment specified on this order and delivered at the place of delivery specified in the order will carry the CE mark of the European Union.

9. PACKAGES

Where practicable separate invoices must be rendered for returnable packages, and whenever possible all packages must be clearly marked and labelled with the Company's order number and the Seller's name. Unless otherwise stated on the face of this order, no additional charges will be accepted for packing and/or the use and/or the return of packing materials, nor shall the Company be under any obligation to return any packing materials to the Seller. If requested in writing prior to delivery the Company shall endeavour to preserve packing materials or containers for collection by the Seller at the Seller's expense. Such collection must be effected promptly following the Company's written request.

10. CARRIER

If a carrier is specified he shall not be regarded as an agent for the Company.

11. REJECTION

Goods supplied shall conform to the specification overleaf and (if supplied for the purpose of a contract named in this Order) they shall also comply with the

requirements of that contract. If the goods do not so conform to such specification or requirements the Buyer may, without prejudice to any other remedy:

- (a) reject the Goods wholly or in part and rejection may take place at the time of delivery or subsequently. On any such rejection occurring, the Company shall have the right to treat this Order as repudiated and to obtain supplies elsewhere, and any costs or loss resulting from extra expense incurred by the Company shall be charged to the Seller. No payment shall be made for rejected goods which will remain at the Seller's risk and which shall be removed by the Seller and at the Seller's expense forthwith upon rejection. The Buyer may demand repayment of any sums paid in respect of such goods; or
- (b) require the Seller to repair the goods or supply replacement goods conforming to the Order within 7 days.

12. CANCELLATION

- (a) In the event of the Seller failing to comply with any of its obligations under the contract, the Company shall have the right at any time while the Seller's default continues to cancel the contract as to the undelivered balance of the goods, but without prejudice to the Company's rights and remedies in respect of the Seller's default.
- (b) The Company reserves the right to require the Seller to suspend delivery or the execution of any work covered by this Order and to suspend payment of a proportionate part of any sums due from the Company under this Order should it be necessary for the Company in its discretion to decline or postpone acceptance of the goods, materials or service by reason of war, industrial action, riot, malicious damage, fire, storm, flood, Act of God, accident or of any other unforeseen contingencies outside the Company's control and if such

reason continues for a period of 2 months or more the Company shall be entitled to treat the Order as frustrated.

- (c) If the Seller becomes insolvent or makes any arrangement with its creditors or have a receiver, administrative receiver or administrator appointed or commence to be wound up (other than voluntarily for amalgamation or reconstruction) or if the Company reasonably apprehends that any of the above events may occur then the Company may, without prejudice to any other rights, terminate this contract by notice to the Seller, the Receiver, the Administrative Receiver or any person in whom the Seller's affairs have become vested, such notice to have immediate effect.

13. PROPERTY

- (a)(i) Subject to the provisions of this Clause, so much of the goods as shall have from time to time been manufactured and everything relating thereto, and all materials and other things whatsoever which the Seller shall acquire or allocate for incorporation in such goods shall, without prejudice to any other rights of the Company under the contract, vest in and become the Company's absolute property as from the time work under the contract begins or the materials or things are so acquired, or allocated and shall thenceforth be in the Seller's possession for the sole purpose of completing work under the contract and shall not be within the Seller's ownership, control or disposition.
- (ii) Neither the Seller nor any sub-contractor, nor any other person shall have a lien on the goods or any materials or things which have become vested in the Company under sub-clause (a)(i) hereof for any sum due to the seller, its sub-contractor or any other person, and the Seller shall take all such steps as may be reasonably necessary to ensure that the Company's title to the goods and

the exclusion of any such lien are brought to the notice of all sub-contractors and other persons dealing with the goods or any such materials or things.

- (iii) Without prejudice to the vesting of the goods and all such materials and things as aforesaid under sub-clause (a)(i) hereof the Seller shall secure that as from the time when work under the contract begins or as soon thereafter as is practicable and that as from the time when any such materials or other things are so acquired, or allocated such a mark shall be placed thereon or attached thereto where possible or, where this is not possible, such a notice shall be displayed and record made in the Seller's books as may be necessary for the purpose of ensuring that the goods or all such materials or things as aforesaid are readily identifiable as being the Company's property and if any direction is given the Company to the Seller as to the steps to be taken to ensure that the goods or any such materials or things shall be readily identifiable as being the Company's property the Seller shall comply with that direction.
- (iv) Notwithstanding the provisions of this Clause the Seller shall remain responsible for all risks in the goods materials and work until they are delivered to the Company and shall insure against all such risks.
- (b) PROVIDED ALWAYS that if the goods and materials supplied pursuant to the contract to which this Order relates are to be used by the Company in the performance of any contractual relationship which the Company has with any third party ("the Third Party Contract") then to the extent that the Third Party Contract contains any provisions relating to the vesting of title to goods which provisions are at variance with the provision of clause 14(a) thereof the provisions in such Third Party Contract shall prevail.

14. QUALITY

All deliveries furnished under this Purchase Order must be of the quality specified or sample proffered and approved and fit for their general purpose or any particular purpose notified to the Seller. All goods are subject to inspection after delivery. The Company reserves the right to reject at any time during the continuance of the contract any goods ordered in respect of the contract which prove to be faulty or not up to sample or specification. The risk in respect of rejected goods passes to the Seller immediately on notice of rejection.

Section 14(1) of the Sales of Goods Act, 1979 is expressly excluded. It is a condition of purchase that the Seller shall re-imburse the Company the full consequential loss suffered by the Company (including the cost of any tests) arising from failure to supply goods or materials and/or carry out the service as specified or referred to on this Order or of or to a satisfactory quality or fit for their purpose.

15. GUARANTEE

The Seller shall fully guarantee the Company for a period of twenty four months, or such other period as may be stated in the order, from the date of delivery in respect of any defect which may arise in the case of the goods attributable to faulty material, workmanship or design unless such design was carried out in detail by the Company. Any defective parts shall be replaced by the Seller within 7 days without extra cost to the Company, delivery to take place in accordance with the Company's instructions.

16. INDEMNITY

The Seller shall indemnify the Company in respect of:-

- (a) all claims, damages and expenses including but not limited to consequential loss or damage, loss of profits, business revenue goodwill or anticipated savings suffered by the Company in consequence of the Seller's negligence or

breach of duty or on the part of the Seller's sub-contractors or agents or servants in any way arising out of or connected with the execution of performance of the Contract or any defect in any goods, their defective design, their defective assembly, or the breach of any of the provisions of this contract;

- (b) all claims made against the Company by a third party or any of the Company's servants for any of the matters specified in clause 16(a);
- (c) it is expressly agreed that the provisions of this Clause 16 are considered reasonable by the parties.

17. LEGAL REQUIREMENTS

- (a) It shall be the Seller's responsibility to ensure that every item of machinery, plant and equipment used, employed or hired by the Seller for the purpose of this Order from whatsoever source and in whatever circumstances obtained conforms structurally to legal requirements. The Seller shall arrange or cause to be arranged such inspection and tests as are imposed by law and shall hold harmless and indemnify the Company against any liability whatsoever which may result from the Seller's use, employment or hire of machinery, plant or requirement for purposes of this Order. Where any item of machinery, plant or equipment is supplied, hired or engaged with driver, every person employed, directed or permitted by the owner to drive shall in all circumstances be regarded as the servant or agent of the owner.
- (b) It shall be the Seller's responsibility to ensure that every person employed to operate any item of machinery, plant and equipment used, or hired by the Seller for the purpose of this order is suitably trained and qualified.

18. PURCHASER'S MATERIALS

- (a) If the Company or its agents issue goods or materials free of charge to the Seller in connection with this Order such goods and materials remain the Company's property and shall be maintained by the Seller in good order and condition. The risk in such goods or materials shall be the Seller's and shall be insured accordingly. Where there are surplus goods or materials these shall be disposed of in accordance with the Company's instructions.

- (b) Where there is a shortage of goods or materials the Seller shall make no substitute. The Seller must inform the Company in writing of any shortages and obtain from the Company the exact materials to complete this order. Substitute materials can only be used in accordance with the Company's express instructions.

19. INTELLECTUAL PROPERTY

The Seller warrants its title to any copyright, patent, trade mark, secret process or any other intellectual property rights used in connection with the goods, and shall keep the Company indemnified against all claims, losses (whether direct or indirect) or expenses in respect thereof.

20. PATTERNS, DRAWINGS, DYES, MOULDS AND TOOLS

All patterns, drawings, dyes, mould, tools and any other documents or objects or anything else supplied by the Company shall be returned on completion of the Order. Such documents or objects are not to be used for the execution of orders other than those placed by the Company and ownership remains with the Company. When requested all patterns, drawings, dyes, moulds and tools shall be returned to the Company at the Seller's expense.

21. ASSIGNMENT OF ORDER

The Seller shall not without the Company's prior consent in writing assign or transfer this Order, or enter into any sub-contract in respect thereof with any third party save that the Seller may subcontract orders for raw materials.

22. PUBLICITY AND CONFIDENTIALITY

This Order shall not without the Company's consent in writing be used in any way for purpose of advertisement, nor shall it without such consent be disclosed to any third party. The Seller shall treat all information provided by the Company as confidential and use such information only for the purpose of supplying the goods as stated in this Order.

23. WORKING CONDITIONS AND STATUTORY OBLIGATIONS

(a) The Seller, its sub-contractors and agents (together with all employees of such persons) shall whilst engaged upon work at the Company's premises or the premises of any of the Company's associated companies at all times observe and be bound by the rules, regulations and procedures from time to time applicable to the Company's employees at those premises and shall at all times fulfil comply with and observe all statutory obligations (copies of which have been supplied), orders, bylaws and other requirements applicable to such premises.

(b) In particular but without limitation the Seller shall comply with all statutory obligations arising under health and safety legislation.

24. CONTRACT (RIGHTS OF THIRD PARTIES ACT) 1999

Except as expressly provided in this Agreement, a person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999

to rely upon or enforce any term of this Agreement provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act.

25. SUCCESSORS AND ASSIGNMENT

This Contract shall be binding upon and ensure for the benefit of the personal representatives or successors in title of the parties to but shall not be assignable by either party.

26. VARIATIONS

No variation of these Conditions shall be valid unless it is in writing and signed by or on behalf of each of the parties to the Contract.

27. WAIVER

No failure to exercise or delay in exercising any right or remedy under these Conditions shall constitute a waiver thereof and no waiver by the Company of any breach or non-fulfilment by the Seller of any provision of this Order shall be deemed to be a waiver of any subsequent or other breach of that or any other provision hereof. No single or partial exercise of any right or remedy under this Order shall preclude or restrict the further exercise of any such right or remedy and the rights and remedies of the Company provided in this Order is cumulative and not exclusive of any rights and remedies provided by law.

28. NO AUTHORITY

The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

29. LAW

This Order shall be construed in all respects in accordance with the laws of England and Wales. The parties hereby submit to the exclusive jurisdiction of the laws of England and Wales.

30. NOTICES

Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that party at its registered office or principal place of business or such other address as may at the time have been notified pursuant to this provision to the party giving the notice.

31. PROVISIONS

If any provisions of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provisions in question shall not be affected thereby.