

# CONDITIONS OF SALE

## 1. Definitions

- 1.1 "Buyer" means the person or company who buys or agrees to buy the Goods from the seller.
- 1.2 "Conditions" means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 "Goods" means the articles, equipment, machinery or services quoted for which the Buyer agrees to buy from the seller.
- 1.4 "Incoterms" means the terms for delivery of goods drawn up by the International Chamber of Commerce current at the date when the contract is made.
- 1.5 "Seller" means Micro Metalsmiths Limited of Kirkdale Road Kirkbymoorside North Yorkshire YO62 6PX
- 1 "Price" means the price of the Goods.

## 2. Conditions applicable

- 2.1 These conditions shall apply to all contracts for the sale of Goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order, or similar document.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions. Acceptance by the seller is binding only when such acceptance is in writing.
- 2.3 Acceptance by the Buyer of a quotation made by the Seller shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Quotations are, unless otherwise stated, valid for 30 days.
- 2.5 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.
- 2.6 The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by this Seller in writing. In entering into the contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.
- 2.7 Where the parties agree to fresh or repeat orders of Goods to which this contract has applied or of goods of a similar nature to such Goods such orders shall be subject to the terms and conditions hereof.

## 3. The Price and payment

- 3.1 The Price shall be the Seller's quoted price. The Price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller's invoice.
- 3.2 Payment of the Price and VAT shall be due within 30 days of the end of the month in which the Goods are delivered.
- 3.3 Payment of tooling, jigs and fixture invoices shall be made within 30 days from the date of the invoice.
- 3.4 An interest on overdue invoices shall accrue daily from the date when payment becomes due until the date of payment at an annual rate of 5% above Barclays Bank plc base interest rate from time to time in force and shall accrue at such a rate after as well as before any judgement.
- 3.5 The Company reserves the right to vary the price between the date of quotation and date of delivery to cover any fluctuation in those costs with respect to those goods not already supplied on any order.
- 1 If at any time the financial position of the Buyer shall become impaired or unsatisfactory to the Seller or in the Seller's opinion inadequate to meet the obligations under this contract, or the Buyer shall fail or neglect to make the payment to the Seller for any delivery of goods under this contract within any days or credit provided, the Seller may require payment in cash on or before delivery or that security shall be given to its satisfaction. Where the Buyer fails to make payment to the Seller on the above terms of payment, the Seller retains the right, at its sole discretion, to demand payment of all and any outstanding sums or obligations from the Buyer whether or not due, and to cancel all and any outstanding orders and deliveries, until the Seller receives payment or security on any such terms the Seller shall decide upon with the Buyer, against payment due from the Buyer, (without prejudice to the Seller's other right under this contract) and no forbearance, course of dealings or prior payment shall affect this right of the Seller.

## 4. Goods

- 4.1 The Buyer shall be solely responsible for establishing suitability, and liable for any claims made with respect to the suitability of purpose of the Goods supplied by and ordered from the Seller.
- 4.2 The Buyer shall be solely responsible for any claims and/or damages made against the Seller for any infringement with regard to patents, royalties or processes used by the Seller in the manufacture of the Buyer's order.
- 4.3 Where the Seller has manufactured Goods in accordance with the Buyer's specifications or accepted standard, then the Seller shall not be liable for future unsuitability of the Goods howsoever caused.
- 4.4 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 4.5 No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.
- 1 The Seller reserves the right to sub-contract any work involved in the manufacture of the Goods.

## 5. Warranties and liability

- 5.1 The Seller warrants that the Goods will at the time of delivery correspond to the description given by the Seller. Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12) all other warranties conditions or terms relating to fitness for purpose merchantability or condition of the Goods and whether implied by statute or common law or otherwise are excluded.
- 5.2 The Seller shall be liable for claims, damages, costs of and any other loss to the Buyer up to the value of the Goods supplied under this contract only. Under no circumstance shall the Seller be further liable, to the Buyer or otherwise, whether for loss of profit or any other direct or indirect or consequential loss, howsoever caused or arising.
- 1 The Seller shall only be liable, to the Buyer or otherwise, to the value of that part of an order outstanding to the Buyer, where non-performance of a contract is deemed to be the Seller's fault.

## 6. Delivery of the Goods

- 6.1 Any dates or periods for the delivery and or performance of the Services of the contract are best estimates and approximate only. The Seller shall attempt to comply with these estimates, however time shall not be the essence of the contract. The Buyer shall not seek to bind the Seller to, nor constitute a binding obligation on the Seller with respect to such estimates.
- 6.2 Delivery of Goods shall be made according to the guidelines laid down by INCOTERMS 90 and the method of delivery shall be agreed in writing by the Seller and the Buyer prior to any acknowledgement of order. Strict adherence to the relevant INCOTERMS 90 agreed upon shall then be made. Where no written agreement is made INCOTERMS 90 EXW shall apply.
- 6.3 The Seller shall be entitled to suspend deliveries to the Buyer should the Buyer be considered to be in breach of any obligation to the Seller with respect to the contract or otherwise.
- 6.4 Short deliveries shall be notified to the Seller, in writing, by the Buyer within seven working days of receipt of the delivery.
- 6.5 Risk with respect to Goods supplied shall pass to the Buyer in accordance with the relevant INCOTERMS 90 referred to in clause 6.2 above.
- 1 Should the performance of the contract be delayed by any circumstances or condition beyond the Seller's control, but without prejudice to the generality of the foregoing, war, industrial dispute, strike, lock-out, riot, fire, storm, Act of God, accident, non availability of materials and/or labour, any statute, rule, byelaw, order or requisition made or issued by any Government or Government Department, local or constituted authority, junta or dictatorship then the Seller reserves the right to suspend further performance or delivery of any contract until such time as the cause delay shall no longer be present.

## 7. Acceptance of the Goods

- 7.1 The Buyer shall be deemed to have accepted the Goods 24 hours after delivery to the Buyer.
- 7.2 All claims for damage to or partial loss of goods in transit, or for non-delivery of goods, must be notified promptly to the Seller and the Carrier initially by telephone and in any case within 3 days, or in the case of non-delivery within 14 days of notification of despatch or receipt of invoice.
- 1 The Seller shall undertake to repair, replace or credit an account of the Buyer in respect of returned Goods only if the Buyer notifies the Seller in writing and returns such Goods to the Seller within 90 days of the Buyer's receipt of the Goods. Returns outside this period shall be dealt with at the Seller's discretion.

## 8. Assignability

No benefit or liability under this contract shall be assigned by the Buyer except with the written consent of the Seller.

- 9. **Waivers** The Seller's right to require strict performance by the Buyer of all the terms and conditions of this Contract and particularly the provisions relating to the payments and taking deliveries shall not in any way be affected by any previous waiver, forbearance or course of dealing by the Seller, and no time, relaxation, or indulgence granted by the Seller to the Buyer shall in any way prejudice his strict rights under this contract. Where this Contract relates to delivery by instalments the Buyer shall not by virtue of any defect or deficiency in any one instalment be entitled to reject any other instalment.

## 10. Title and risk

- 10.1 Risk of damage to or loss of the Goods shall pass to the Buyer.
  - 10.1.1 in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection or
  - 10.1.2 in the case of the Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods.
- 10.2 The title to Goods shall not pass from the Seller to the Buyer until such time as payment in full for all Goods supplied has been made by the Buyer and received by the Seller and cleared through the Seller's bank. The Buyer shall hold such goods as bailee for the Seller and the Buyer shall have liberty to transfer ownership of the Goods in normal course of trading (including incorporation into other goods) but the proceeds of any sale shall be held for the account of the Seller for the discharge of all money owing from the Buyer to the Seller.
- 10.3 For the purpose of clause 10.2 the word 'incorporate' shall be deemed to include without prejudice to the generality of the expression the conversion of the Goods into new objects or the mixing of the Goods with other objects or the treating of the Goods in a way so that they become constituents of other objects.
- 10.4 The Buyer shall be responsible for fully and effectively indemnifying the Seller any and all claims and costs howsoever they arise against the Seller or otherwise suffered or incurred by the Seller relating to the Goods after the time upon which risk passes to the Buyer in accordance with clause 10 of these conditions.

- 11. **Intellectual property** The specifications and designs of the Goods (including the copyright design right or other intellectual property in them) shall as between the parties be the property of the Seller. Where any design or specifications have been supplied by the Buyer for manufacture by or to the order of the Seller then the Buyer warrants that the use of those designs or specifications for the manufacture processing assembly or supply of the Goods shall not infringe the rights of any third party.

- 12. **Storage** If the buyer fails to collect Goods from the Seller, or accept deliveries made by the Seller, the Seller shall be entitled to make a storage charge against the Buyer, should the Goods remain on the Seller's premises seven days after the Buyer has been notified by the Seller that they are ready for collection.

- 13. **Arbitration** If any dispute or difference shall arise between the parties as to the meaning of this contract or any matter or thing arising out of or connected with this contract then it shall be referred to the determination of an arbitrator to be appointed by agreement of the parties or (in default of an agreement within 21 days of the service upon one party of a written request to concur in such appointment) by the President for the time being of the Chartered Institute of Arbitrators.

## 14. Proper law on contract

- 14.1 This contract is subject to the law of England and Wales.
- 14.2 The parties agree to submit to the exclusive jurisdiction of the English Courts.