

# Magal Engineering Group Ltd. Terms and Conditions of Purchase

## 1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in these conditions:
- **“Contract”** the contract between the Customer and the Supplier for the sale and purchase of the Goods in accordance with these conditions;
  - **“Customer”** Magal Engineering Limited incorporated and registered in England and Wales with company number 4407738 and whose registered office is at 47 Castle Street, Reading, Berkshire RG1 7SR;
  - **“Goods”** the goods agreed in the Contract to be purchased by the Customer from the Supplier (including any part of it) set out in the Purchase Order;
  - **“Intellectual Property Rights”** patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world;
  - **“Purchase Order”** the Customer's written instruction to supply the Goods, incorporating these conditions; and
  - **“Supplier”** the person, firm or company who accepts the Purchase Order in accordance with condition 3.3.
- 1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to **writing** or **written** includes faxes and e-mail.
- 1.9 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

## 2. Application of Conditions

- 2.1 These conditions shall:
- Apply to and be incorporated in the Contract; and Prevail over any inconsistent terms or conditions contained in or referred to in the Supplier's quotation, acceptance, correspondence or elsewhere or implied by law, trade custom, practice or course of dealing.
- 2.2 No addition to, variation of, exclusion or attempted exclusion of the Purchase Order or these conditions or any of them shall be binding on the Customer unless in writing and signed by a duly authorised representative of the Customer.
- 2.3 Where the Purchase Order is for more than one item, it shall (following acceptance by the Supplier) be regarded as a single Contract for all Goods supplied pursuant to that Purchase Order.

## 3. Effect of Purchase Order

- 3.1 The Customer shall only be bound by an order if it is issued on the Customer's standard Purchase Order form and signed by a duly authorised representative of the Customer.
- 3.2 The Purchase Order constitutes an offer by the Customer to purchase the Goods subject to these conditions. Accordingly, any acceptance of the Purchase Order by the Supplier shall establish a contract for the sale and purchase of the Goods on these conditions. Any counter-offer made by the Supplier to supply the Goods on other conditions shall only be validly accepted if such acceptance is in writing and signed by a duly authorised representative of the Customer.
- 3.3 The execution and return of the acknowledgement copy of the Purchase Order form by the Supplier, or the Supplier's execution, commencement of work or commencement of delivery pursuant to the Purchase Order constitutes acceptance of the Purchase Order on these conditions by the Supplier.

## 4. Supplier's Warranty

- 4.1 The Supplier warrants to the Customer that:
- 4.1.1 The Goods will conform with the quality, description and other particulars of the Goods stated in the Purchase Order;
  - 4.1.2 The Goods will conform to all samples, descriptions and specifications provided to the Customer by the Supplier;
  - 4.1.3 The Goods will conform with all standards referred to on any part of the Goods and in any product packaging and/or documentation in, with or in relation to which the Goods is supplied;
  - 4.1.4 The Goods will be of satisfactory quality and fit for any intended uses expressly or impliedly made known to the Supplier, and will be free from all defects for a period of twenty four months from the date of delivery; and
  - 4.1.5 The Goods will comply with all performance and other specifications stated in the Purchase Order, and all applicable legislation for the time being in force.
- 4.2 The Customer's rights under the Contract are in addition to the statutory terms implied in favour of the Customer by the Sale of Goods Act 1979 and any other statute.
- 4.3 The provisions in this condition 4 shall survive any delivery, inspection, acceptance, payment or performance pursuant to the Contract and shall extend to any replacement, repaired, substitute or remedial Goods provided by the Supplier.

## 5. Quantities

Unless the Customer has agreed otherwise in writing, the Supplier shall deliver the exact specified quantities of Goods in accordance with the Purchase Order. Without affecting its other rights and remedies, the Customer reserves the right to reject incomplete deliveries and to return excess quantities at the Supplier's risk and expense.

## 6. Inspection

- 6.1 The Customer shall have the right to inspect and test the Goods prior to delivery.

## 7. Delivery

- 7.1 The Supplier shall deliver the Goods on the date specified in the Purchase Order or, if no such date is specified, within 28 days of the date of the Purchase Order. Time is of the essence as to the delivery of the Goods under the Contract and if the Supplier does not comply with its obligations in the preceding sentence, the Customer may:
- 7.1.1 Cancel the Contract in whole or in part without incurring any liability to the Supplier;
  - 7.1.2 Refuse to accept any subsequent delivery of Goods which the Supplier attempts to make;
  - 7.1.3 Purchase substitute items elsewhere; and
  - 7.1.4 Hold the Supplier accountable for any loss and additional costs incurred.
  - 7.1.5 (As an alternative remedy to those referred to in clauses 7.1.1 to 7.1.4 above) deduct 1 percent of the price of the Goods for each weeks delay in deliver up to a maximum of 10 percent of the price of the Goods.
- 7.2 The Goods shall be properly packed and secured in such manner as to enable it to reach its destination in good condition. Each delivery of the Goods shall be accompanied by a delivery note which shows the date of each order, the Customer's part numbers and Purchase Order number. No charge shall be made for wrapping, packing, cartons, boxes, crating or containers unless specified in the Purchase Order, and the Customer shall not be responsible for returning any such materials.
- 7.3 The Supplier must notify the Customer in writing of when delivery will take place at least seven days prior thereto. The Goods shall be delivered by the Supplier ex-works to the Supplier's premises unless otherwise specified in the Purchase Order. The Goods shall be received at the place of delivery, subject to the Customer's inspection and approval. Any Goods which the Customer rejects as not conforming with the Purchase Order shall be returned at the Supplier's risk and expense.
- 7.4 The Customer shall not be deemed to have accepted the Goods until it has had thirty days to inspect the Goods after they have arrived at the Customer's address specified on the Purchase Order. The Customer may reject the Goods within such thirty days referred to in this clause 7.4 where the Goods do not conform with the Purchase Order. Where batches of the Goods have been delivered the Customer may engage an agent to determine which of the Goods in the batch do not conform with the Purchase Order and reject any of those Goods which do not conform with the Purchase Order provided that nothing herein shall prevent the Customer from rejecting

the whole batch within the thirty days referred to above where the Customer does not engage an agent to carry out a batch inspection as described.

- 7.5 The Customer may reject the Goods (within the thirty days referred to in clause 7.4) in the event that the number of Goods delivered is more or less than the number of Goods ordered by the Customer. Where the Customer does not reject the Goods in such circumstances a pro-rata adjustment to the price shall be made.
- 7.6 In the event that any Goods are rejected the Supplier shall either itself or procure that a nominated sort agency attend the Customer's premises to inspect and sort the Goods. Any failure to so attend will result in the Supplier being liable to pay £50 per man hour for the Customer to sort the relevant Goods. All rejected Goods (and all Goods returned to the Customer for repair) shall be returned to the Supplier at the Supplier's risk and expense.

## 8. Risk and Property

- 8.1 The Goods shall be at the risk of the Supplier until delivery in accordance with condition 7.3 provided however that if the Supplier has failed to notify the Customer of delivery at least [seven days] prior thereto, the Goods shall be at the risk of the Supplier until receipt of delivery by the Customer.
- 8.2 Ownership of the Goods shall pass to the Customer on completion of delivery in accordance with condition 7.3 (whether or not the Supplier has given at least seven days notice in writing prior to delivery or not), except that if the Goods are paid for before delivery, ownership shall pass to the Customer once payment has been made. The passing of ownership in the Goods is without prejudice to any right of rejection to which the Customer may be entitled under the Contract or otherwise.

## 9. Prices

All prices shall be as stated in the Purchase Order. All prices are fixed and inclusive of delivery, packaging and packing and are not subject to adjustment save as specifically provided in these conditions or the Purchase Order.

## 10. Payment

- 10.1 Payment of invoices shall be made in accordance with the Purchase Order.

- 10.2 Without prejudice to any other right or remedy, the Customer reserves the right to set off any amount at any time owing to it by the Supplier against any amount payable by it to the Supplier under the Contract.

## 11. Indemnity

- 11.1 The Supplier shall indemnify and hold the Customer harmless from all claims and all direct, indirect or consequential liabilities (including loss of profits), costs, proceedings, damages and expenses (including legal and other professional fees and expenses) awarded against, or incurred or paid by, the Customer as a result or in connection with:
- 11.1.1 Any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the manufacture or supply of the Goods; or
  - 11.1.2 Defective quality or materials in or in relation to the Goods; or
  - 11.1.3 Any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the Contract by the Supplier howsoever arising.

## 12. Confidentiality and the Customer's Property

- 12.1 The Supplier shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Customer or its agents, and any other confidential information concerning the Customer's business or its products which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential material to such of its employees as need to know the same for the purpose of discharging the Supplier's obligations to the Customer and shall ensure that such employees are subject to obligations of confidentiality corresponding to those which bind the Supplier.
- 12.2 This condition 12 shall survive the termination of the Contract, however arising.

## 13. Termination

- 13.1 The Customer may cancel the Contract (for all or part only of the Goods) by giving written notice to the Supplier at any time before delivery, in which case the Customer shall pay the Supplier the price for the cancelled Goods, less any cost savings accruing to the Supplier by reason of the cancellation.
- 13.2 Without prejudice to any other rights or remedies to which the Customer may be entitled, the Customer may terminate the Contract without liability to the Supplier if:
- 13.2.1 The Supplier commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of fourteen days after being notified in writing to do so;
  - 13.2.2 The Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 ;
  - 13.2.3 The Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
  - 13.2.4 A petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
  - 13.2.5 An application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier;
  - 13.2.6 The holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
  - 13.2.7 A person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
  - 13.2.8 A creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;

- 13.2.9 Any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 13.2.1 to condition 13.2.8 (inclusive);
- 13.2.10 The Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or
- 13.2.11 There is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 13.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 13.4 Termination of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

## 14. General

### 14.1 Assignment and subcontracting

- 14.1.1 The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.1.2 The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.

### 14.2 Notices

- 14.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier or e-mail.
- 14.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 14.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by e-mail, one working day after transmission.

14.2.3 The provisions of this condition 14.2 shall not apply to the service of any proceedings or other documents in any legal action.

**14.3 Severance**

14.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

14.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

14.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

14.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

14.6 **Variation.** Except as set out in these conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Customer.

14.7 **Governing law and jurisdiction:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.