

Metalcraft Direct Ltd Terms and Conditions for the Purchase of Goods

1. Interpretation

The following definitions and rules of interpretation apply in these Conditions.

1.1 Definitions:

"Business Day"	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
"Conditions"	the terms and conditions set out in this document as amended from time to time in accordance with clause 15.4.
"Contract"	the contract between Metalcraft and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.
"Delivery Date"	the date specified in the Order, or, if none is specified, within 14 days of the date of the Order.
"Delivery Location"	the address for delivery of Goods as set out in the Order.
"Force Majeure Event"	any circumstance not within a party's reasonable control, including: <ul style="list-style-type: none">(a) acts of God, flood, drought, earthquake or other natural disaster;(b) epidemic or pandemic;(c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;(d) nuclear, chemical or biological contamination or sonic boom;(e) any law or any action taken by a government or public authority, including imposing an export or import restriction, quota or prohibition;(f) collapse of buildings, fire, explosion or accident;

- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and
- (h) interruption or failure of utility service.

"Goods"	the goods (or any part of them) set out in the Order.
"Metalcraft"	Metalcraft Direct Ltd, incorporated in England under company number 14636554 and having its registered office at Suite 537, The Atrium, 1 Harefield Road, Uxbridge, United Kingdom, UB8 1EX
"Metalcraft Materials"	has the meaning set out in clause 8 (Metalcraft materials).
"Order"	Metalcraft's order for the Goods, as set out in Metalcraft's Purchase Order form.
"Specification"	the specification for the Goods, including any related plans and drawings, that is agreed in writing by Metalcraft and the Supplier.
"Supplier"	the person or firm from whom Metalcraft purchases the Goods.

1.2 **Interpretation:**

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its successors and permitted assigns.
- (c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (d) Any words following the terms **including, include, in particular, for example** 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.
- (e) A reference to **writing** or **written** includes fax and emails.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by Metalcraft to purchase the Goods in accordance with these Conditions.
- 2.3 The Order shall be deemed to be accepted on the earlier of:
 - (a) the Supplier issuing a written acceptance of the Order; and
 - (b) the Supplier doing any act consistent with fulfilling the Order,at which point the Contract shall come into existence.
- 2.4 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.5 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

3. The goods

- 3.1 The Supplier shall ensure that the Goods shall:
 - (a) correspond with their description and the applicable Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by Metalcraft expressly or by implication, and in this respect Metalcraft relies on the Supplier's skill and judgement;
 - (c) where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery; and
 - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3 Metalcraft may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such

inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

- 3.4 If following such inspection or testing Metalcraft considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clause 3.1, Metalcraft shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 Metalcraft may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Delivery

- 4.1 The Supplier shall ensure that:
 - (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods, special storage instructions (if any); and
 - (c) if the Supplier requires Metalcraft to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 4.2 The Supplier shall deliver the Goods:
 - (a) on the Delivery Date;
 - (b) at the Delivery Location; and
 - (c) during Metalcraft's normal business hours, or as instructed by Metalcraft.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location and upon the Goods being signed for as received by Metalcraft's representative.
- 4.4 If the Supplier:
 - (a) delivers less than 95.0% of the quantity of Goods ordered, Metalcraft may reject the Goods; or
 - (b) delivers more than 105.0% of the quantity of Goods ordered, Metalcraft may at its discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods

ordered, and Metalcraft accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

- 4.5 The Supplier shall not deliver the Goods in instalments without Metalcraft's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Metalcraft to the remedies set out in clause 5.

5. Metalcraft's remedies

- 5.1 If the Goods are not delivered on the Delivery Date, or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, Metalcraft may exercise any one or more of the following rights and remedies:
- (a) to terminate the Contract by giving written notice to the Supplier;
 - (b) to reject the Goods (in whole or in part) and return the rejected Goods to the Supplier at the Supplier's own risk and expense;
 - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - (e) to recover from the Supplier any costs incurred by Metalcraft in obtaining substitute goods from a third party; and
 - (f) to claim damages for any other costs, loss or expenses incurred by Metalcraft which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 5.2 If the Goods are not delivered on the Delivery Date, Metalcraft may, at its option, claim or deduct by way of liquidated damages 10% of the price of the Goods for each week's delay in delivery until the earlier of delivery or termination or abandonment of the Contract by Metalcraft, up to a maximum of 30% of the total price of the Goods. If Metalcraft exercises its rights under this Clause 5.2, it shall not be entitled to any of the remedies set out in Clause 5.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).
- 5.3 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5.4 Metalcraft's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

6. Title and risk

Title and risk in the Goods shall pass to Metalcraft on completion of delivery.

7. Price and payment

- 7.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 7.2 The price of the Goods:
- (a) excludes amounts in respect of value added tax (VAT), which CT Metals shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - (b) includes the costs of packaging, insurance and carriage of the Goods.
- 7.3 No extra charges shall be effective unless agreed in writing with Metalcraft.
- 7.4 The Supplier may invoice Metalcraft for the price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, Metalcraft's order number, the Supplier's VAT registration number, and any supporting documents that Metalcraft may reasonably require.
- 7.5 Metalcraft shall pay correctly rendered invoices within 60 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.6 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 3% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from 21 days after the dispute is resolved until payment.
- 7.7 Metalcraft may at any time, without notice to the Supplier, set off any liability of the Supplier to Metalcraft against any liability of Metalcraft to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. If the liabilities to be set off are expressed in different currencies, Metalcraft may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by Metalcraft of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

8. Metalcraft materials

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by Metalcraft to the Supplier (**Metalcraft Materials**) and all rights in the Metalcraft Materials are and shall remain the exclusive property of Metalcraft. The Supplier shall keep the Metalcraft Materials in safe custody at its own risk, maintain them in good condition until returned to Metalcraft, and not dispose or use the same other than in accordance with Metalcraft's written instructions or authorisation.

9. Indemnity

9.1 The Supplier shall keep Metalcraft indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by Metalcraft as a result of or in connection with:

- (a) any claim made against Metalcraft for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the manufacture, supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against Metalcraft by a third party for death, personal injury or damage to property arising out of or in connection with defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- (c) any claim made against Metalcraft by a third party arising out of or in connection with the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

9.2 This clause 9 shall survive termination of the Contract.

10. Insurance

During the term of the Contract and for a period of three years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance (minimum level of cover: £5 million) and public liability insurance (minimum level of cover: £5 million) to cover the liabilities that may arise under or in connection with the Contract, and shall, on CT Metals's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11. Confidentiality

- 11.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.
- 11.2 Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.3 **Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.**

12. Compliance with relevant laws

- 12.1 In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force.
- 12.2 Metalcraft may immediately terminate the Contract for any breach of clause 12.

13. Termination

- 13.1 Metalcraft may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. Metalcraft shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 13.2 Without limiting its other rights or remedies, Metalcraft may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- (a) the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;

- (b) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (c) the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with its creditors, having a receiver appointed to any of its assets, or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - (d) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
 - (e) the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this agreement is in jeopardy.
- 13.3 On termination or expiry of the Contract, the Supplier shall immediately return all Metalcraft Materials. If the Supplier fails to do so, then Metalcraft may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 13.4 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 13.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

14. Force majeure

- 14.1 Provided it has complied with clause 14.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

- 14.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 14.3 The Affected Party shall:
- (a) as soon as reasonably practicable after the start of the Force Majeure Event, but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
 - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 14.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 2 weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving 1 week's written notice to the Affected Party.

15. General

15.1 Assignment and other dealings

- (a) Metalcraft may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of Metalcraft.

15.2 **Subcontracting.** The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of Metalcraft. If Metalcraft consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

15.3 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.4 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by Metalcraft.

15.5 **Waiver.** Except as set out in clause 2.5, 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 prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 15.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

15.7 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be:
 - (i) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
 - (ii) sent by fax to its main fax number or sent by email to the email address specified in the Order.
- (b) Any notice or other communication shall be deemed to have been received:
 - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
 - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9:00 am on the second Business Day after posting or at the time recorded by the delivery service; and
 - (iii) if sent by fax or by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 15.7(b)(iii), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- (c) This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15.8 Third party rights.

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

(b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

15.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.

15.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.