

GMT RUBBER-METAL-TECHNIC LIMITED'S TERMS AND CONDITIONS OF PURCHASE

1. DEFINITIONS AND INTERPRETATION

1.1 In these conditions unless the context requires otherwise the following words have the following meanings:

1.1.1 **"Buyer"** means GMT Rubber-Metal-Technic Limited (Company number: 01878734) whose registered office is The Sidings, Station Road, Guiseley, Leeds, West Yorkshire LS20 8BX, UK;

1.1.2 **"Contract"** means any contract between the Buyer and the Seller for the purchase of Goods and/or supply of Services incorporating these conditions and the Order;

1.1.3 **"Goods"** means any products ordered by the Buyer from the Seller or to be supplied by the Seller to the Buyer;

1.1.4 **"Liability"** means costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), expenses, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses or liabilities;

1.1.5 **"Order"** means an order placed by the Buyer with the Seller for the supply of the Goods and/or provision of the Services;

1.1.6 **"Seller"** means the person or organisation who provides the Buyer with the Goods and/or the Services;

1.1.7 **"Services"** means the services and/or work to be performed by the Seller for the Buyer; and

1.1.8 **"Working Day"** means any day which is not a Saturday, Sunday or a statutory public holiday in England.

1.2 Reference to any gender includes all genders.

1.3 Reference to the singular shall include the plural and vice versa.

1.4 Words indicating a person shall include bodies of persons whether corporate or incorporate.

1.5 The headings in these conditions are for convenience only and shall not affect their interpretation.

1.6 Reference to any statute or statutory provision includes a reference to the same as from time to time amended, extended, re-enacted or consolidated and all subordinate legislation from time to time made under it.

2. FORMATION OF CONTRACT

2.1 Subject to any variation under Clause 2.4, these conditions are the only conditions upon which the Buyer is prepared to deal with the Seller and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2 Each Order for Goods by the Buyer to the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of order, specification or similar document shall form part of the Contract and the Seller waives any right which it otherwise might have to rely on such terms and conditions.

2.4 These conditions apply to all the Buyer's purchases and any variation to these conditions shall have no effect unless expressly agreed in writing and signed by an authorised representative of the Buyer.

3. QUALITY AND SPECIFICATION

3.1 The Goods shall be of the best available design, of the best quality, material and workmanship, be without fault and shall be as specified in the Order and/or in any specification provided to the Seller by the Buyer or produced for the Buyer by the Seller and/or as otherwise agreed in writing between the parties.

3.2 The Services shall be performed by appropriately qualified and trained personnel with due care and diligence to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances and shall be as specified in the Order and/or in any specification provided to the Seller by the Buyer or produced for the Buyer by the Seller and/or as otherwise agreed in writing between the parties.

3.3 Any specification, moulds, materials, dies and/or equipment together with the copyright, design rights and/or any other intellectual property rights in all specifications, data and materials whether supplied by the Buyer to the Seller or specifically produced and/or used by the Seller for the Buyer in connection with the Contract, shall:

3.3.1 be the exclusive property of the Buyer;

3.3.2 not be disclosed to any third party, used or disposed of except to the extent required for the purpose of the Contract; and

3.3.3 be held by the Seller at its own risk in safe custody until returned to the Buyer in good condition upon request or termination of the Contract

3.4 At any time prior to delivery of the Goods the Buyer shall be entitled and the Seller shall provide the Buyer with all access and facilities reasonably required to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party.

3.5 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract and the Buyer so informs the Seller within 5 Working Days of inspection or testing the Seller shall immediately take such steps as are necessary to ensure compliance. If the Seller does not take such steps within 5 Working Days of such notification the Buyer shall be entitled to cancel the relevant Order without any further Liability to the Seller.

3.6 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and/or the performance of the Services.

3.7 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier and properly

packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

3.8 The Seller acknowledges that conformity with the Order and the provisions of this Clause 3 are conditions of this Contract and the Buyer shall be entitled to reject any of the Goods and/or Services which are not in conformity with the Order and/or any of the provisions of this Clause 3.

4. DELIVERY

4.1 The Goods shall be delivered, carriage paid, to the Buyer's place of business or to such other place of delivery as is agreed by the Buyer in writing prior to delivery of the Goods.

4.2 The date for delivery and/or the date of performance shall be specified in the Order, or if no such date is specified then delivery and/or performance shall take place within 28 days of the Order.

4.3 Unless otherwise agreed in writing by the Buyer in advance of delivery and/or performance taking place, delivery and/or performance shall take place between the hours of 8.30 am and 5.00 pm Monday to Thursday and 8.30 am to 1.00 pm Fridays being a Working Day.

4.4 The time of delivery and/or performance of the Goods and/or Services shall be of the essence of the Contract.

4.5 The Seller shall ensure that each delivery of Goods is accompanied by a delivery note which shows, inter alia, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

4.6 If the Buyer agrees in writing in advance of delivery and/or performance that Goods may be delivered and/or the Services may be performed in instalments the Contract will be treated as a single contract and not severable.

4.7 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract 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 latent defect in the Goods has become apparent.

4.8 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or performance of the Services.

4.9 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods whether or not any Goods are accepted by the Buyer.

4.10 If the Goods are not delivered and/or the Services are not performed on the due date then, without prejudice to any other rights which it may have, the Buyer reserves the right to:

4.10.1 cancel the Contract in whole or in part;

4.10.2 refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Seller attempts to make;

4.10.3 recover from the Seller any expenditure reasonably incurred by the Buyer in obtaining the Goods and/or Services in substitution from another supplier; and

4.10.4 claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to deliver the Goods and/or perform the Services on the due date.

5. INDEMNITY

5.1 The Seller shall indemnify and keep the Buyer indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

5.1.1 defective workmanship, quality or materials;

5.1.2 an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply of the Goods; and

5.1.3 any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer'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 and/or Services as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Seller.

6. PRICE

6.1 The price of the Goods and/or Services shall be as stated in the Order.

6.2 Unless otherwise agreed in writing by the Buyer all prices of the Goods and/or Services shall be:

6.2.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and

6.2.2 inclusive of all other charges in connection with the Goods and/or Services.

6.3 No increase in the price may be made without the prior consent of the Buyer in writing.

6.4 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller whether or not notified to the Buyer.

7. PAYMENT

7.1 The Buyer will pay for the Goods and/or Services no later than the last Working Day of the month following the month in which the Goods and/or

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IS AVAILABLE UPON REQUEST**

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Services are delivered and/or performed provided the Seller has issued an invoice in respect of such Goods and/or Services.

7.2 The Buyer shall be entitled to set off any amount owing to the Buyer by the Seller against any amount payable by the Buyer to the Seller.

7.3 If any sum under this Contract is not paid by the due date the party owed such sum may, without prejudice to any other rights or remedies it may have, charge interest from the due date until payment in full is made (both before and after judgment) on the amount unpaid at whichever is the greater rate of 4% over the base rate of Lloyds TSB bank from time to time, compounded with monthly rests, or the amount prescribed by law.

8. RISK

8.1 Risk in the Goods and of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Order.

9. TITLE

9.1 Title in the Goods shall pass to the Buyer upon delivery unless payment for the Goods is made before delivery when it shall pass to the Buyer once payment for those Goods has been made in full and cleared funds.

10. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS

10.1 Neither party shall use and/or disclose any confidential information which is acquired by it about the other party's business and/or given by one party to the other party and/or generated by one party using the other party's confidential information except in the proper performance of this Contract.

10.2 The Seller assigns to the Buyer, with full title guarantee and free from all third party rights, any and all intellectual property rights and all other rights in the products of the Services.

10.3 The Seller shall, promptly at the Buyer's request, do or procure to be done all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of this agreement, including all right, title and interest in and to any and all intellectual property rights and all other rights assigned to the Buyer in accordance with Clause 10.2.

11. WARRANTIES AND LIABILITY

11.1 Subject to Clause 11.3 below, the Seller warrants to the Buyer that, upon delivery and for a period of 12 months from the date of delivery of the Goods, the Goods will:

11.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and fit for any purposes held out by the Seller or made known to the Seller in writing at the time the Buyer placed the Order;

11.1.2 be free from defects in design, materials and/or workmanship;

11.1.3 conform with the Order and/or any specification provided to the Seller by the Buyer or produced for the Buyer by the Seller and/or as otherwise agreed in writing between the parties conform with all descriptions and specifications provided to the Buyer by the Seller; and

11.1.4 comply with all statutory requirements and regulations relating to the sale of the Goods.

11.2 Subject to Clause 11.3 below, the Seller warrants to the Buyer that, upon delivery and for a period of 12 months from the date of completion of the performance of the Services, the Services will:

11.2.1 be performed by appropriately qualified personnel with due care and diligence and to such high standard as it is reasonable for the Buyer to expect in all the circumstances;

11.2.2 be free from defects in design, materials and/or workmanship;

11.2.3 conform with the Order and/or any specification provided to the Seller by the Buyer or produced for the Buyer by the Seller and/or as otherwise agreed in writing between the parties conform with all descriptions and specifications provided to the Buyer by the Seller; and

11.2.4 comply with all statutory requirements and regulations relating to the provision of the Services.

11.3 The Seller shall have no Liability under the warranties in Clauses 11.1 and 11.2 above in respect of:

11.3.1 any defect in the Goods and/or Services arising from the Seller's compliance with any instructions and/or specification supplied and/or approved by the Buyer;

11.3.2 any faults and/or defects caused by wilful damage, abnormal working conditions, failure to follow the Seller's instructions, misuse, alteration and/or repair of the Goods and/or Services without the Seller's prior written approval and/or improper maintenance or negligence on the part of the Buyer or a third party.

11.4 Without prejudice to any other remedy the Buyer may have, if any of the Goods and/or Services are defective and are covered by the warranties in Clauses 11.1 and/or 11.2 above the Seller shall at the Buyer's sole option either repair the Goods or supply replacement Goods and/or Services or refund the price which has been paid by the Buyer for the defective Goods and/or Services.

11.5 Such repair, replacement or refund shall be provided by the Seller within 30 Working Days of the Seller being notified of the defect provided it is notified within 30 Working Days of the defect becoming apparent or when it should reasonably have become apparent to the Buyer.

11.6 The Seller shall indemnify and keep indemnified the Buyer in full against any and all Liability (including legal costs on a full indemnity basis) awarded against, incurred and/or suffered by the Buyer as a result of or in connection with:

11.6.1 breach of any warranty given by the Seller in relation to the Goods and/or Services;

11.6.2 any claim that the Goods infringe or their importation, use or resale infringes the patent, copyright, design right, trade mark or other intellectual property rights of any other person except to the extent that the claim arises from compliance with any specification supplied and/or approved by the Buyer;

11.6.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

11.6.4 any act or omission of the Seller or its employees, agents or permitted sub-contractors in supplying, delivering and/or installing the Goods; and/or

11.6.5 any act or omission of any of the Seller's personnel in connection with the performance of the Services.

12. TERMINATION

12.1 The Buyer shall be entitled to cancel the Order in respect of all or part only of the Goods and/or Services by giving notice to the Seller at any time prior to delivery or performance in which event the Buyer's sole Liability shall be to pay to the Seller the price for the Goods and/or Services in respect of which the Buyer has exercised its right of cancellation less the Seller's net saving of cost arising from cancellation.

12.2 The Buyer shall be entitled to immediately terminate this Contract by written notice without Liability to the Seller at any time if the Seller:

12.2.1 breaches the terms of this Contract (and if remediable the breach has not been remedied within 10 Working Days of receiving notice requiring it to be remedied);

12.2.2 persistently breaches any one or more terms of this Contract;

12.2.3 is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, take or suffer any similar action in any jurisdiction or any step is taken (including without limitation the making of an application on the giving of any notice) by it or by any other person in respect of any of these circumstances;

12.2.4 ceases or threatens to cease to carry on business; and/or

12.2.5 appears reasonably to the Buyer to be about to suffer any of the above events.

13. GENERAL

13.1 Neither party shall be liable for any delay or failure to perform its obligations under this Contract as a result of reasons beyond its reasonable control including but not limited to acts of God, war, explosion, flood, fire, governmental actions and any other similar events. If the event causing the delay or failure continues in excess of 1 month this Contract may be terminated at the option of the party not affected by the event.

13.2 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

13.3 Any invalidity, illegality or unenforceability of any or any part of a provision of this Contract shall not affect the validity, legality or enforceability of the remaining provisions of this Contract.

13.4 The Seller shall not assign, transfer, dispose of or sub-contract (or purport to do any of the above in respect of) any of its rights or obligations under the Contract.

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

13.6 None of the terms and conditions of this Contract shall be enforceable by any person who is not a party to it.

13.7 This Contract shall be governed by the laws of England and the parties agree to submit to the non-exclusive jurisdiction of the English Courts.