

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

These terms and conditions ("Conditions") apply to all transactions for the sale of any products ordered from or to be supplied by GMT Rubber-Metal-Technic Limited (Company number: 01878734) whose registered office is The Sidings, Station Road, Guiseley, West Yorkshire LS20 8BX ("Seller")

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 the person or organisation who purchases Goods from the Seller;

1.1.2 **"Contract"** means any contract between the Buyer and the Seller for the purchase of Goods incorporating these Conditions and any order accepted by the Seller in accordance with Clause 3.2;

1.1.3 **"Delivery Point"** means the place where delivery of the Goods is to take place under Clause 6;

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

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

1.2 In these Conditions:

1.2.1 reference to any gender includes all genders and words indicating a person shall include bodies of persons whether corporate or incorporate;

1.2.2 reference to a Clause is to the relevant clause in these Conditions;

1.2.3 headings are for convenience only and shall not affect the interpretation of these Conditions;

1.2.4 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. APPLICATION OF CONDITIONS

2.1 The Contract shall be on these Conditions to the exclusion of all other terms and conditions.

2.2 The Contract constitutes the entire agreement between the parties and supersedes all previous terms and conditions or agreements between the parties relating to its subject matter.

2.3 No variation to the Contract shall be binding unless agreed in writing by an authorised representative of the Seller.

2.4 The Buyer acknowledges that it does not rely on any representation and/or warranty which is not contained in the Contract. Nothing in the Contract shall exclude liability for any fraudulent statement and/or act made prior to the date of the Contract.

3. ORDERS AND CONTRACT FORMATION

3.1 Each order or acceptance of a quotation for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions.

3.2 The contract between the Buyer and the Seller will become legally binding only when the Seller issues a written acknowledgement of order or (if earlier) the Seller delivers the Goods to the Buyer.

3.3 Any quotation given by the Seller to the Buyer for Goods is given on the basis that no Contract shall come into existence until the Seller has notified the Buyer in writing of its acceptance of the Buyer's order. Any quotation is not binding and will not constitute an offer and will remain valid for a period of 30 days.

4. DESCRIPTION

4.1 The quantity and description of the Goods shall be as set out in the Seller's quotation or acknowledgement of order.

4.2 The Buyer shall ensure that the terms of its order and any applicable specifications, instructions and/or drawings are complete and accurate and the Seller shall have no liability for errors in any specifications, instructions and/or drawings supplied and/or approved by the Buyer.

4.3 By supplying any specifications, instructions and/or drawings the Buyer warrants to the Seller that any Goods made to such specifications, instructions and/or drawings do not in whole or in part infringe the intellectual property rights of any third party.

4.4 The Buyer agrees to indemnify and keep indemnified the Seller against any and all claims, losses, expenses, liabilities and costs (including legal costs on a full indemnity basis and increased administration costs) arising out of the Seller's use of specifications, details and/or drawings supplied by the Buyer.

4.5 Details and/or specifications in catalogues, brochures, websites, adverts and price lists issued by the Seller are intended as a guide only and only give a general approximation of the Goods. The Buyer agrees that it has not relied upon such details and/or specifications unless it has sought and obtained written confirmation from the Seller of their accuracy.

5. CANCELLATION

5.1 If the Buyer is contracting as a consumer and has ordered Goods which are not being made to the Buyer's own specification, are not personalised or by their nature cannot be returned the Buyer may cancel an order with the Seller at any time within 7 Working Days beginning on the day after the Buyer receives the Goods.

5.2 To cancel an order the Buyer must inform the Seller in writing and return the Goods to the Seller immediately in the same condition in which the Buyer received them and at the Buyer's own cost and risk.

5.3 The price of the Goods returned by the Buyer in accordance with Clause 5.1 will be refunded by the Seller in full including any costs of delivery of the Goods to the Buyer but excluding the cost of returning the item to the Seller which will be borne by the Buyer.

5.4 The Buyer will not have any right to cancel an order and the Seller is unable to issue a refund in respect of any Goods which have been made to the Buyer's own specification or are personalised for the Buyer in any way.

5.5 Subject to Clause 5.1, no order which has been accepted by the Seller may be cancelled by the Buyer except with the Seller's prior written

agreement and on condition that the Buyer shall indemnify and keep indemnified the Seller in full against any and all liability (including the costs of all labour and materials used) incurred and/or suffered by the Seller as a result of the cancellation.

6. DELIVERY

6.1 Unless otherwise agreed in writing by the Seller, delivery of the Goods shall take place at the Seller's place of business.

6.2 The Seller will use its reasonable endeavours to achieve delivery by any date specified in the Buyer's order, but each such date is to be treated as an estimate only and time shall not be a condition of the Contract. If no date is so specified, delivery shall be within a reasonable time.

6.3 The Buyer shall take delivery of the Goods within 7 Working Days of the Seller giving it notice that the Goods are ready for delivery.

6.4 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

6.4.1 risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Seller's negligence);

6.4.2 the Goods shall be deemed to have been delivered; and

6.4.3 the Seller may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

6.5 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading and/or unloading the Goods (as applicable).

6.6 If the Seller delivers to the Buyer a quantity of Goods of up to 10% (ten percent) more or less than the quantity ordered by the Buyer, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and the price for such goods shall be adjusted at the pro rata Contract rate.

6.7 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

6.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

6.9 The Seller shall not be liable for any non-delivery of Goods or any shortfall in the quantity of Goods delivered (even if caused by the Seller's negligence) unless the Buyer gives written notice to the Seller of the non-delivery or shortfall within 7 Working Days of the date when the Goods would in the ordinary course of events have been received.

6.10 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

7. CREDIT LIMIT

7.1 The Seller may set a credit limit for the Buyer and any changes the Seller makes to the Buyer's credit limit will be notified to the Buyer from time to time.

7.2 The Seller reserves the right to refuse to accept any Orders and/or to suspend delivery of any Goods and/or withhold performance of any Services if such Goods would result in the Buyer exceeding its credit limit or if the credit limit has already been exceeded.

8. RISK

8.1 Risk in the Goods and of damage to or loss of the Goods shall pass to the Buyer:

8.1.1 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

8.1.2 in the case of 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.

9. TITLE

9.1 Despite delivery of the Goods and risk having passed to the Buyer, title and ownership in the Goods shall remain with the Seller until it has received payment in full and cleared funds for:

9.1.1 the Goods; and

9.1.2 all other goods and services agreed to be provided by the Seller to the Buyer under this and any other agreement.

9.2 Until such time as title in the Goods passes to the Buyer the Buyer shall:

9.2.1 hold the Goods as the Seller's fiduciary agent and bailee;

9.2.2 keep the Goods stored in a secure and satisfactory condition separate from all other goods of the Buyer and/or third parties and clearly marked in such a way as to be readily identifiable as the Seller's property;

9.2.3 not alter, remove, destroy or obscure any identifying marks, logos or packaging on or relating to the Goods; and

9.2.4 keep the Goods insured for the price at which the Goods were sold to the Buyer against all insurable risks and the Buyer shall hold any proceeds of such policy of insurance in relation to the Goods on trust for the Seller.

9.3 The Buyer may resell the Goods prior to title and ownership having passed provided such sale is in the ordinary course of the Buyer's business at full market value and that such sale is a sale of the Seller's property on the Buyer's own behalf acting as principal.

9.4 The Seller shall be entitled to recover payment for Goods despite ownership not having passed.

9.5 The Buyer grants the Seller's employees and/or agents the right to enter the Buyer's premises or any other premises where the Goods are or may be stored in order to confirm the Buyer's compliance with this Clause 9 and/or, if the Buyer's right to possession has ceased, to recover the Goods.

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10. PRICE

10.1 Unless otherwise agreed by the Seller in writing, the price for the Goods shall be the price set out in the Buyer's order.

10.2 The Seller may, by giving notice to the Buyer at any time up to 7 Working Days before delivery, increase the Contract price to reflect any increase in the cost of the Goods to the Seller due to factors occurring after the making of the contract of sale beyond its reasonable control, including without limitation foreign exchange fluctuations, taxes and duties and the cost of labour, materials and other manufacturing costs. The Buyer may cancel the Contract within 7 Working Days of any such notice from the Seller.

10.3 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

11. PAYMENT

11.1 Unless otherwise agreed in writing by the Seller, the Buyer will pay the price for the Goods in pounds sterling no later than the last Working Day of the month following the month in which the Goods are delivered or deemed to be delivered.

11.2 Time for payment shall be of the essence of the Contract.

11.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy the Seller may have, the Seller shall be entitled to:

11.3.1 cancel the order to which payment relates and suspend delivery and/or performance of any other orders;

11.3.2 appropriate any payment made by the Buyer to such order as the Seller may think fit;

11.3.3 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% (four percent) over the base rate of the Seller's bank from time to time, compounded with monthly rests, or the amount prescribed by law.

12. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

12.1 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.

12.2 Unless otherwise agreed in writing all intellectual property rights (including without limitation all patents, copyright, database rights, design rights (whether registered or unregistered), trade marks (whether registered or unregistered) and other similar rights, whether existing now and/or in the future, wherever existing in the world together with the right to apply for protection of the same) in the Goods shall be owned by the Seller absolutely.

13. WARRANTY

13.1 Subject to Clause 13.2, the Seller warrants to the Buyer that upon delivery and for a period of 12 months from the date of delivery the Goods will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and free from material defects in design, materials and/or workmanship.

13.2 The Seller shall have no Liability under the warranty in Clause 13.1 above in respect of:

13.2.1 any defect in the Goods arising from the Seller's compliance with any specifications, instructions and/or drawings supplied and/or approved by the Buyer;

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

13.2.3 Goods in respect of which the total price has not been paid by the due date for payment; and

13.2.4 those parts, materials and/or equipment which are not manufactured by the Seller in respect of which the Buyer shall only be entitled to the benefit of such warranty or guarantee as is given by the manufacturer to the Seller.

13.3 The Seller shall not be liable for a breach of the warranty in Clause 13.1 unless the Buyer gives written notice of the defect to the Seller, and if the defect is as a result of damage in transit to the carrier, within 2 Working Days of the time when the Buyer discovers or ought to have discovered the defect.

13.4 If any of the Goods are defective and are covered by the warranty in Clause 13.1 above the Seller shall at its sole option either repair the Goods or supply replacement Goods or refund the price which has been paid by the Buyer for the defective Goods. Such repair, replacement or refund shall be the Buyer's sole remedy in respect of any claims it has under the warranty given by the Seller in Clause 13.1 above and the Seller shall have no further liability for a breach of the warranty in respect of such Goods.

13.5 At the Seller's reasonable request the Buyer must return to the Seller any alleged defective Goods for inspection and/or procure sufficient access to the premises at which any alleged defective Goods are held to enable inspection. If the returned Goods prove to be defective the Seller shall reimburse the Buyer's reasonable costs of returning the Goods.

13.6 Any work carried out by the Seller, including but not limited to a visit to inspect the Goods, which is not covered by the warranty in Clause 13.1 will be charged for at the Seller's normal rate on a time and materials basis.

14. LIMITATION OF LIABILITY

14.1 Subject to Clauses 14.5 and 14.6 the Seller's total liability under this Contract shall not exceed the amount payable by the Buyer to the Seller in respect of the relevant order to which the claim relates.

14.2 The Seller shall have no liability to the Buyer for any:

14.2.1 loss of profits;

14.2.2 depletion of reputation and goodwill;

14.2.3 pure economic losses;

14.2.4 special damages;

14.2.5 aggravated, punitive and/or exemplary damages;

14.2.6 consequential and/or indirect losses; and/or

14.2.7 interruption of business, loss of business, contracts and/or opportunity.

14.3 The Seller shall have no Liability to the Buyer for defective Goods to the extent the defect is caused or contributed to by the Buyer and/or by the Buyer's continued use of defective Goods after the defect has become apparent or suspected or should reasonably have been apparent or suspected by the Buyer.

14.4 Except for the financial cap on liability which shall apply only once in respect of all types of liability, each of the limitations and/or exclusions set out in this Contract shall be deemed to be repeated and apply as a separate provision for each of:

14.4.1 liability in contract (including fundamental breach);

14.4.2 liability in tort (including negligence);

14.4.3 liability for breach of statutory duty; and

14.4.4 liability for breach of common law and/or any other legal basis.

14.5 Subject as expressly provided in this Contract all warranties, conditions or other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are excluded to the fullest extent permitted by law.

14.6 Nothing in this Contract shall exclude or limit the Seller's liability for death or personal injury caused by its own negligence, any liability for fraud or fraudulent misrepresentation or any other liability which the Seller is not permitted to exclude or limit as a matter of law.

15. TERMINATION

15.1 Either party may immediately terminate the Contract by written notice if the other party:

15.1.1 breaches the terms of the Contract (and if remediable the breach has not been remedied within twenty (20) Working Days of receiving notice requiring it to be remedied);

15.1.2 persistently breaches any one or more terms of the Contract;

15.1.3 fails to make any payment when due;

15.1.4 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 (except for the purposes of amalgamation or reconstruction and in such manner that the resulting company effectively agrees to be bound by or assume the obligations imposed on that other party under this Contract);

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

15.1.6 appears reasonably to the other party to be about to suffer any of the above events.

15.2 If the Seller has the right to terminate the Contract:

15.2.1 the Seller may withhold delivery of any undelivered Goods and stop any Goods in transit;

15.2.2 the Seller may enter the Buyer's premises or any other premises where the Goods are or may be stored and may repossess and sell or dispose of any Goods owned by the Seller to discharge any sums owed by the Buyer to the Seller under the Contract or any other agreement with the Buyer; and

15.2.3 all monies owed by the Buyer to the Seller shall immediately become due and payable.

16. GENERAL

16.1 The Seller shall not be liable for any delay or failure to perform its obligations under the Contract as a result of reasons beyond its reasonable control including but not limited to acts of God, war, explosion, flood, fire, governmental actions, Seller's delays and difficulties in obtaining raw materials, strike, lock-out, or other form of industrial action, power breakdown or machinery breakdown lasting more than 1 Working Day and any other similar events. If the event causing the delay or failure continues in excess of 1 month the Contract may be terminated at the option of either party.

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

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

16.4 The Buyer 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 without the prior written consent of the Seller.

16.5 None of the terms and conditions of the Contract shall be enforceable by any person who is not a party to it. This shall not apply to any company within the same group of companies as the Seller who the Seller consents to being able to enforce the Contract in addition to the Seller. The rights of any third party to enforce the Contract may be varied and/or extinguished by agreement between the parties without the consent of any third party.

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