

# MRC FLANGEFITT LIMITED TERMS OF PURCHASE

## 1 DEFINITIONS

- 1.1 'Associated Company' means any company which is a subsidiary undertaking or parent undertaking of the Buyer or any subsidiary undertaking of such parent undertaking from time to time and subsidiary undertaking and parent undertaking shall have the meanings set out in section 1162 of the Companies Act 2006 as amended from time to time.
- 1.2 'Buyer' means MRC Flangefitt Limited registered in England and Wales with company number 01922173.
- 1.3 'Conditions' means the terms and conditions of purchase as set out in this document.
- 1.4 'Confidential Information' means any and all information provided by the Buyer or an Associated Company under the Contract.
- 1.5 'Contract' means any contract between the Buyer and the Seller for the supply and purchase of Goods which incorporates (in order of precedence) these Conditions and the Order.
- 1.6 'Control' means the ability of a person to direct the affairs of another whether by virtue of the ownership of shares, contract or otherwise.
- 1.7 'Delivery Date' means the date specified by the Buyer in the Order as when the Goods are to be delivered.
- 1.8 'DDP' means delivered duty paid under Incoterms 2010.
- 1.9 'Delivery Point' means the delivery point set out by the Buyer in the Order.
- 1.10 'Goods' means the goods to be supplied to the Buyer by the Seller in accordance with the Order.
- 1.11 'IPR' means any and all intellectual property rights protected under the law anywhere in the world, including without limitation, patents, designs, copyright, trade marks, know-how, technical information, rights in data and database rights (whether registered or unregistered or any applications for registration) whether now known or future.
- 1.12 'Order' means any order made by the Buyer for Goods from the Seller;
- 1.13 'Quotation' means the price offered by the Seller to the Buyer for the supply of Goods.
- 1.14 'Seller' means the person(s), firm or company who supplies or agrees to supply Goods to the Buyer.

## 2 CONDITIONS APPLICABLE

- 2.1 These Conditions shall apply to all Contracts pursuant to each Order placed by the Buyer and are the only Conditions upon which the Buyer is prepared to deal with the Seller.
- 2.2 Terms or conditions contained on any prior, contemporaneous or subsequent communication from Seller or Buyer (whether written, verbal or transmitted through electronic means, including but not limited to catalogues, merchandise material, delivery documents, and acknowledgements) that submit, propose, or state any additions, changes, deviations and/or modifications to the Contract, shall automatically be deemed void, objected to and rejected by Seller and Buyer.
- 2.3 No changes or variations to a Contract shall be effective unless agreed in writing by the Buyer.
- 2.4 The Buyer may contact the Seller to request a Quotation for the purchase of Goods and the Seller will supply the Buyer with a Quotation.
- 2.5 Each Quotation shall be deemed to be an offer by the Seller to the Buyer for the supply of Goods on these Conditions.
- 2.6 No Quotation provided by the Seller shall be deemed to be accepted by the Buyer until the Buyer places a written Order.
- 2.7 The Contract shall be deemed to be made on receipt by the Seller of the written Order from the Buyer.
- 3 **THE PRICE AND PAYMENT**
- 3.1 Unless the Buyer agrees otherwise in writing the price for the Goods shall be as specified in the Order exclusive of VAT but inclusive of all costs associated with packaging, delivery and any other applicable duties and taxes, levies expenses and charges.
- 3.2 The Seller shall submit invoices in a form approved by the Buyer on the later of delivery or acceptance of the Goods by the Buyer. The Buyer shall pay for the Goods within 60 days of receipt of an invoice submitted in the approved form unless the Buyer agrees otherwise in writing. Time for payment shall not be of the essence for the purposes of the Contract.
- 3.3 The Buyer will only pay the price for the quantity of Goods delivered as set out in the Order.
- 3.4 Without prejudice to any other right or remedy, the Buyer has the right to set off any monies owing at any time to the Seller against any monies due to the Buyer from the Seller and/or for the Seller's breach of any Contract.
- 3.5 If there is any invoice which is in dispute (whether in whole or part), the Buyer shall be entitled to withhold payment of the relevant invoice in full. The parties shall enter into good faith discussions to resolve such dispute.
- 3.6 If the Buyer fails to make payment to the Seller of any sums owed, the Seller may charge interest to the Buyer on such sums at a rate of 4% above the base lending rate from time to time of Barclays Bank Plc until such payment has been made. Interest shall not be payable on any unpaid sums under Conditions 3.4 and 3.5 above.
- 3.7 Payment of the price for the Goods shall not constitute acceptance by the Buyer of the Goods.

## 4 WARRANTIES

- 4.1 The Seller warrants that for a period of 18 months from the date of acceptance of the Goods by the Buyer all Goods supplied by the Seller shall: (i) comply in all respects with applicable specifications, (ii) are fit for purpose, (iii) are of good and merchantable quality, free from any defects in design, materials and workmanship, and (iv) conform with all applicable laws, licences, permissions, authorisations, consents and permits applicable to the design, manufacture, processing, storage, testing and delivery of the Goods.
- 4.2 The Seller further warrants that: (i) all Goods supplied by the Seller do not and will not in any way infringe or violate any IPR or Confidential Information, nor any contractual, employment or other rights of third parties, (ii) it has and will convey to the Buyer, good and marketable title to the Goods and that all Goods are and will remain free and clear of all security interests and all other liens and encumbrances, (iii) it has full capacity and authority to enter into the Contract and the necessary expertise to comply with the Contract.
- 4.3 The Seller agrees to assign to the Buyer the benefit of any warranties in respect of the Goods which the Seller enjoys the benefit of in addition to those warranties provided in accordance with Conditions 4.1 and 4.2 and the Seller agrees and acknowledges that any warranty given pursuant to these Conditions shall extend for the benefit of the Buyer, any Associated Company and any customers of the Buyer who shall have available the same remedies against the Seller as the Buyer has under these Conditions.

## 5 DELIVERY OF THE GOODS

- 5.1 Delivery shall be DDP (Delivered Duty Paid) to the Delivery Point on the Delivery Date unless otherwise agreed in writing by the Buyer.
- 5.2 All Goods supplied shall be properly shipped/transported, packaged and secured in such a manner as to reach the Delivery Point in a good condition.
- 5.3 Time of delivery of the Goods shall be of the essence for the purposes of the Contract. If the Goods are not delivered by the Delivery Date, then without prejudice to any other rights the Buyer may have, the Buyer reserves the right to (i) refuse to take delivery of the Goods; (ii) terminate the Contract with immediate effect, and/or (iii) recover from the Seller all losses associated with such delay including but not limited to the Buyer's increased cost of purchasing replacement products on the spot market and any damages incurred by the Buyer for late delivery under sale contracts with its customers.
- 5.4 If the Goods are delivered before the Delivery Date, the Buyer shall be entitled at its sole discretion to refuse to take delivery or to charge the Seller for insurance and storage of the Goods until the Delivery Date.

## 6 INSPECTION AND ACCEPTANCE OF THE GOODS

- 6.1 The Seller shall permit the Buyer or anyone appointed by the Buyer to inspect and test the Goods during their manufacture and processing. No such inspection or test shall relieve the Seller of its obligations as set out in the Contract or at law or shall constitute acceptance of the Goods by the Buyer.
- 6.2 The Buyer shall not be deemed to have accepted any part of the Goods until after the Buyer (or the Buyer's customer) has inspected the Goods and ascertained that they are in accordance with the Contract following delivery of the Goods. The Buyer may reject any Goods supplied which are not in accordance with the Contract.
- 6.3 In the event that any Goods are rejected by the Buyer pursuant to Condition 6.2, the Buyer may, at its sole option: (i) require the Seller to immediately replace the rejected Goods at the Seller's cost and risk; (ii) cancel the Order and require the Seller to collect the rejected Goods from the Buyer at the Seller's cost and risk, and/or (iii) recover from the Seller all losses associated with the delivery of such rejected Goods including but not limited to the Buyer's increased cost of purchasing replacement products on the spot market and any damages incurred by the Buyer for late delivery under sale contracts with its customers.
- 6.4 Unless the Seller collects such Goods promptly upon receipt of notice of rejection the Buyer may dispose of them as the Buyer shall think fit. During the period between delivery of the Goods to the Buyer and collection by the Seller, the Buyer shall not be liable for any loss or damage caused to the damaged Goods.
- 6.5 Title shall pass to the Buyer on delivery of the Goods.
- 6.6 Risk shall pass to the Buyer upon the Buyer's acceptance of the Goods or payment for the Goods whichever is later.

## 7 REMEDIES OF BUYER

- 7.1 The Seller shall indemnify in full, defend and hold the Buyer (who for the purposes of this Condition 7.1 shall include the Buyer, any Associated Company and their customers) harmless from and against any and all actions, losses claims, damages, liabilities and settlements as well as costs and expenses, including but not limited to legal fees, related to the defence of any of the above ("Damages") which may be asserted against the Buyer or to which the Buyer may hereafter be subject by reason of: (i) death or personal injury to any person; (ii) damage to or destruction or loss of use of any property, including loss of use thereof, and damage to the environment; (iii) the Seller's breach of any of its obligations under the Contract whether in contract, tort (including negligence), breach of statutory duty or otherwise; (iv) all claims made against the Buyer arising out of the acts and/or omissions of the Seller and/or the Seller's personnel, and/or (v) any and all third party claims for infringement of IPR in the Goods supplied by the Seller.
- 7.2 The Seller shall at all times maintain in force adequate and suitable insurance with a reputable insurance company over the Goods and its liabilities under the Contract (including product liability, professional indemnity insurance, public liability insurance and employer's liability insurance cover) naming the Buyer as an additional insured, waiving all rights of subrogation against the Buyer and making such insurances primary and on request from the Buyer shall provide proof of such insurance.
- 7.3 Nothing in these Conditions excludes or limits the liability of either party for death or personal injury caused by its negligence or intentional or wilful misconduct or any liability for fraud or fraudulent misrepresentation or any other liability that cannot be restricted by law.
- 7.4 Without prejudice to any other rights of the Buyer, where the Seller supplies Goods which do not comply with the Contract the Seller shall at the Buyer's sole option promptly repair or replace such Goods (as appropriate) without any additional charge to the Buyer including but not limited to any costs associated with opening up, dismantling, re-assembly, making good after repairs and testing of such goods to the Buyer's reasonable satisfaction. If the Seller fails to repair or replace the Goods within 5 days of the Buyer notifying the Seller under this provision, the Buyer's may at its sole option: (i) cancel the Order and require the Seller to collect the Goods from the Buyer at the Seller's cost and risk, (ii) recover from the Seller all losses associated with the delivery of such Goods including but not limited to the Buyer's increased cost of purchasing replacement products on the spot market and any damages incurred by the Buyer for late delivery under sale contracts with its customers and/or (iii) repair or replace any Goods itself, or through an agent, sub-contractor or otherwise at the Seller's cost.
- 7.5 The acceptance of the Goods by the Buyer as determined in Condition 6 is without prejudice to the Buyer's rights and the Seller's obligations under this Condition 7.

## 8 CANCELLATION

- 8.1 An Order may be cancelled in writing by the Buyer at any time prior to the Delivery Date without cost or liability to the Buyer except in relation to any carriage charges demonstrated by the Seller for Goods already in transit.
- 8.2 An Order may be amended in writing by the Buyer provided that if such amendment causes an increase or decrease in the price of the Goods or the Delivery Date the parties shall, acting in good faith, reasonably agree an adjustment to the price and/or Delivery Date.
- 8.3 The Buyer shall not be liable to the Seller for any loss (consequential or otherwise) including loss of profit as a result of any cancellation of or amendment to an Order.

## 9 TERMINATION

- 9.1 The Buyer may terminate the Contract for any reason by providing 7 days' prior written notice to the Seller.
- 9.2 The Buyer may terminate the Contract with immediate effect from the date of service of written notice to the Seller: (i) if the Seller commits a material and/or persistent breach of any of their obligations under the Contract and (if the breach is capable of remedy) fails to remedy it within the time stated in any written notice provided by the Buyer, (ii) if the Seller commits any act which brings or is likely to bring the Buyer into disrepute or which damages or is likely to damage their interests, (iii) if the Seller becomes insolvent or if the Buyer, acting reasonably, has serious doubts as to the Seller's solvency, or (iv) if the Seller undergoes a change in Control.
- 9.3 The Seller shall fulfil any Orders which are outstanding at the date of termination and indemnify the Buyer for all losses incurred as a result of termination pursuant to Condition 9.2.
- 9.4 On termination of the Contract for any reason the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination shall not be affected.

## 10 ASSIGNMENT

- 10.1 The Seller shall not be entitled to assign transfer, sub-contract or dispose of its rights or obligations under the Contract without the prior written consent of the Buyer.
- 10.2 The Seller shall not be relieved from any liabilities or obligations under the Contract and shall be responsible for the acts, defaults and negligence of any sub-contractor as fully as if they were the acts, defaults or negligence of the Seller.

## 11 NOTICES

- 11.1 Any notice to be given under the Contract by either party to the other shall be in writing and may be served by fax, personal service or by pre-paid recorded delivery or registered post to the address of the other party given in the Order.
- 11.2 Any such notice shall be deemed to have been served: (i) if delivered by hand at the time of delivery; (ii) 48 hours after posting in the case of pre-paid recorded delivery/registered post; or (iii) if sent by fax upon the sender's receipt of a confirmed log out print for the transmission regarding the date, time and transmission of all pages and provided that: (i) a copy of the fax is also sent by pre-paid recorded delivery post to the receiving party and (ii) the fax is transmitted within normal working hours of the receiving party, otherwise such notice shall be deemed to have been served on the next business day.

**12 CONFIDENTIALITY**

- 12.1 The Seller will and shall procure that the Seller's personnel will, keep confidential all Confidential Information that it may acquire and will not use the Confidential Information for any purpose other than to complete its obligations under the Contract.
- 12.2 The obligations of this Condition 12 will not apply to information which: (i) is publicly available or becomes publicly available through no act or omission of the Seller; or (ii) the Seller is required to disclose by order of a court or regulatory body of competent jurisdiction.
- 12.3 The Seller shall not make any press announcements or publicise the Contract in any way, without the prior written consent of the Buyer.
- 12.4 This Condition 12 shall apply during the continuance of the Contract and after its termination howsoever arising without limitation in time.
- 12.5 The Buyer may at any time request the immediate return or destruction of Confidential Information by written notice to the Seller.

**13 INTELLECTUAL PROPERTY RIGHTS**

- 13.1 All IPR produced from or arising as a result of the performance of the Contract, so far as not already vested, are hereby assigned by the Seller to the Buyer and/or its customers and shall become the absolute property of the Buyer and/or its customers as the case may be. The Seller shall do all that is reasonably necessary to ensure that such rights vest in the Buyer and/or its customers by the execution of appropriate instruments and/or the making of agreements with third parties.
- 13.2 The Buyer and/or its customers shall retain ownership in any IPR in any specification for Goods which the Seller is supplying in accordance with the Buyer's specification.

**14 THIRD PARTY RIGHTS**

- 14.1 An entity which is not expressly a Party to the Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract and the provisions of the Contracts (Rights of Third Parties) Act 1999 shall be expressly excluded from these Conditions.
- 14.2 Any Associated Company may enforce any term of the Contract.

**15 RELATIONSHIP OF THE PARTIES**

- 15.1 The Contract is not a partnership, joint venture, or any other type of legal entity. Nothing in the Contract shall be construed as creating a fiduciary relationship between the parties. Neither party shall hold itself out to be an agent, representative, or partner of the other by reason of the Contract or the relationship created hereby, and neither shall have the right to enter into any contracts or commitments in the name of, or on behalf of, the other or to bind the other in any respect. The Seller shall at all times perform and execute the provisions of the Contract as an independent contractor, maintaining complete and exclusive control over the Seller's personnel and operations.

**16 AUDIT RIGHTS**

- 16.1 The Seller shall keep full and detailed accounts as may be necessary and satisfactory to Buyer. The Buyer, its agents, and customers shall be afforded access to all of the Seller's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to the Contract, and Seller shall preserve all such records for a period of five (5) years after final payment.

**17 SANCTIONS AND BOYCOTT**

- 17.1 The Seller shall not act in any manner (including omitting to act in relation to a transaction) which is inconsistent with, penalised or prohibited under any laws, regulations, orders, demands, rules or requirements of the United States of America which relates to international boycotts of any type.
- 17.2 The Seller shall not cause the Buyer to be, nor shall the Buyer be obliged to perform any obligation under the Contract if this would be, in violation of any laws, regulations, orders, demands, rules or requirements of the European Union, any EU member state, the United Nations, the United States of America or any other relevant jurisdiction relating to trade sanctions, foreign trade controls, export controls and similar laws.

**18 ANTI-CORRUPTION**

- 18.1 The Seller warrants and represents to Buyer that in connection with the Contract they will comply with all applicable laws, regulations, demands, rules and/or official government orders and requirements of the United Kingdom, the United States of America or any other relevant jurisdiction relating to anti-bribery or anti-money laundering.

**19 LAW AND JURISDICTION**

- 19.1 The Seller shall perform its obligations under the Contract in accordance with all applicable laws, statutes, regulations, and codes from time to time in force..
- 19.2 Any breach of Condition 17, 18 or 19.1 shall be a material breach for the purposes of Condition 9.2.
- 19.3 These Conditions and each Contract is subject to the law of England and Wales and the parties submit to the exclusive jurisdiction of the English courts. However, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Contract.
- 19.4 In performing its obligations hereunder Seller undertakes to comply with the principles of the International Labour Organization Declaration on Fundamental Principles and Rights at Work , the associated United Nations Guiding Principles on Business and Human Rights; as well as any supplier codes or expectations made available by Buyer from time to time.
- 19.5 The Seller warrants and undertakes that all Goods and materials which form part of the Goods supplied to the Buyer are not sourced by illegal and/or unethical means and that it has in place reliable systems to ensure that the tantalum, tin, tungsten and gold (collectively "3TG") in the products, parts, components and/or materials that they manufacture for or supply to the Buyer do not directly or indirectly finance or benefit armed groups that are perpetrators of serious human rights abuses in the Democratic Republic of Congo or an adjoining country. The Seller shall exercise due diligence on the source and chain of custody of 3TG in all Goods supplied to the Buyer and make their due diligence measures available to the Buyer upon request. Seller shall respond promptly to Buyer's request for information regarding the results of their due diligence, including but not limited to information regarding the country of origin of smelters and refiners of 3TG in Goods supplied to the Buyer.