



Standard Terms and Conditions of Sale

The customer's attention is drawn in particular to the provisions of clause.

I. interpretation

1.1. **Definitions.** In these Conditions, the following definitions apply:

"Business Day": a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

"Catalogue": SPM's descriptive document from time to time in force containing details of the Goods – whether in physical or electronic form.

"Conditions": the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

"Contract": the contract between SPM and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

"Customer": the person or firm who purchases the Goods from SPM.

"Ex Works": as set out in the Incoterms 2010

"Force Majeure Event": has the meaning given in clause 10.

"Goods": the goods or any part of them set out in the Order.

"Order": the Customer's order for the Goods, comprising the Customer's written acceptance of SPM's quotation, or other acceptance thereof, as the case may be.

"Specification": any specification for the Goods, including any related plans and drawings, that is explicitly agreed in writing by the Customer and SPM as at the date of the Contract

"SMM" shall mean Special Metric Materials Ltd, Shepley Industrial Estate North, Audenshaw, Manchester, M34 5DR

1.2. **Construction.** In these Conditions, the following rules apply:

- (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 personal representatives, successors

or permitted assigns.

- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when SMM issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract shall comprise any Order, these Conditions and the Specification. In the event of any conflict between the provisions they shall be read in the following order of precedence:
 - (a) The Order
 - (b) The Specification
 - (c) The Conditions
- 2.5 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of SMM which is not set out in the Contract.

- 2.6 Any samples, drawings, descriptive matter, or advertising produced by SMM and any descriptions or illustrations contained in SMM's Catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.7 A quotation for the Goods given by SMM shall not constitute an offer. A quotation shall only be valid for a period of 2 Business Days from its date of issue.

3. Goods

- 3.1 The Goods are described in SMM's Catalogue as modified by any applicable Specification.
- 3.2 To the extent that the Goods are to be supplied in accordance with a Specification supplied by the Customer, the Customer shall indemnify SMM against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by SMM in connection with any claim made against SMM for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with SMM's use of the Specification. This clause 3.2 shall survive termination of the Contract.
- 3.3 SMM reserves the right to amend the specification of the Goods and/or the Specification if required by any applicable statutory or regulatory requirements.

4. Delivery

- 4.1 SMM shall provide the Goods Ex Works and delivery will be completed once SMM notifies the Customer of their availability for collection
- 4.2 SMM shall ensure that each delivery of the Goods is accompanied by a delivery note.
- 4.3 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. SMM shall not be liable for any delay or failure in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to

provide SMM with adequate instructions that are relevant to the supply of the Goods.

- 4.4 If SMM fails to deliver the Goods in breach of Contract, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. SMM shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide SMM with adequate delivery instructions or any other instructions, information or data that are relevant to the supply of the Goods.
- 4.5 If the Customer fails to arrange collection of the Goods within 3 Business Days of SMM notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or SMM's failure to comply with its obligations under the Contract:
- (a) delivery of the Goods shall be deemed to have been completed at .00 am on the third Business Day after the day on which SMM notified the Customer that the Goods were ready; and
 - (b) SMM shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 4.6 If 10 Business Days after the day on which SMM notified the Customer that the Goods were ready for delivery the Customer has not arranged collection of them, SMM may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 4.7 The Customer shall not be entitled to reject the Goods if SMM delivers up to and including 10% more or less than the quantity of Goods ordered.
- 4.8 SMM may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality

- 5.1 SMM warrants that on delivery, and for a period of 6 months from the date of delivery ("warranty period"), the Goods shall:
- (a) conform in all material respects with their description and any applicable the Specification;
 - (b) be free from material defects in design, material and workmanship; and
 - (c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

- 5.2 Subject to clause 5.3, if:

- (a) the Customer gives notice in writing to SMM during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
- (b) SMM is given a reasonable opportunity of examining such Goods; and
- (c) the Customer (if asked to do so by SMM) returns such Goods to SMM's place of business at SMM's cost,

SMM shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

- 5.3 SMM shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
- (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;
 - (b) the defect arises because the Customer failed to follow SMM's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - (c) the defect arises as a result of SMM following any drawing, design or Specification supplied by the Customer;
 - (d) the Customer alters or repairs such Goods without the written consent of SMM;

- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
- (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 5, SMM shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by SMM.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until SMM has received payment in full (in cash or cleared funds) for the Goods;

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

- (a) hold the Goods on a fiduciary basis as SMM's bailee;
- (b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as SMM's property;
- (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- (d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

- (e) notify SMM immediately if it becomes subject to any of the events listed in clause 8.2; and
- (f) give SMM such information relating to the Goods as SMM may require from time to time,

but the Customer may resell or use the Goods in the ordinary course of its business.

- 6.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or SMM reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy SMM may have, SMM may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

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 SMM's published price list in force as at the date of delivery.
- 7.2 SMM may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- (a) any factor beyond SMM's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give SMM adequate or accurate information or instructions.
- 7.3 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from SMM, pay to SMM such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

- 7.4 SMM may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.5 The Customer shall pay the invoice in full and in cleared funds within 20 Business Days of the date of the invoice. Payment shall be made to the bank account nominated in writing by SMM. Time of payment is of the essence.
- 7.6 If the Customer fails to make any payment due to SMM under the Contract by the due date for payment ("due date"), then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above Barclays Bank PLC's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.7 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against SMM in order to justify withholding payment of any such amount in whole or in part. SMM may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by SMM to the Customer.

8. Customer's insolvency or incapacity

- 8.1 If the Customer becomes subject to any of the events listed in clause 8.2, or SMM reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to SMM, SMM may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and SMM without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 8.2 For the purposes of clause 8.1, the relevant events are:
- (a) the Customer 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no

reasonable prospect of so doing, in either case, within the meaning of section 268 of the insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- (b) the Customer 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 (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (c) (being a company) 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 Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer 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 its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) 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 Customer;
- (g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(h) (inclusive);

- Ⓚ the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- Ⓚ the Customer's financial position deteriorates to such an extent that in SMM's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- Ⓚ (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

8.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. Limitation of liability

9.1 Nothing in these Conditions shall limit or exclude SMM's liability for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation;
- (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979;
- (d) defective products under the Consumer Protection Act 1987; or
- (e) any matter in respect of which it would be unlawful for SMM to exclude or restrict liability.

9.2 Subject to clause 9.1:

- (a) SMM shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- (b) SMM's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort

(including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

- (c) SPM shall under no circumstances whatsoever be liable to the Customer or to any third party for the Customer's modification or use of the Goods in any way other than expressly approved by SMM.

10 Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A "Force Majeure Event" means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, export regulations, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

11. Anti-Bribery

11.1 The Customer shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 11.1(b), and will enforce them where appropriate;

- (d) promptly report to SMM any request or demand for any undue financial or other advantage of any kind received by the Customer in connection with the performance of this agreement;

11.2 Breach of this clause 11 shall entitle SMM to terminate the Contract with immediate effect.

12 Termination

12.1 Without limiting its other rights or remedies, SMM may terminate this Contract with immediate effect by giving written notice to the Customer if the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so.

12.2 Without limiting its other rights or remedies, SMM may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.

12.3 On termination of the Contract for any reason the Customer shall immediately pay to SMM all of SMM's outstanding unpaid invoices and interest.

12.4 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

12.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

13. General

13.1 Assignment and subcontracting.

- (a) SMM 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.
- (b) The Customer 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 SMM.

13.2 Notices.

- (a) 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, fax or e-mail.

- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); if sent by pre-paid first class post or recorded delivery, at 1 .00 am on the second Business 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 fax, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 **Severance.**

- (a) 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.
- (b) 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.

13.4 **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.

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

13.6 **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 SMM.

13.7 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.

13.8 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 this Contract or its subject matter or formation.

13.9 Arbitration

(a) The parties shall attempt to resolve any dispute arising out of or relating to the Contract through negotiations between senior executives of the parties, who have authority to settle the same. If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators.

(b) If the matter has not been resolved by an ADR procedure within 60 days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary. Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.

(c) If the Supplier is not based within the United Kingdom then all disputes arising out of or in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.