

**FLEXITALLIC UK LTD**  
**Conditions of Purchase**

**1. INTERPRETATION**

**1.1** In these conditions:

<b>“Buyer”</b>	means Flexitallic UK Ltd
<b>“Completion Date”</b>	means the date upon which the Goods shall be delivered or the date by which the Services shall have been completed in accordance with the Order or such other date as may be notified to the Seller.
<b>“Conditions”</b>	means these conditions.
<b>“Contract”</b>	means the agreement between the Buyer and the Seller for the purchase and sale of Goods or the supply of Services.
<b>“Goods”</b>	means the Goods to be supplied by the Seller as described in the Order.
<b>“Order”</b>	means the Order placed by the Buyer with the Seller.
<b>“Price”</b>	means the price stated on the Order and fixed for the duration of the Order.
<b>“Seller”</b>	means the person firm or company to whom the Order is addressed.
<b>“Services”</b>	means the Services to be provided by the Seller as described in the Order.
<b>“Specification”</b>	means any description applied to the Goods or Services contained or referred to in the Order.

**1.2** Words and phrases defined for the purposes of or in connection with any statutory provision shall where the context so requires be construed as having the same meaning in these Conditions. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.

**1.3** Unless the context otherwise requires reference to a Condition shall be construed as a reference to a Condition of these Conditions and reference to a clause shall be construed as reference to a clause of a Condition.

## **2. APPLICABILITY OF CONDITIONS**

**2.1** The Buyer shall be bound by the Order only:

**2.1.1** If placed with the Seller on the Buyer's official Order form; and

**2.1.2** It is accepted by the Seller in writing within 14 days of the date of the Order or by execution of the Order.

**2.2** The Conditions contained herein shall govern the Contract to the exclusion of any other terms and conditions not incorporated or referred to in the Buyer's Order.

**2.3** Acknowledgement of an Order shall constitute the Seller's acceptance of these Conditions to the exclusion of all others including any which may be printed on the Seller's documents.

## **3. VARIATIONS**

All Contracts shall be deemed to be exclusively subject to the Conditions and neither party shall be bound by any variation waiver of or addition to the Conditions unless agreed in writing and signed on behalf of both parties.

## **4. QUALITY AND DESCRIPTION**

**4.1** All Goods supplied or Services carried out shall be of satisfactory quality using sound materials and best workmanship and shall be subject to the Buyer's approval and such approval shall not relieve the Seller of any liability arising hereunder.

**4.2** The Seller shall be responsible for any discrepancies errors or omissions in the drawings and other particulars supplied by it for the purposes of this Contract whether the Buyer has approved the same or not.

**4.3** It will be a condition of every Contract that the Seller shall operate a quality system which is certified to comply with at least one of the following:

**4.3.1** ISO 9001 latest edition;

**4.3.2** UKAS requirements for an accredited calibration laboratory;

**4.3.3** AP1 Q1 latest edition;

**4.3.4** other standards acceptable to the Buyer

**4.4** Without prejudice to the other provisions in this clause 4 all Goods and Services shall conform as to quality, quantity and description with the particulars stated in the Order and if samples or patterns are provided by either party Goods or Services shall be equal in all respects to such samples or patterns.

**4.5** Goods and Services shall be capable of any standard or performance specified in the Order and meeting the Specification and where the purpose for which the Goods or Services is expressly or impliedly made known to the Seller the Goods

or Services shall be fit for that purpose.

- 1.1** The seller shall notify the buyer immediately of unexpected anomalies, nonconformances, changes in product and/or process, changes of suppliers, and/or changes of manufacturing facility location. The buyer reserves the right to approve such changes or incidents before work is allowed to proceed.
- 1.2** The seller acknowledges it shall apply suitable corrective action when presented with complaints or nonconformance reports from the buyer.
- 1.3** The seller acknowledges the buyer right of access to its facilities, product, and/or related quality records at any time, by the buyer, its customer, or regulatory authorities in order to verify quality or authenticity of products or work. Right of access may be limited to only those records and product applicable to Flexitallic UK Ltd products or contracts.
- 1.4** All purchasing requirements shall be flowed down to sub-tier suppliers or subcontractors.
- 1.5** All applicable certificates must be sent with each shipment
- 1.6** Records pertaining to the manufacture, inspection and test of Flexitallic UK Ltd products shall be retained for a minimum of ten (10) years, unless otherwise stated in the PO.
- 1.7** The seller acknowledges that they must prohibit delivery to the buyer of counterfeit, fraudulent or suspect items (CFSI) or misrepresentation of the items.
- 1.8** The seller shall maintain a method of commodity and item level traceability that ensures tracking of the supply chain back to the manufacturer of the material being delivered per the PO. This traceability method shall clearly identify the name and location of all of the supply chain intermediaries from the manufacturer to the direct source of the material for the seller and shall include the manufacturer's commodity or item level identification for the item(s) such as date codes, lot codes, heat codes, serialisations, unique item identifiers, or batch identifications.
- 1.9** The seller must provide a Certificate of Conformance (CofC) when requested with all materials. The seller shall approve, retain, and provide copies of the CofC. Manufacturer CoC's shall, at minimum, include the following:
  - Manufacturer name and address
  - Manufacturer and/or the buyers part number
  - Commodity or item level identification for the item(s) such as date codes, lot codes, heat codes, serialisations, unique item identifiers, or batch identifications
  - Signature or stamp with title of sellers authorised personnel signing the certificate
- 1.10** If suspect/counterfeit material is furnished under this purchase agreement, such items shall be impounded. The seller shall promptly replace such items

with items acceptable to the buyer and the seller may be liable for all costs relating to impoundment, removal, and replacement. The buyer may turn such items over to Authority Having Jurisdiction for investigation and reserves the right to withhold payment for the suspect items pending the results of the investigation. Any known instances of fraud or attempted fraud shall be documented in writing to the buyer

**1.11** Any knowing and willful act to falsify, conceal or alter a material fact, or any false, fraudulent or fictitious statement or representation in connection with the performance of work under this PO may be punishable in accordance with applicable legal statutes.

## **5. INSPECTION AND TESTING**

**5.1** The Buyer will be entitled to inspect and test the Goods during manufacture processing or storage and shall be entitled to inspect and test the Goods or Services during the course of performance thereof. If the Buyer exercises this right the Seller shall provide or procure the provision of all such facilities as the Buyer may reasonably require for that purpose.

**5.2** If as a result of any inspection or test under sub-clause 5.1 above the Buyer's representative is of the reasonable opinion that the Goods or Services do not comply with the Order or on completion of manufacture or processing or carrying out are unlikely so to do it shall inform the Seller accordingly in writing and the Seller shall take such steps as may be necessary to ensure such compliance at the Seller's cost and the test shall be repeated at the Seller's cost.

**5.3** No inspection or testing carried out by the Buyer pursuant to this clause shall in any way diminish or detract from the Seller's obligations under any other clause hereof.

**5.4** The seller shall establish and implement inspection and test activities necessary to assure the authenticity and conformance or purchased material by the buyer including:

- Traceability and documentation verification
- Visual examination
- Tests and inspections

For cases where there is reason to doubt the authenticity of materiel or compliance with manufacturing specifications, additional tests and inspections should be performed by the seller, as necessary, to detect counterfeits.

## **6. REJECTION**

**6.1** The Buyer reserves the right to reject Goods or Services which are in any way faulty or do not meet the Specification or which do not conform to the standard quality or description specified in the Order. Section 15A Sale of Goods Act 1979 (as amended) shall not apply to Goods supplied under this Contract. The Buyer may (but shall not be obliged to) return rejected Goods at the Seller's own risk and expense.

## **6.2 If the Buyer:**

**6.2.1** Has the right to reject the Goods pursuant to sub-clause 6.1 above by reason of a breach on the part of the Seller that affects some or all of the Goods; but

**6.2.2** Accepts some of the Goods including any Goods unaffected by the breach, the Buyer does not by accepting them lose its right to reject the rest and any such acceptance is without prejudice to any other rights of the Buyer, whether arising under this Contract or otherwise.

**6.3** Forthwith upon rejection and entirely at its own cost and expense the Seller shall replace rejected Goods with Goods which comply in all respects with the requirements specified in the Order and shall remedy in full all defects in the Services.

**6.4** If the Seller shall fail to replace rejected Goods or to remedy rejected services within thirty days from the date of rejection (or earlier if so requested by the Buyer) the Buyer shall (without prejudice to any other rights it may have against the Seller) be entitled to obtain other goods in replacement or obtain the services of an alternative seller to remedy the rejected services and the reasonable costs incurred in so doing including all losses thereby incurred by the Buyer shall be borne by the Seller.

## **7. DELIVERY**

**7.1** Delivery shall be at the Seller's cost and risk (unless otherwise agreed in writing by the Buyer.)

**7.2** The Seller shall ensure that the Goods are properly packed and secured and shall make proper arrangements to ensure that the Goods are delivered by the Seller or despatched for delivery to the Buyer at the place or places and in the manner specified in the Order.

**7.3** Unless specifically stated to the contrary in the Order the Seller shall not make any charge for casks packages drums containers or other reusable items of any description nor for the cost of return thereof.

**7.4** Unless otherwise agreed in writing by the Buyer, the Seller shall be responsible for all handling charges including off loading up to and including the Buyer's premises or other point of delivery.

**7.5** Advice notes and certificates of conformity shall be submitted by the Seller in duplicate, the original to accompany the Goods and a copy to be sent by post to the Buyer's purchase department.

**7.6** Invoices shall be submitted to the Buyer's accounts department after despatch of the Goods and statements shall be rendered monthly against approved invoices for payment.

## **8. LOSS IN TRANSIT**

All Goods lost or damaged in transit shall be replaced by the Seller forthwith upon receipt of notification from the Buyer of such loss or damage provided that the Buyer shall give such notification to the Seller within 14 days of such loss or damage coming to the Buyer's attention.

## **9. TIME**

**9.1** The Seller shall deliver the Goods on the Completion Date and/or complete the Services by that date. Without prejudice to any other rights the Buyer may have, the Seller will pay to the Buyer liquidated damages for lateness in delivery or completion at the rate of 1.5% of the Price for each week or part thereof of lateness.

**9.2** Without prejudice to the provisions of sub-clause 9.3 below if by reason of Force Majeure (as hereinafter defined) the Seller shall be unable to comply with its obligations under sub-clause 9.1 above it shall immediately inform the Buyer and the Buyer shall allow to the Seller such extended period for performance of its obligations as shall in all the circumstances appear to the Buyer to be reasonable.

**9.3** If following such extended periods (or any further period allowed by the Buyer) the Seller is still unable for reasons of Force Majeure to comply with its obligations hereunder the Buyer shall be entitled without prejudice to any rights then accrued to it to cancel this Contract and may at its option return any Goods delivered up to the date of cancellation or pay to the Seller the value of any part of the Goods or Services then supplied or rendered.

## **10. FORCE MAJEURE**

For the purposes of clause 9 above the expression "Force Majeure" means any event or circumstances (whether arising from natural causes or otherwise) beyond the direct control of the Seller including (insofar as beyond such control but without prejudice to the generality of the foregoing) strikes lock outs or other industrial action (other than in the Seller's premises) riot civil commotion aircraft fire flood drought or war.

## **11. INDEMNITY**

**11.1** The Seller shall keep the Buyer indemnified in full against all 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 or in connection with:

**11.1.1** defective workmanship, quality or materials;

**11.1.2** any act or omission of the Seller, its employees, permitted agents or sub-contractors in manufacturing, supplying, delivering, or removing any of the Goods or Services;

**11.1.3** any infringement or alleged infringement of any intellectual property rights or the rights of any third party resulting from supply of the Goods or Services or the use of the Goods or Services by the Buyer in the normal course of its business;

**11.1.4** 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 of the Buyer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, or arises from the Goods or Services and to the extent that such claim is not a result of the negligence of the Buyer, its employees or agents;

**11.1.5** any infringement by the Seller or its own suppliers, employees, agents or sub-contractors of the intellectual property rights or the confidentiality of the Buyer.

**11.2** Without prejudice to any other right or remedy the Buyer may have, if any of the Goods or Services are not supplied in accordance with the Contract or fail to conform with the Order or the Specification then the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods or Services have been accepted or whether the Buyer has paid any invoice relating to such Goods or Services:-

**11.2.1** to reject any such Goods or Services (in whole or part) and return them to the Seller at the risk and cost of the Seller on the basis that a full refund for the Goods or Services so returned will be paid by the Seller;

- 11.2.2** at the Buyer's option to give the Seller the opportunity at the Seller's expense either to remedy any defect in the Goods or the Services or to supply replacement Goods or Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;
  - 11.2.3** to carry out at the Seller's expense any work necessary to make the Goods conform with the Order or the Specification;
  - 11.2.4** to claim such damages as may have been sustained in consequence of the Seller's breach of the Contract; and
  - 11.2.5** to obtain alternative Goods or Services from third parties at the Seller's expense.
- 11.3** The Buyer will indemnify the Seller for personal injury or death to the extent that such personal injury or death is caused by the negligence of the Buyer and its servants or agents for whose negligence the Buyer is liable at law. Save as specified herein the Buyer will not, in any circumstances,, be liable for any other loss or damage whether direct, indirect or consequential.

## **12. PASSING OF PROPERTY**

- 12.1** Subject to the provisions of sub-clause 12.2 below the property in the Goods subject of this Contract shall pass to the Buyer on delivery without prejudice to any right of rejection which may accrue to the Buyer under the Conditions.
- 12.2** Without prejudice to the provisions of clause 9.3 above if the Seller postpones delivery at the request of the Buyer the property in the Goods shall pass to the Buyer seven days after the receipt of notification from the Seller that the Goods are due and ready for delivery but the Goods shall nevertheless remain at the Seller's risk until delivery has been completed in accordance with the Buyer's instructions.

## **13. PAYMENT**

- 13.1** Payment of the Price shall be made within 60 days of the date of invoice PROVIDED ALWAYS that the Buyer shall be under no obligation to pay for the Goods or Services rejected under the provisions of clause 6 above.
- 13.2** Unless otherwise agreed the Price shall not be subject to variation except insofar as the Seller may be obliged by any statute statutory instrument order or regulation having legal effect to vary the same to take account of new or revised tax rates or duties. The Price shall be inclusive of all taxes, duties, packaging and delivery costs and expenses unless otherwise agreed in writing by the parties.
- 13.3** Payment of the Price is conditional upon the Goods and/or Services being supplied in all respects in accordance with the Order and in particular with the Specification and delivery requirements.



- 13.4** The Buyer shall have the right to set-off from the Price such sum as in its opinion is reasonable should the Goods or Services not be supplied in accordance with this or any other Order.

#### **14. ASSIGNMENT AND SUB-CONTRACTING**

- 14.1** The Seller shall not without the prior written consent of the Buyer assign transfer or sub-let this Contract or any part thereof except as part of any bona fide amalgamation or reconstruction of the Seller's business.
- 14.2** No assignment transfer or sub-letting pursuant to sub-clause 14.1 above shall relieve the Seller from any of its obligations under the Contract.

#### **15. STATUTORY PROVISIONS**

The Seller shall be responsible for ensuring that its employees comply with all statutory provisions regulations orders and by-laws of any government or other authority relating to the supply of the Goods or the provision of the Services.

#### **16. HEALTH AND SAFETY**

Any Seller entering upon the premises of the Buyer shall ensure that its employees shall observe all the rules and regulations for the time being of the Buyer relating to the attendance on its premises of such persons.

#### **17. INSURANCE**

- 17.1** Where the Seller undertakes to supply Goods or Services then the Seller shall insure against all losses claims demands proceedings costs charges and expenses for injury (including death) or damage to any person or property arising out of any and all occurrences which are the result of the fault or negligence of the Seller in the supply of the Goods or Services and any other liabilities covered under the Conditions.
- 17.2** The indemnity limit shall be not less than £10,000,000 (ten million pounds sterling) for each occurrence or such other sum as may be specified in the Order.
- 17.3** The insurance will be effected with an insurer who at the Buyer's option shall be subject to its approval and the Seller shall ensure that either:
- 17.3.1** The policy is effected in the joint names of the Buyer and the Seller; or
  - 17.3.2** The beneficial interest of the Buyer is noted on the face of the insurance policy.
- 17.4** The Seller will whenever requested by the Buyer produce to the Buyer a copy of the policy and the receipts for payment of the current premium.
- 17.5** In the event that the Seller fails to comply with this condition the Buyer may at its option provide such insurance and the Seller shall be obliged promptly to reimburse the Buyer for all costs incurred.

## **18. TERMINATION**

- 18.1** Either party shall be entitled forthwith to terminate the Contract by written notice to the other if:
- 18.1.1** the other party commits any material breach of any of the provisions of the Contract and, in the case of such a material breach, which is capable of remedy, fails to remedy the same within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
  - 18.1.2** an encumbrancer takes possession of or a receiver or administrative receiver is appointed over any of the property or assets of that other party;
  - 18.1.3** the other party makes any voluntary arrangement with its creditors, enters into a deed of arrangement or becomes subject to an administrative order or a petition therefore;
  - 18.1.4** that other party passes a resolution to be wound up or has a winding up petition presented against it (except for the purposes of a solvent, amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the organisation effectively agrees to be bound by or to assume the obligations imposed on that other party under the Contract); or
  - 18.1.5** that other party ceases, or threatens to cease, to carry on business;
  - 18.1.6** that other party is unable to pay its debts as they fall due;
  - 18.1.7** the financial position of that other party deteriorates to such an extent that in the reasonable opinion of the other party its capability to adequately fulfil its obligations under the Contract has been placed in jeopardy;
  - 18.1.8** that other party is subject to a change of control. "Control" means the ability to direct the affairs of the party, whether by virtue of the ownership of shares or otherwise and each party shall inform the other party forthwith upon the occurrence of a change of control.
- 18.2** The rights to terminate the Contract given by this clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.
- 18.3** Upon the termination of the Contract for any reason, subject as otherwise provided in the Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract. Without limitation to the generality of the foregoing the rights and obligations set out in clause 21 shall survive the termination of the Contract.

**18.4** Upon the termination of the Contract for any reason the Seller shall upon the Buyer's request return any property of the Buyer in the Seller's possession to the Buyer (to include technical drawings, any documents, manuals or software and whether in hard or electronic format).

## **19. DIES, TOOLING, MOULDS ETC.**

**19.1** The property and copyright in all patterns dies moulds and other tooling supplied by the Buyer to the Seller for use in the execution of this Contract shall remain in the Buyer and shall not be used by and nor shall details thereof be disclosed to any third party without the prior written consent of the Buyer.

**19.2** All such patterns dies moulds and other tooling shall be:

**19.2.1** Insured by the Seller against all risks whilst in the custody of the Seller;

**19.2.2** Surrendered to the Buyer upon demand in good and serviceable condition and the Seller shall be liable to the Buyer for any loss thereof or damage thereto.

## **20. INVENTIONS**

In the case of any Contract whereby the Seller undertakes any development work the Buyer shall have first option to have transferred to it all intellectual and industrial property rights of whatsoever nature in such work and the Seller shall execute all such acts and documents as shall be necessary to give effect to this clause.

## **21. CONFIDENTIALITY**

Any technical specifications plans drawings patterns blue prints descriptions designs jigs tools and fixtures (including without limitation pattern equipment) and all intellectual and industrial property rights contained therein supplied by the Buyer to the Seller in connection with the Order shall remain the property of the Buyer and any information derived therefrom shall be treated by the Seller as confidential and shall not without the prior written consent of the Buyer be published or disclosed to any third party or made use of by the Seller except to the extent necessary to implement the Order.

To the extent that any data and/or information received by Seller in connection with an Order constitutes personal data subject to the Data Protection Act 1998, the General Data Protection Regulation or any similar or related laws or regulations (the "Privacy Acts"), Seller agrees to process such data in accordance with the Privacy Acts. Please see Seller's Privacy Policy for further details regarding its handling of personal data.

## **22. CANCELLATION**

The Buyer has the right to cancel this Order subject to reasonable payment for work completed to the date of cancellation but in any event such payment shall not exceed the Price.

## **23. NOTICES**

All notices authorisations consents and approvals given pursuant hereto shall be in writing (which shall include e-mail and confirmed facsimile transmission) in the English language to be effective and notices sent by post shall be deemed to have been given at the time when they would have been received in the ordinary course of the post and notices sent by e-mail and facsimile transmission shall be deemed to have been received on the next working day following receipt.

## **24. GENERAL**

- 24.1** The Conditions are in addition to any statutory or common law rights of the Buyer.
- 24.2** In the Conditions use of the singular shall include the plural and vice versa and use of gender shall be immaterial.
- 24.3** Clause headings are for ease of reference only and shall not affect the construction or interpretation hereof.
- 24.4** The failure of either party to this Contract to exercise or enforce any rights conferred hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.
- 24.5** The invalidity or unenforceability for any reason of any part of these Conditions shall not prejudice or effect the validity or enforceability of the remainder.

## **25. Law**

The Contract shall be read and construed in all aspects in accordance with the laws of England and the parties hereto hereby irrevocably submit to the jurisdiction of the English Court.

