

## The Eltherington Group - Conditions of Purchase

Revised: 23 September 2020

### 1. Interpretation

#### 1.1 In these Conditions:

**Buyer:** means the relevant Eltherington Group company specified in the Order to which the Goods and/or Services are to be supplied by the Seller under the Contract.

**Conditions:** means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

**Contract:** means the contract for the sale and purchase of the Goods and/or the supply and provision of the Services.

**Delivery Address:** means the address stated in the Order for delivery of the Goods to the Buyer.

**Eltherington Group:** Eltherington Group Limited (registered number 00648546), Eltherington Aluminium Limited (registered number 04544043) and Eltherington Industries Limited (registered number 04544592), each of whose registered office is at Eltherington Business Park, 1305 Hedon Road, Hull, East Yorkshire, England, HU9 5QD.

**Goods:** means the goods (including any instalment of the goods or any part of them) described in the Order.

**Order:** means the Buyer's written purchase order in respect of the supply the Goods and/or the performance of the Services, incorporating these Conditions.

**Price:** means the price of the Goods and/or the charge for the Services.

**Seller:** means the person, firm or company who accepts the Buyer's Order.

**Services:** means the services (if any) described in the Order.

**Specification:** includes any plans, drawings, data or other information relating to the Goods or Services.

**writing:** includes email but not fax (and **written** shall have a corresponding meaning).

#### 1.2 Interpretation:

(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 successors and permitted assigns.

(c) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

(d) Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the

sense of the words, description, definition, phrase or term preceding those terms.

- (e) The headings in these Conditions are for convenience only and shall not affect their interpretation.

## **2. Basis of purchase**

- 2.1 The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Conditions.
- 2.2 These Conditions shall govern the Contract to the exclusion of any terms or conditions endorsed upon, delivered with or contained in the Seller's quotation, acknowledgement or acceptance of Order or similar document and the Seller waives any right which it otherwise might have to rely on such terms and conditions.
- 2.3 No variation to the Order or these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.
- 2.4 It shall be a condition precedent of any Contract that the Seller obtains a unique order number from the Buyer. In the event that the Seller has not obtained such an order number from the Buyer, a Contract will not have formed between the Buyer and Seller. In the event that for any reason a Contract has been formed without a unique order number being obtained by the Seller, the Buyer may (at its sole discretion) terminate the Contract with immediate effect by giving written notice to the Seller and without any obligation or liability to the Seller whatsoever.
- 2.5 Each Order and acceptance is to be treated as a separate Order and accordingly if there shall at any time be more than one Order in course of performance between the Buyer and the Seller, and any question, dispute or difficulty shall arise in respect of one of such Orders, neither the existence of such question, dispute or difficulty nor the terms on which it may be settled shall affect in any way whatever any such Orders. The Seller shall not be entitled to exercise in relation to any Order any right of set-off or counter-claim.

## **3. Specifications**

- 3.1 The quantity, quality and description of the Goods and the Services shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable written Specification supplied by the Buyer to the Seller, or which is agreed in writing by the Buyer with the Seller.
- 3.2 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer. Such Specification shall constitute the confidential information

of the Buyer for the purposes of clause 12 below, and the Seller shall not use any such Specification except to the extent required for the purpose of the Contract.

- 3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services. The Seller shall ensure that any items, equipment or packages supplied in connection with the Order comply with CE marking requirements in accordance with all relevant EU and other laws within the scope of which the Goods and/or Services fall.
- 3.4 Before delivery, the Seller shall carefully inspect and test the Goods and/or the Services for compliance with such samples, specifications and manufacturing instructions or other descriptions as the Buyer may stipulate. A certificate shall be supplied in duplicate for each individual test.
- 3.5 At any time prior to the delivery of the Goods to the Buyer, the Buyer shall have the right to inspect and test the Goods at the premises of the Seller or any relevant third party. If the Buyer is of the opinion that the Goods do not conform or are unlikely to conform with the Order or to any Specification supplied or agreed to by the Buyer, the Buyer shall inform the Seller and the Seller shall immediately take such action as is necessary to ensure conformity. Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.
- 3.6 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within 7 days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.
- 3.7 The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach the Delivery Address in an undamaged condition.

#### **4. Price of the goods and services**

- 4.1 The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:
  - (a) exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
  - (b) inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.
- 4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.

4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

## **5. Terms of payment**

5.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.

5.2 Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services within 60 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, after acceptance of the Goods or Services in question by the Buyer.

5.3 Without prejudice to any other right or remedy, the Buyer shall be entitled to set-off any amount owing at any time from the Seller to the Buyer or claimed from the Seller against any amount payable by the Buyer to the Seller under the Contract or otherwise.

5.4 If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 3% per annum above The Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

## **6. Delivery**

6.1 The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the time and date or within the period stated in the Order, in either case during the Buyer's usual business hours. Where the time and date of delivery of the Goods or of performance of the Services is to be specified after the placing of Order, the Seller shall give the Buyer reasonable notice of the specified date.

6.2 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.

6.3 If the Goods are not delivered and/or performance of the Services is not completed on the due date(s) then, without prejudice to any other rights which it may have, the Buyer reserves the right to cancel the Contract in whole or in part and/or refuse to accept any subsequent delivery of the Goods and/or performance of the Services which the Seller attempts to make and/or claim damages for any additional costs, loss, or expenses incurred by the Buyer which are attributable to the Seller's failure to deliver the Goods or complete performance of the Services on the due date(s).

- 6.4 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 6.5 If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract in respect of each instalment. Nevertheless, failure by the Seller to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiated.
- 6.6 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent, notwithstanding the signing of any delivery note by the Buyer or the use of the Goods by the Buyer.
- 6.7 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.
- 6.8 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.
- 6.9 If the Goods are delivered to the Buyer in excess of the quantities ordered, the Buyer shall not be bound to pay for the excess and any excess will be and will remain at the Seller's risk and will be returnable at the Seller's expense.

## **7. Risk and Property**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract (following off-loading).
- 7.2 The property in the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

## **8. Warranties and Indemnity**

- 8.1 The Seller warrants to the Buyer that the Goods:
- (a) will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
  - (b) will be free from defects in design, material and workmanship;
  - (c) will correspond with any relevant Specification or sample;
  - (d) will comply with all statutory requirements and regulations relating to the sale of the Goods; and

- (e) will comply with any additional conditions and requirements relating to quality which are specified by the Buyer in writing (whether in its Order or otherwise).
  
- 8.2 The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to the highest standard and shall conform in all respects with the Order and any specification supplied by the Buyer to the Seller (or agreed in writing by the Buyer) and will comply with all statutory requirements and regulations relating to the performance of the Services.
  
- 8.3 The Buyer's rights under these Conditions are in addition to statutory conditions or terms implied in favour of the Buyer.
  
- 8.4 Without prejudice to any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
  - (a) to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days; or
  - (b) at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
  
- 8.5 The Seller shall indemnify the Buyer in full against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal and other professional fees and expenses, and all costs and expenses associated with a product recall) awarded against or incurred or paid by the Buyer as a result of or in connection with:
  - (a) breach of any warranty given by the Seller in relation to the Goods or the Services;
  - (b) any infringement or alleged infringement of any patent, copyright, design right, trademark or other intellectual property rights of any other person caused by the importation, use, resale or supply of the Goods or Services, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
  - (c) any liability under the Consumer Protection Act 1987 in respect of the Goods;
  - (d) any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods;
  - (e) any act or omission of any of the Seller's personnel in connection with the performance of the Services; and
  - (f) any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost

or expense was caused by, relates to or arises from the Goods or the performance of the Services.

## **9. Force Majeure**

9.1 The Buyer reserves the right to defer the date of delivery of the Goods or performance of the Services or payment or to cancel the Contract or reduce the volume of the Goods or the extent of the Services ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the Buyer's reasonable control including, without limitation, acts of God, governmental actions, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

## **10. Termination**

10.1 The Buyer shall have the right at any time and for any reason to terminate the Contract, in whole or in part, by giving the Seller written notice. Upon any such termination by the Buyer, all work on the Contract (or in respect of termination of part only of the Contract, all work on that part which is terminated) shall be discontinued, and the Buyer's sole liability in respect of any cancelled Goods and/or Services shall be to pay to the Seller fair and reasonable compensation for the Seller's work-in-progress at the time of termination, including costs reasonably incurred by the Seller in the expectation of the performance of the Contract but excluding any loss of anticipated profits and excluding any indirect or consequential loss incurred by the Seller. the Buyer's maximum liability in the event of termination under this clause 10.1 shall not exceed the value of the Goods or Services comprised in the Contract.

10.2 The Buyer shall be entitled to terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:

- (a) the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
- (c) the Seller ceases, or threatens to cease, to carry on business; or
- (d) the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

## **11. Buyer's Property**

- 11.1 Materials, equipment, tools, dies, moulds and data supplied by the Buyer to the Seller shall be used by the Seller only for the production, manufacture or processing of the Goods for supply to the Buyer or performance of Services for the Buyer and shall remain the exclusive property of the Buyer but shall be held by the Seller in safe custody at its own risk and maintained and kept in good condition by the Seller until returned to the Buyer and shall not be disposed of other than in accordance with the Buyer's written instructions, nor shall such items be used otherwise than as authorised by the Buyer in writing.
- 11.2 Any design rights, copyrights or other intellectual property rights created by the Seller in performing the Order shall belong to the Buyer absolutely and shall be used for the purpose only of performing the Order and no other purpose without the prior written consent of the Buyer. At the Buyer's request and expense, the Seller shall sign such documents as the Buyer may require to perfect the Buyer's title to such intellectual property rights.

## **12. Confidentiality**

The Seller shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which have been disclosed to the Seller by the Buyer or its agents, or which are created by the Seller in performing the Order and any other confidential information concerning the Buyer's business, customers, supplier and/or its products which the Seller may obtain and the Seller shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Seller's obligations to the Buyer and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Contract. The Seller may also disclose such of the Buyer's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause shall survive termination of the Contract.

## **13. Non-solicitation**

Where as a result of the purchase by the Buyer of Goods or Services from the Seller under the Contract, the details of the Buyer's customer(s) are disclosed to the Seller:

- (a) those details of the Buyer's customer(s) shall constitute the Buyer's confidential information for the purposes of clause 12 above; and
- (b) the Seller shall not without the prior consent of the Buyer solicit sales of any goods or services (where such goods or services are identical or substantially similar to the Goods and/or Services supplied under the Contract) directly from such customer during the period of the Contract and for a period of 12 months after completion of such Contract.



## **14. General**

**14.1 Dispute Resolution Procedure.** If any dispute arises under or in connection with these Conditions or the sale of the goods or provision of the Services:

- (a) the Buyer and the Seller will attempt in good faith to resolve any such dispute or claim promptly through negotiations between their respective senior executives who have authority to settle the same;
- (b) if the matter is not resolved through negotiation, the Buyer and the Seller will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution (ADR) procedure as recommended to the Buyer and the Seller by the Centre for Dispute Resolution; and
- (c) if the matter has not been resolved by an ADR procedure within 40 days of the initiation of such procedure, or if either party will not participate in an ADR procedure, the dispute shall be referred to arbitration by a single arbitrator appointed by agreement or (in default) nominated on the application of either party by the President for the time being of the Law Society.

## **14.2 Assignment and other dealings**

- (a) The Buyer may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract. The Buyer may perform any of its obligations or exercise any of its rights under the Contract by itself or through any other company in the Eltherington Group, provided that any act or omission of any such other company shall be deemed to be the act or omission of the Buyer and the Seller shall have no right to make any claim over any other company in the Eltherington Group.
- (b) The Order is personal to the Seller and the Seller shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

## **14.3 Notices.**

- (a) Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- (b) Any notice shall be deemed to have been received:
  - (i) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; and
  - (ii) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

- (c) This clause 14.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- (d) A notice given under the Contract is not valid if sent by fax or email.

14.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 14.4 shall not affect the validity and enforceability of the rest of the Contract.

14.5 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

14.6 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

14.7 **Entire agreement.**

- (a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- (b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- (c) Nothing in this clause shall limit or exclude any liability for fraud.

14.8 **Third party rights.**

- (a) Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- (b) The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

- 14.9 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).
- 14.10 **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.
- 14.11 **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 the Contract or its subject matter or formation.