

TERMS AND CONDITIONS OF TRADING

- 1. GENERAL**
 - (i) Any Contract entered into by ITW Foils (A Division of ITW Limited) ("The Vendor") for the supply of goods or services is subject to these conditions. No other terms, or conditions (including any written on or attached to any purchase order, form, document or correspondence) shall be included or implied unless previously agreed upon in writing and signed by an authorised officer of the Vendor. No purported variation of the terms will be effective unless confirmed in writing by the Vendor, and in no event will any Customer's standard terms and conditions of business apply. No liability shall attach to the Vendor, its agents or employees in respect of any representations or statements made, whether before or after agreement is reached unless confirmed in writing by the Vendor. No forbearance nor indulgence by the Vendor in enforcing any term shall constitute a variation of it or a waiver of the Vendor's rights under it.
 - (ii) In the event of any conflict or inconsistency between these terms and conditions of trading and the terms of the Customer's order, these terms and conditions will prevail, unless otherwise agreed by the Vendor in writing.
 - (iii) Telephone orders must be confirmed in writing. No responsibility can be expected nor accepted for inaccuracies of orders given over the telephone.
- 2. DEFINITIONS**

In these conditions the expression "the order confirmation" shall mean the form sent in accordance with these conditions under clause 3 and the expression "the Customer", "the goods" and the "price" shall have the respective meanings shown in the order confirmation
- 3. ACCEPTANCE**
 - (i) No order shall be deemed accepted by the Vendor unless received in writing and upon receipt of the Vendor's official order confirmation. Once the Vendor has notified the Customer of acceptance of a written order by despatch of the order confirmation the contract between the Vendor and the Customer shall be deemed to be made.
 - (ii) Any quotation issued by the Vendor shall be open for acceptance at any time up to and including the acceptance date shown on the quotation. After the expiration of the acceptance date the quotation must be confirmed in writing by the Vendor.
 - (iii) Any quotation is made on the understanding that it will be accepted in full. In the event of partial acceptance of the quotation by the customer a written revised quotation may be sent by the Vendor to the Customer.
- 4. PRICE**
 - (i) All prices shown on the Vendor's price list or any prices quoted by the Vendor are provisional only and shall be subject to variation without notice.
 - (ii) Goods and services are invoiced at the price ruling at the date of despatch.
 - (iii) Prices do not include carriage on deliveries within mainland, unless otherwise stated.
 - (iv) Prices quoted are exclusive of VAT which is chargeable at the current rate.
 - (v) The vendor reserves the right to amend the price to cover any alterations in labour, raw material, transport or production costs or fluctuations in foreign exchange rates in the event that completion of delivery is delayed for any reason beyond the Vendor's control.
- 5. PAYMENT**

Terms – payment is due 30 days after the invoice date unless other terms are stated in writing by the Vendor, before the date of despatch of the invoice. The time for payment shall be the essence of the contract. In the event of default in payment by the due date the Vendor reserves the right at any time to impose a late payment charge of 2% per month or part thereof on monies overdue, and to suspend delivery or terminate the contract in respect of any of the goods remaining undelivered.
- 6. DELAY**

While time of delivery shall not be the essence of any contract the Vendor shall make every reasonable effort to ensure that the goods are delivered by the agreed delivery date. The Vendor shall not be liable for any delay or for any consequence of any delay on production or delivery of any goods if caused by fire, strikes, lockouts, dispute with workmen, flood, accidents, delay in transport, shortage of fuel, default of supplier, inability to obtain material, force majeure, embargo act or demand of any government, government department or local authority as a consequence of war or of hostilities, (whether war be declared or not) or by Act of God or by any other matter whatsoever beyond the Vendor's reasonable control. If any such delay occurs then (unless the cause frustrates or renders impossible or illegal the performance of this contract or otherwise discharges it) the period for the Vendor to perform its obligations shall be extended by such period (not limited to the length of the delay) as the Vendor may reasonably require the performance of its obligations.
- 7. CANCELLATION**
 - (i) Cancellation of the order prior to delivery will be accepted only on payment of 10% of the order value, however if the goods have been placed in the works as completed, cancellation cannot be made and the full price is payable.
 - (ii) Cancellation after delivery cannot be accepted and payment must be made to the Vendor in full.
 - (iii) Cancellation of the order by the Customer for whatever reason shall entitle the Vendor to recover any ancillary costs and expenses incurred over and above the terms laid down in clause 7(i) and clause 7(ii) above.
- 8. DELIVERY AND COLLECTION**
 - (i) Any time or date given by the Vendor for delivery is given as an estimate only and the Vendor shall not be liable to make good any damage or loss arising directly or indirectly from delay or advance in delivery. Two weeks written notice must be given to the Vendor of any change likely to affect delivery for the change to be implemented.
 - (ii) The Vendor shall arrange for carriage of the goods to the Customer unless otherwise specified in the order confirmation, or specified in written instructions from the Customer. The goods shall be at the Customer's risk as from the moment of delivery to the Customer's premises. Claims for loss or damage to the goods in transit shall be made by the Customer directly to the Vendor within 3 days of receipt of the goods or if the goods are not delivered within 3 days of the date of the Vendor's invoice for the goods.
 - (iii) Items may be collected from the Vendor's premises provided that payment is made at the time or a written order has been charged to an approved credit account beforehand.
 - (iv) Part delivery – each delivery shall be deemed to be a separate contract for the purposes of these conditions. Failure to comply with one or more delivery shall not be deemed to be a repudiation of the balance of the contract.
- (v) The Vendor reserves the right to charge storage where the Customer delays delivery of a non standard or special order more than 3 months after the date of delivery requested by the Customer. The rate will be 3% above the current bank base rate multiplied by the sales contract value of the goods in storage.
- 9. PASSING OF RISK AND PROPERTY**

The risk in the goods shall pass to the Customer on delivery but the property of the goods shall not pass to the Customer until the Customer has paid all debts in full due to the Vendor and until such time the Customer shall :

 - (i) Hold the goods in a fiduciary capacity as agent for the Vendor and shall be accountable to the Vendor for the proceeds of sale of such goods.
 - (ii) Inform any Sub Purchaser that the goods are sold subject to a retention of title clause and impose a clause in similar terms to the Sub Purchaser providing the same rights as in this clause.
 - (iii) Pay the proceeds of the sale of goods belonging to the Vendor into a separate bank account.
 - (iv) If requested to do so by the Vendor, produce payment by a Sub Purchaser direct to the Vendor.
 - (v) In the event of any breach of this clause, if requested by the Vendor, permit the Vendor to enter the premises where the goods are being stored and permit removal of the goods into the Vendor's possession.
 - (vi) Until full payment has been received not sell, or otherwise dispose of the goods (except if it is the sole wish of the Vendor so to do), shall keep the goods safe and insured at the Customer's own expense and shall return the goods to the Vendor on demand.
- 10. CLAIMS**
 - (i) Any claim by the Customer that goods supplied do not conform to contract must be made in writing within 3 days of delivery. The goods concerned shall not be subject to any process nor disposed of until the Vendor has had the opportunity to make an inspection and/or test the goods. The Customer should examine and test the goods upon delivery and if any items are damaged or missing should state details on the delivery ticket. Goods should be signed for "not examined" unless opened upon receipt and found correct otherwise the Vendor cannot accept responsibility.
 - (ii) If the goods are not found to be defective the Vendor's costs of inspection shall be borne by the Customer. If the goods are found to be defective, the Vendor shall at its option replace them or credit the Customer with their invoiced value or part thereof and that shall be the limit of the Vendor's responsibility.
 - (iii) The Customer shall inform the Vendor if the goods have not been received within three days of despatch (in mainland).
- 11. WARRANTIES AND EXCLUSIONS**
 - (i) The Vendor warrants the goods to be free from defects in materials and workmanship for a period of one year from the date of delivery. During such period the goods are to be kept in storage under manufacturers normal specifications. During such period any rectification required due to such defects will be done by the Vendor without charge.
 - (ii) In no circumstances whatsoever shall the Vendor, its employees or agents be liable for any special indirect or consequential damage arising out of any matter contained, implied or referred to herein. In particular the Vendor cannot accept any liability for any expenses or losses incurred as a result of any interruptions in the use of the Customers equipment.
- 12. INVALIDATION**

If the Customer shall fail to pay the contract price to the Vendor on the due date or, if a natural person die or be subject of an order under the Mental Health Act 1959, or if any distress or execution is levied upon the Customer's property or assets, or if the Customer shall offer to make a scheme of arrangement with creditors or commit an act of bankruptcy or, being a Company has a receiver/manager appointed over any part of its undertakings or, if a resolution for the winding up of the Company be passed, then the Vendor may treat all sums due or to become due on any account as immediately payable and/or suspend or cancel further deliveries or require payment in advance or recover any goods which are unsold wherever they are stored or treat the contract as repudiated by the Customer without prejudice to any other rights of the Vendor.
- 13. COSTS**

In the event of non payment or other default by the Customer, the Vendor shall be entitled to recover all legal costs incurred thereby and interest on the monies outstanding calculated at 3% over the current bank base rate compounded on a monthly basis.
- 14. WAIVER**

Waiver by the Vendor of any of these conditions shall not in any way affect the validity of any other conditions herein.
- 15. MISCELLANEOUS**
 - (i) The Customer shall not assign any rights or delegate any duties hereunder.
 - (ii) The Vendor reserves the right to sub contract any or all of its obligations hereunder
 - (iii) These conditions shall be subject and construed in accordance with English Law and the Customer shall submit to the jurisdiction of the English Courts.
 - (iv) If any dispute as to the proper interpretation of these terms cannot be settled by mutual agreement it shall be referred for determination to a single referee pursuant to the provisions of the Arbitration Act 1950 or any other statutory modification thereof, to be appointed in default of agreement by the current President of the Law Society.
 - (v) The Vendor reserves the right to amend specifications of its product and their prices without prior notice.