

## CONDITIONS OF PURCHASE

### 1. Interpretation

#### 1.1 In these Conditions:

“BUYER” means Metalfin Ltd (a private company registered in England with limited liability under company number 8026751 whose registered office is at 25 High Street, Cobham, Surrey KT11 3DH;

“CONDITIONS” means the standard terms and conditions of purchase set out in this document

“CONTRACT” means the contract for the sale and purchase of the Goods and/or the supply and acquisition of the Services which shall comprise these Conditions; any special terms and conditions agreed in Writing between the Buyer and the Seller; the Specification and the Order;

“DELIVERY ADDRESS” means the address stated on the Order;

“GOODS” means the goods (including any instalment of the goods or any part of them) which the Seller is to supply in accordance with these Conditions;

“ORDER” means the Buyer’s order for the Goods and/or Services as set out in the Buyer’s purchaser order form attached which shall be subject to these Conditions;

“PRICE” means the price of the goods and/or the charge for the Services;

“SELLER” means the person so described in the Order;

“SERVICES” means the services (or any part of them) described in the Order;

“SPECIFICATION” includes any plans, drawings, data or other information relating to the Goods or Services; and

“WRITING” includes fax, email and comparable means of communication.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 The headings in these conditions are for convenience only and shall not affect their interpretation.

### 2. Basis of Purchase

2.1 The Order and any Specification constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services from the Seller in accordance with such offer. The Contract shall be formed upon unconditional acceptance by the Seller of the Buyer’s Order, any Specification and these Conditions. The Contract shall constitute the entire agreement between the parties to the exclusion of any other terms and conditions or any other agreement, arrangement or understanding which is made or purported to be made between the Seller and the Buyer, whether written or oral, relating to its subject matter.

2.2 The Order will lapse unless unconditionally accepted by the Seller in Writing within 7 days of its date.

- 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 Each party agrees that it shall have no remedies in respect of any representation or warranty (whether made innocently or negligently) that is not set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation based upon any statement in the Contract.

### **3. Specifications**

- 3.1 The quantity, quality and description of the Goods and the Services shall be as provided in this Contract.
- 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. The Seller shall not disclose to any third party or use any such Specification, the details of an Order or the terms of any Contract except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.
- 3.3 The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, labelling, packaging, storage, handling, packing and delivery of the Goods and shall obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws in the performance of the Services.
- 3.4 The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing. No inspection or test carried out by the Buyer shall relieve the Seller of its responsibilities under or in relation to the Contract.
- 3.5 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 a reasonable period of time from inspection or testing, the Seller shall immediately take such steps as are necessary to ensure compliance.
- 3.6 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 their destination in an undamaged condition in the ordinary course.
- 3.7 The Seller shall maintain in force, with a reputable insurance company insurances sufficient to cover the Seller's potential liability under the Contract and for a period of not less than six years thereafter, and shall, on the Buyer's request, produce both the insurance certificate(s) giving details of cover and the receipt for the current year's premium.

### **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:
  - 4.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
  - 4.1.2 inclusive of all charges for packaging, packing, shipping, carriage insurance and delivery of the Goods to the Delivery Address and any duties, imposts, 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.
- 4.4 In the event that the Buyer shall be owed any monies under any other contract or arrangement entered into between the Buyer and the Seller, the Buyer shall be entitled to set off the Price of the Goods and the Services or any part thereof in diminution of the sums due from the Seller to the Buyer.

## 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 and/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/or the Services within 95 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 provided always that the period for payment of the Price may be varied by express written agreement between the Buyer and the Seller.

## 6. **Delivery**

- 6.1 The Goods shall be delivered to the Delivery Address and/or the Services shall be performed at the place specified in the Order on the date or within the period stated in the Order. Delivery of the Goods shall always be during the Buyer's usual business hours.
- 6.2 Where the date of delivery of the Goods and/or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the date of delivery which shall be a date acceptable to the Buyer.
- 6.3 The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 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 The Seller shall not deliver the Goods and/or perform the Services by instalments without the prior written consent of the Buyer. 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 and not severable.
- 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.
- 6.7 The Seller shall give the Buyer reasonable notice of any instructions or other information required to enable the Buyer to accept delivery of the Goods and/or 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.

**7. Risk and Property**

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon completion of delivery to the Buyer in accordance with the Contract.
- 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 Liability**

- 8.1 The Seller warrants and represents to the Buyer that the Goods:

- 8.1.1 will correspond with their description and any applicable Specification;
- 8.1.2 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;
- 8.1.3 will be free from defects in design, material and workmanship and shall remain so for a period of 12 months after delivery;
- 8.1.4 will correspond with any relevant Specification or sample; and
- 8.1.5 will comply with all statutory requirements and regulations relating to the sale of the Goods.

- 8.2 The Seller warrants and represents to the Buyer that in the provision of the Services the Seller:

- 8.2.1 will conform with any applicable Specification;
- 8.2.2 will co-operate with the Buyer in all matters relating to the Services and comply with all instructions of the Buyer;
- 8.2.3 will perform the Services with the best care, skill and diligence in accordance with best practice and standards of quality as are found in the Seller's industry, profession or trade;
- 8.2.4 will provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 8.2.5 will use the best quality goods, materials, standards and techniques and ensure that the goods and materials supplied and used in the Services or transferred to the Buyer will be free from defects in workmanship, installation and design;
- 8.2.6 will not do or omit to do anything which may cause the Seller to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Seller acknowledges that the Buyer may rely or act on the Services.

8.3 The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

8.3.1 breach of any warranty given by the Seller in relation to the Goods and/or Services;

8.3.2 any claim that the Goods infringe, or their importation, use or resale, infringes the patent, copyright, design right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;

8.3.3 any liability under the Consumer Protection Act 1987 in respect of the Goods;

8.3.4 any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods;

8.3.5 any act or omission of any of the Seller's employees, agents or sub-contractors in connection with the performance of the Services; and

8.3.6 any breach of any of the provisions under Clause 11.

## 9 Remedies

9.1 Without prejudice to any other remedy if any Goods and/or Services are not in accordance with the Contract in any way including but not limited to where Goods and/or Services are defective or not supplied or not delivered by the delivery date the Buyer shall be entitled to any one or more of the following remedies, whether or not it has accepted the Goods and/or the Services:

9.1.1 to terminate the Contract with immediate effect;

9.1.2 to reject the Goods (in whole or in part) and to return them to the Seller at the Seller's own risk and expense and/or to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;

9.1.3 to require the Seller to repair or replace the rejected Goods, or to provide a full refund of the Price of the rejected Goods (if paid);

9.1.4 to refuse to accept any subsequent delivery of the Goods (in full or by way of instalment) which the Seller attempts to make;

9.1.5 to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods and/or substitute services from a third party;

9.1.6 to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out any of its obligations, including a failure to meet any agreed dates, under the Contract;

9.1.7 where the Buyer has paid in advance for Services that have not been provided by the Seller, to have such sums refunded by the Seller; and/or

9.1.8 unless agreed in writing by the Buyer and the Seller, if the Goods and/or Services are not delivered on the due date the Buyer shall be entitled to deduct from the Price or (if the Buyer has paid the Price) to claim from the Seller by way of liquidated damage for delay one percent of the Price for every week's delay, up to a maximum of ten per cent of the Price.

## 10 Termination

- 10.1 The Buyer shall be entitled to cancel the Order, in respect of all or part only of the Goods and/or the Services, by giving notice to the Seller at any time prior to delivery or performance whereupon the Seller shall discontinue all work on the Order and the Buyer shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 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:
- 10.2.1 the Seller breaches any provision under Clause 11;
  - 10.2.2 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 (other than for the purpose of amalgamation or reconstruction);
  - 10.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Seller;
  - 10.2.4 the Seller ceases, or threatens to cease, to carry on business; and/or
  - 10.2.5 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 Anti-Bribery

- 11.1 The Seller, (which for the purposes of this clause 11 shall include all of the Seller's employees, agents, representatives, affiliates and any person employed by or acting on behalf of the Seller) agrees with the Buyer that it will not, in connection with the Goods and Services to be supplied under this Contract or in respect of any other agreement or understanding between the Buyer and the Seller, bribe, or attempt to bribe (which shall include without limitation, any offer of any form of payment, gift or other form of inducement, reward or advantage charitable donations, facilitation payments, and/or political contributions (whether of money or anything of value)) the Buyer or any of the Buyer's employees, agents, representatives, affiliates or persons employed by or acting on behalf of the Buyer, any customers, potential customers, public or government officials or employees, public international organisations, political parties, or private individuals or other entities ("**Relevant Party**").
- 11.2 The Seller represents and warrants to the Buyer that it has not, prior to the date of this Contract, bribed or attempted to bribe any Relevant Party in order to secure and/or retain any business with the Buyer whether in connection with this Contract or otherwise.
- 11.3 The Seller acknowledges and agrees that it is familiar with and will abide by the anti-bribery and anti-money laundering laws in all the countries in which it is incorporated or established and in which it does business.
- 11.4 The Seller agrees that it will not take or knowingly permit any action to be taken that would cause the Buyer to be in violation of any applicable anti-bribery or anti-money laundering laws.
- 11.5 The Seller agrees that its books, records and all accounts shall accurately reflect any and all transactions with the Buyer whether under this Contract or otherwise, and the Buyer (and the

Buyer's authorised representatives) shall have the right to inspect, audit and to take copies of the Seller's books, records and accounts at any time on prior written notice.

- 11.6 If the Seller discovers that it has or may have violated any of the provisions in this clause 10, the Seller shall immediately notify the Buyer and cooperate with any investigations by the Buyer into such matters.
- 11.7 Without prejudice to the generality of clauses 11.1 to 11.6 inclusive, the Seller covenants with the Buyer to establish and at all times maintain and implement such anti-bribery policies and procedures as may be required to ensure that it prevents bribery or attempted bribery taking place on the Seller's behalf.

## **12     General**

- 12.1 The Buyer is a member of the group of companies whose ultimate holding company is Amari Metals Limited ("Group") and accordingly the Buyer may perform any of its obligations or exercise any of its rights hereunder by itself or through any other member of the Group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Buyer. For the purposes of this Condition "ultimate holding company" shall include any successor company of Amari Metals Limited. Any member of the Group may enforce the terms of a Contract subject to and in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999. No other third party may enforce the terms of the Contract under that Act.
- 12.2 The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
- 12.3 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- 12.4 No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision. Each right or remedy of the Buyer under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not. Failure or delay by the Buyer in enforcing any provision of any Contract shall not be construed as a waiver of any of its rights under the Contract.
- 12.5 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 12.6 The Contract shall be governed by the laws of England, and the Seller agrees to submit to the exclusive jurisdiction of the English courts.

## **13     Import Terms**

Where the Goods are supplied for import into the United Kingdom, the following provisions shall (subject to any special terms and conditions agreed in Writing between the Buyer and the Seller) apply:

- 13.1 The goods shall be delivered (FOB) the air or sea port of shipment.

13.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the United Kingdom and for the payment of any duties on them.

September 2012