

The Customer's attention is particularly drawn to the provisions of clause 11.

1. INTERPRETATION

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

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

Commencement Date: has the meaning set out in clause 2.2.

Conditions: these terms and conditions as amended from time to time in accordance with clause 14.7.

Contract: the contract between the Supplier and the Customer for the supply of Services in accordance with these Conditions.

Customer: the person or firm who purchases the Services from the Supplier.

Customer Stock: the goods (or any part of them) belonging to the Customer and provided to the Supplier for the purpose of carrying out the Services.

Delivery Location: has the meaning set out in clause 4.1(a).

Force Majeure Event: has the meaning given to it in clause 13.1.

Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Order: the Customer's order for the supply of Services, as set out in the Customer's purchase order form, or the Customer's written acceptance of the Supplier's quotation, or overleaf, as the case may be.

Services: the metal finishing services supplied by the Supplier to the Customer in relation to the Customer Stock as set out in the Service Specification.

Service Specification: the description or specification for the Services provided in writing by the Supplier to the Customer.

Supplier: Kingfisher Enamelling Company Limited registered in England and Wales with company number 03167285.

Supplier's Premises: has the meaning set out in clause 4.1(a)

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 statutory 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; and
- (e) a reference to **writing** or **written** includes faxes and e-mails.

2. **BASIS OF CONTRACT**

- 2.1 The Order constitutes an offer by the Customer to purchase the Services in accordance with these Conditions.
- 2.2 The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.
- 2.4 Any samples, drawings, descriptive matter or advertising issued by the Supplier and any illustrations or descriptions of the Services contained in the Supplier's catalogues or brochures or website are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force.
- 2.5 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.
- 2.6 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue. Unless otherwise stated by

the Supplier, the Supplier reserves the right to withdraw or amend any quote given at any time prior to acceptance of the Order.

3. FINISHING SERVICES

- 3.1 The Supplier shall provide the Services to the Customer in accordance with the Service Specification in all material respects.
- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Services specified in the Order but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 3.3 The Supplier shall have the right to make any changes to the Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill.

4. DELIVERY AND COLLECTION

- 4.1 In order to allow the Supplier to carry out the Services in relation to Customer Stock, such Customer Stock shall either be:
 - (a) delivered to the Supplier's premises at Units 2-3 Moxley Industrial Centre, Western Way, Wednesbury, West Midlands, WS10 7BG (or such other location as may be advised by the Supplier) (**Supplier's Premises**); or
 - (b) collected by the Supplier from the location set out in the Order (or such other location as the parties may agree) (**Delivery Location**),as agreed between the Supplier and the Customer (and in the absence of such agreement then the provisions of clause 4.1(a) shall apply).
- 4.2 On completion of the Services, either:
 - (a) the Supplier shall deliver the Customer Stock to the Delivery Location at any time after the Supplier notifies the Customer that it is ready; or
 - (b) the Customer shall collect the Customer Stock from the Supplier's Premises within five Business Days of the Supplier notifying the Customer is ready,

as agreed between the Supplier and the Customer (and in the absence of such agreement then the provisions of clause 4.2(b) shall apply).

- 4.3 Delivery of the Customer Stock shall be completed on their arrival at the Delivery Location or the completion of loading of the Customer Stock at the Supplier's Premises, as the case may be.
- 4.4 Any dates quoted for delivery of the Customer Stock are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Customer Stock that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Customer Stock.
- 4.5 If the Customer fails to accept or take delivery of the Customer Stock within ten Business Days of the Supplier notifying the Customer that such stock is ready, then except where such failure or delay is caused by a Force Majeure Event or by the Supplier's failure to comply with its obligations under the Contract in respect of the Customer Stock:
- (a) delivery of the Customer Stock shall be deemed to have been completed at 9.00 am on the tenth Business Day following the day on which the Supplier notified the Customer that they were ready;
 - (b) the Supplier shall store the Customer Stock until delivery takes place, and charge the Customer for all related costs and expenses (including insurance);
 - (c) the Supplier shall be entitled to suspend or cancel further deliveries under any contract between the Customer and the Supplier.
- 4.6 The Supplier may deliver the Customer Stock 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. TITLE AND RISK

- 5.1 The risk in Customer Stock shall remain with the Customer at all times except when the Customer Stock is being collected by the Supplier pursuant to clause 4.1(b) or being delivered to the Customer in accordance with clause 4.2(a), in which event the risk shall remain with the Customer until the Customer Stock is in transit for collection or delivery at which point risk shall pass to the Supplier whilst such Customer Stock are in transit only and risk shall subsequently pass back to the Customer on completion of delivery.

- 5.2 Title to the Customer Stock shall remain with the Customer at all times and the Customer shall keep them insured against all risks for their full price.

6. QUALITY OF METAL FINISHING SERVICES

- 6.1 Subject to clause 6.3, the Supplier warrants that on delivery the Services carried out on the Customer Stock shall:

- (a) confirm in all material respects with the Service Specification;
- (b) be free from material defects in workmanship.

- 6.2 Subject to clause 6.1, if:

- (a) the Customer gives notice in writing within 7 days from the date of delivery that any of the Services do not comply with the warranty set out in clause 6.1 as a result of defective work carried out by the Supplier in providing the Services;
- (b) the Supplier is given a reasonable opportunity of examining such Customer Stock;
- (c) the Supplier, acting reasonably, agrees that the defect in the Customer Stock relates to defective work carried out by the Supplier in providing the Services and does not relate to (and was not caused by) a defect which existed within the Customer Stock prior to the Supplier carrying out the Services;
- (d) the Customer (if asked to do so by the Supplier) returns such Customer Stock to the Supplier's place of business at the Customer's cost within 14 days of discovery of the defect,

the Supplier shall, at its option, re-perform the Services on the Customer Stock to rectify the defect at no further cost to the Customer.

- 6.3 The Supplier shall not be liable for any Services which do not comply with the warranty in clause 6.1 if:

- (a) the Customer makes any further use of the Customer Stock to which the Services relate after giving a notice in accordance with clause 6.2;
- (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Customer Stock or (if there are none) good trade practice;
- (c) the defect arises as a result of the Supplier following any drawing, design or Service Specification supplied by the Customer;
- (d) the Customer alters or repairs such Customer Stock without the written consent of the Supplier;

- (e) the defect arises as a result of the grade of metal used in the manufacture of the Customer Stock;
- (f) the defect is (or is caused by) a defect which existed within the Customer Stock prior to the Supplier carrying out the Services;
- (g) the defect was brought to the Customer's attention by the Supplier prior to the Supplier carrying out the Services;
- (h) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
- (i) the Customer Stock differ from its description or the Service Specification (as applicable) as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

6.4 Except as provided for in this clause 6 the Supplier shall have no liability to the Customer in respect of the Services carried out on the Customer Stock failing to comply with the warranty set out in clause 6.1.

6.5 The terms of this conditions shall apply to any Services re-performed pursuant to clause 6.2.

7. CUSTOMER'S OBLIGATIONS

7.1 The Customer shall:

- (a) ensure that the terms of the Order and (if submitted by the Customer) the Service Specification are complete and accurate;
- (b) co-operate with the Supplier in all matters relating to the Services;
- (c) provide the Supplier with such information and materials as the Supplier may reasonably require to supply the Services, and ensure that such information is accurate in all material respects;
- (d) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.

7.2 If the Supplier's performance of any of its obligations in respect of the Services is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):

- (a) the Supplier shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the

extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;

- (b) the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 7.2; and
- (c) the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8. CHARGES AND PAYMENT

- 8.1 The price for the Services shall be the price set out in the Order. The price is exclusive of all costs and charges of packaging, insurance and transport of the Customer Stock, which shall be paid by the Customer when it pays for the Services.
- 8.2 The Supplier shall invoice the Customer on or at any time after completion of delivery of the Customer Stock.
- 8.3 The Customer shall pay each invoice submitted by the Supplier:
 - (a) within the timeframe stated on the invoice or, if no specific timeframe is stated on the invoice within 30 days of delivery of the Customer Stock or as otherwise agreed between the Supplier and the Customer; and
 - (b) in pound sterling in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

- 8.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 8.5 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 3% per annum above the Bank of England Plc'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 Customer shall pay the interest together with the overdue amount.

- 8.6 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law. The Supplier may, without limiting its other rights or remedies, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 All Intellectual Property Rights and all other rights in the Customer Stock and any Service Specification provided by the Customer shall be owned by the Customer. During the term of the Contract, the Customer shall license all such rights to the Supplier free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Supplier to make reasonable use of the Customer Stock and the Service Specification in order to carry out the Services.
- 9.2 All Intellectual Property Rights in or arising out of or in connection with the Services shall be owned by the Supplier.

10. CONFIDENTIALITY

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party (including but not limited to in relation to any Intellectual Property Rights) by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the Contract, 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 receiving party may also disclose such of the disclosing party'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 10 shall survive termination of the Contract.

11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
 - (b) fraud or fraudulent misrepresentation;
 - (c) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);
 - (d) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (title and quiet possession); or
 - (e) defective products under the Consumer Protection Act 1987.

11.2 Subject to clause 11.1:

- (a) the Supplier shall under no circumstances whatsoever 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) the Supplier'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 the total payments made by the Customer to the Supplier in cleared funds under the terms of the Contract.

- 11.3 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 and the terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

- 11.4 This clause 11 shall survive termination of the Contract.

12. TERMINATION

- 12.1 Without limiting its other rights or remedies either party may terminate the Contract by giving the other party not less than one month's written notice.
- 12.2 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of its obligations under this Contract and (if such breach is remediable) fails to remedy that breach within 10 days after receipt of notice in writing to do so;
- (b) the other party 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 or limited liability partnership) 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;
- (c) the other party 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 a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (d) 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 other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the other party with one or more other companies or the solvent reconstruction of that other party;
- (e) the other party (being an individual) is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the other party 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;
- (g) 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 other party (being a company);
- (h) the holder of a qualifying charge over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

- (j) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 12.2(b) to clause 12.2(i) (inclusive);
- (k) the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the other party's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

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

12.4 Without limiting its other rights or remedies, the Supplier may suspend the supply of Services or all further deliveries of Customer Stock under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under this Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 12.2(b) to clause 12.2(m), or the Supplier reasonably believes that the Customer is about to become subject to any of them.

12.5 On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

13. FORCE MAJEURE

- 13.1 For the purposes of this Contract, **Force Majeure Event** means an event beyond the reasonable control of the Supplier including but not limited to strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.
- 13.2 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.
- 13.3 If the Force Majeure Event prevents the Supplier from providing any of the Services and/or Customer Stock for more than four weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.

14. GENERAL

14.1 Assignment and other dealings.

- (a) The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- (b) The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

14.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with this 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 or sent by prepaid first-class post or other next working day delivery service, or by 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 16.2(a); 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; 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 or e-mail, 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

14.3 **Severance.**

- (a) 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 shall not affect the validity and enforceability of the rest of the Contract.
- (b) If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

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

14.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, nor constitute either party the agent of another party for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

14.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

14.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions shall be effective unless it is agreed in writing and signed by the Supplier.

- 14.8 **Governing law.** This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 14.9 **Jurisdiction** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).