

## TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS

(Revised March 2019)

### 1. Definitions and interpretation

1.1 In these Conditions, the following definitions apply:

**"Applicable Law"** : any and all laws, regulations and industry standards or guidance (including any applicable British Standard) and any binding judgment of a relevant court of law which is or are relevant to the Contract;

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

**"Conditions"** : the terms and conditions set out in this document as amended from time to time in accordance with condition 14.4;

**"Confidential Information"** : any and all know-how, documentation and information, whether commercial, financial, technical, operational or otherwise, relating to the business, affairs, customers, suppliers, employees, affiliates, products and/or methods of the Customer or the Supplier and disclosed to or otherwise obtained or created by the other party in connection with the Contract;

**"Contract"** the contract between the Customer and the Supplier for the sale and purchase of the Goods which incorporates these Conditions, the Order and the Specification;

**"Customer"** : Umicore Marketing Services UK Limited (registered in England and Wales with company number 04781785) whose registered office is at Collier House, Mead Lane, Hertford, England, SG13 7AX;

**"Delivery Date"** : the date specified in the Order, or, if none is specified, within 10 Business Days of the date of the Order;

**"Delivery Location"** : the address for delivery of Goods as set out in the Order;

**"Force Majeure Event"** : any event beyond the reasonable control of a party which that party is unable reasonably to prevent or avoid and which hinders, delays or prevents performance by that party;

**"General Data Protection Regulation"** : Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

**"Goods"** : the goods (or any part of them) set out in the Order;

**"Order"** the Customer's order for the Goods, as set out in the Customer's purchase order form, the Customer's written acceptance of the Supplier's quotation, or as otherwise agreed between the parties from time to time, as the case may be;

**"Specification"** : any specification for the Goods as set out or referred to in the Order; and

**"Supplier"** : the person or firm from whom the Customer purchases the Goods.

1.2 In these Conditions, the following rules apply:

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended, re-enacted or superseded and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.2 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

1.2.3 a reference to **"writing"** or **"written"** includes faxes and emails.

### 2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of:

2.3.1 the Supplier issuing a written acceptance of the Order; and

2.3.2 the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

2.4 The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Supplier that is inconsistent with these Conditions.

### 3. The Goods

3.1 The Supplier warrants that the Goods:

3.1.1 correspond with their description and Specification;

3.1.2 are of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;

3.1.3 are free from defects in design, material and workmanship and shall remain so for 12 months after delivery;

3.1.4 comply with all Applicable Law relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and

3.1.5 are manufactured, supplied and delivered:

3.1.5.1 without any breach of the Modern Slavery Act 2015 or activity that would constitute a breach of that act if it took place within England and Wales;

3.1.5.2 in accordance with good ethical trading practices and standards; and

3.1.5.3 in a manner reflecting a commitment to safety and human rights in the workplace.

3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

3.3 The Customer may assay the Goods at any time before or after delivery. If the Customer elects to assay the Goods prior to delivery, the Supplier shall provide the Customer with all facilities reasonably required for such assay. The Supplier shall remain fully responsible for the Goods despite any such assay and any such assay shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.4 If following such assay the Customer considers that the Goods do not comply or are unlikely to comply with the

Supplier's undertakings at condition 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. The Customer may conduct further assays after the Supplier has carried out its remedial actions.

### 4. Delivery

4.1 The Supplier shall ensure that:

4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and

4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable).

4.2 The Supplier shall deliver the Goods:

4.2.1 on the Delivery Date;

4.2.2 at the Delivery Location; and

4.2.3 during the Customer's normal business hours, or as instructed by the Customer.

4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

4.4 The Supplier shall notify the Customer immediately in writing if delivery of the Goods is, or is likely to be, delayed, the reason for such delay and the timescales for delivery. The Supplier shall use all reasonable endeavours to avoid or minimise any delay.

4.5 The Customer shall not be deemed to have accepted any Goods until it has had a reasonable time to assay them following delivery or, in respect of latent defects, until a reasonable time after the defect becomes apparent.

4.6 The Supplier shall not deliver the Goods in instalments without the Customer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. Upon any default or breach by the Supplier in respect of any instalment, the Customer may at its option:

4.6.1 cancel any other instalment(s) and/or treat the whole Contract as repudiated; or

4.6.2 waive the default or breach and treat the Contract as continuing provided that such waiver shall in no way

affect the Customer's right to exercise its rights under condition 5 or any of its other rights or remedies under the Contract or at common law.

## 5. Remedies

5.1 If any Goods are not delivered on the Delivery Date or do not comply with the undertakings set out in condition 3.1 then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Customer may exercise any one or more of the following remedies:

- 5.1.1 terminate the Contract;
- 5.1.2 reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- 5.1.3 require the Supplier to repair or replace the rejected Goods or to provide a full refund of the price of the rejected Goods (if paid);
- 5.1.4 refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 5.1.5 recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and/or
- 5.1.6 claim damages for any other costs, losses or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

5.2 If the Customer requires the Supplier to repair or replace the rejected Goods, the Supplier shall do so as soon as possible and in any event within 10 Business Days. These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5.3 The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

## 6. Title and risk

6.1 Risk in the Goods shall pass to the Customer on delivery of such Goods.

6.2 Title to each of the Goods shall pass to the Customer on the earlier of: (i) the Customer's payment for such Goods; and (ii) delivery of such Goods. Nothing in this condition 6.2 shall prevent the Customer from using or selling the Goods prior to title passing.

6.3 The Supplier warrants that, on the date of delivery, the Supplier shall have the full and unrestricted right to sell the Goods to the Customer. Title to any Goods which the Customer rejects shall revert to the Supplier only

when the Customer has recovered in full the price paid for the relevant rejected Goods together with any costs it has incurred in storing and/or returning such Goods to the Supplier.

## 7. Price and payment

7.1 The price of the Goods shall:

7.1.1 in respect of fine metals, be the market rate set at the point of Order by the London Bullion Market Association (**LBMA**). The price of fine metals set by the LBMA shall be adjusted by way of reducing the price to reflect a brokerage charge as determined by the Customer from time to time;

7.1.2 in respect of scrap metals, be the price determined by the assay conducted by the Customer. The price of scrap metals determined by the assay shall be adjusted by way of reducing the price to reflect:

7.1.2.1 any costs incurred by the Customer in refining the scrap metal; and

7.1.2.2 where the Customer has refined the scrap metal, any agreed proportion of the scrap metal to be retained by the Customer.

7.1.3 for all other Goods, shall be the price set out in the Order.

7.2 The price of the Goods:

7.2.1 excludes amounts in respect of UK value added tax ("**VAT**"), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

7.2.2 includes all taxes and duties other than VAT, the costs of packaging, insurance and carriage of the Goods.

7.3 No extra charges shall be effective unless agreed in writing with the Customer.

7.4 The Supplier may invoice the Customer for the price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery and assay of Goods in accordance with clauses 3.3 and 3.4, whichever is the later. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the Supplier's VAT registration number and any supporting documents that the Customer may reasonably require.

7.5 The Customer shall pay each correctly rendered invoice in respect of Goods that comply with the Contract within the period agreed by the parties. Payment shall be

made to the bank account nominated in writing by the Supplier.

7.6 If the Customer disputes the whole or any part of an invoice, it may withhold payment in respect of the disputed amount provided that it gives notice in writing to the Supplier of any intention to withhold payment, specifying the amount to be withheld and the grounds for withholding payment.

7.7 Except where the Customer withholds an amount due to a bona fide dispute pursuant to condition 7.6, the Supplier may charge interest on overdue amounts at the rate of 2% per annum above the Bank of England's base rate from time to time, from the due date until actual payment of the overdue amount, whether before or after judgment. The Supplier agrees that the right to claim interest under this condition 7.7 is a substantial remedy for late payment of undisputed invoices.

7.8 The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier (whether under the Contract or not and whether such liability is present or future, liquidated or unliquidated) to the Customer against any liability of the Customer to the Supplier.

## 8. Indemnity

8.1 The Supplier shall indemnify, keep indemnified and hold harmless the Customer from and against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation whether arising in tort (including negligence), in contract or otherwise and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with any claim made against the Customer (a "**Claim**"):

8.1.1 for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods (except to the extent that the claim is attributable to compliance with any Specification supplied by the Customer); or

8.1.2 for death, personal injury or damage to property arising out of or in connection with the supply of the Goods including:

8.1.2.1 any defect in them; or

8.1.2.2 any act or omission of the Supplier or its employees, agents or subcontractors.

8.2 In the event of a Claim under condition 8.1.1:

8.2.1 the Supplier shall at its own expense defend the Claim; and

8.2.2 the Supplier shall use all reasonable endeavours to procure for the Customer the right to continue using the relevant Goods or modify them so that they are

8.3 This condition 8 shall survive termination of the Contract.

## 9. Insurance and liability

9.1 During the term of the Contract, the Supplier shall maintain in force with a reputable insurance company professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

9.2 Except under condition 8.1 and subject to condition 9.3, neither party shall be liable to the other for any indirect or consequential losses or damage suffered by the other party.

9.3 Nothing in the Contract shall limit either party's liability for:

9.3.1 death or personal injury arising from its negligence;

9.3.2 fraudulent misrepresentation; or

9.3.3 any other liability that cannot be excluded by law.

## 10. Confidentiality

10.1 Subject to condition 10.2, each party to the Contract (the "**Recipient**") shall:

10.1.1 use the other party's (the "**Disclosing Party**")'s Confidential Information solely for the performance of the Contract; and

10.1.2 keep the Disclosing Party's Confidential Information strictly confidential and not, without the Disclosing Party's prior written consent, disclose it to any other person.

10.2 The Recipient may disclose the Disclosing Party's Confidential Information:

10.2.1 only to those of its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Recipient's rights or carrying out its obligations under or in connection with the

- Contract and the Recipient shall ensure that such persons comply with this condition 10.2;
- 10.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and
- 10.2.3 if such information is public knowledge or already known to the Recipient at the time of disclosure or subsequently becomes public knowledge in each instance other than by breach of any duty of confidentiality (contractual or otherwise).
- 10.3 This condition 10 shall survive termination of the Contract.
- 11. Compliance with Applicable Law and Policies**
- 11.1 In performing its obligations under the Contract, the Supplier shall comply with all Applicable Law from time to time in force including the Bribery Act 2010, the Modern Slavery Act 2015, the General Data Protection Regulation and the Data Protection Act 2018 and all applicable health and safety laws.
- 11.2 The Customer may immediately terminate the Contract for any breach of this condition 11.
- 12. Ethics**
- 12.1 The Supplier shall:
- 12.1.1 comply with all Applicable Law relating to anti-bribery and anti-slavery including the Bribery Act 2010 and the Modern Slavery Act 2015 ("**Relevant Requirements**");
- 12.1.2 have and maintain in place throughout the term of the Contract its own policies and procedures relating to anti-bribery and anti-slavery, including adequate procedures under the Bribery Act 2010 and the Modern Slavery Act 2015, to ensure compliance with the Relevant Requirements and enforce them where appropriate;
- 12.1.3 have and maintain in place throughout the term of the Contract a system of training for its employees to ensure compliance with the Relevant Requirements and the Relevant Policies, keep a record of all such training offered and/or completed and shall provide a copy of the record available to the Customer on request;
- 12.1.4 promptly report to the Customer:
- 12.1.4.1 any breach, or potential breach, of the Relevant Requirements;
- 12.1.4.2 any actual or suspected slavery or human trafficking in a supply chain which has any connection with the Contract and/or the Customer; and
- 12.1.4.3 any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of its obligations under the Contract.
- 12.2 The Supplier warrants and represents that at the date of the Contract coming into force neither the Supplier nor any of its officers, employees, agents or other persons associated with it:
- 12.2.1 has been convicted of any offence involving slavery or human trafficking; and
- 12.2.2 to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence in connection with slavery or human trafficking.
- 12.3 Breach of this condition 12 shall be deemed an irreparable material breach of the Contract.
- 12.4 For the purpose of this condition 12:
- 12.4.1 the meaning of "**adequate procedures**" and whether a person is associated with another person shall be determined in accordance with the Bribery Act 2010 (and any guidance issued under that Act); and
- 12.4.2 a person associated with the Supplier includes any of the Supplier's subcontractors.
- 13. Termination**
- 13.1 The Customer may terminate the Contract in whole or in part at any time before delivery with immediate effect by giving the Supplier at least five Business Days' written notice.
- 13.2 If the Customer terminates the Contract under condition 13.1:
- 13.2.1 it shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss; and
- 13.2.2 the Contract shall continue in full force and effect in respect of Goods already delivered or paid for by the Customer or which the Customer indicates that it still wishes to receive.
- 13.3 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 13.3.1 the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to



remedy that breach within 30 days of being notified in writing to do so;

13.3.2 performance of the Contract would, in the Customer's reasonable opinion, cause the Customer to be in breach of any Applicable Law;

13.3.3 the Supplier (being a body corporate) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, or takes or suffers any similar action in any jurisdiction (an "Insolvency Event");

13.3.4 the Supplier (being an individual) is declared bankrupt, enters into any composition or arrangement with his creditors, has a receiver appointed to any of his assets, or ceases to carry on business, or takes or suffers any similar action in any jurisdiction (also an "Insolvency Event")) (or, the Supplier being a partnership, has a partner to whom any Insolvency Event applies);

13.3.5 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

13.3.6 the Supplier's financial position deteriorates to such an extent that in the Customer's opinion the Supplier's capability to fulfil its obligations under the Contract adequately has been jeopardised.

13.4 If the Customer terminates the Contract pursuant to condition 13.3, then, without prejudice to any other right or remedy available to it, the Customer may (at its option):

13.4.1 keep any Goods already delivered to it subject to payment of that proportion of the price attributable to such Goods in accordance with the Contract (less any sums already paid to the Supplier); or

13.4.2 repudiate the Contract, return the Goods and require the repayment of the whole or any part of the Price which has been paid.

13.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations or liabilities that have accrued as at termination.

13.6 Conditions that expressly or by implication survive termination of the Contract shall continue in full force and effect.

## 14. General

### 14.1 Assignment and other dealings

14.1.1 The Customer may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

14.1.2 The Supplier may not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Customer.

### 14.2 Subcontracting

The Supplier may not subcontract any or all of its rights or obligations under the Contract without the Customer's prior written consent. The Supplier shall remain liable for all the acts and omissions of any subcontractor as if they were its own.

### 14.3 Entire agreement

The Contract (incorporating these Conditions) 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.

### 14.4 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 Customer.

### 14.5 Waiver

Except as set out in condition 2.4, no failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of or prevent or restrict the 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.

### 14.6 Severance

If any 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 shall be deemed deleted. Any modification or deletion of a provision under this

condition shall not affect the validity and enforceability of the rest of the Contract.

#### 14.7 Notices

14.7.1 Any notice or other communication 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 by a signed-for next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

14.7.2 Any notice shall be deemed to have been received:

14.7.2.1 if delivered by hand, on signature of a delivery receipt or, if not signed for, at the time the notice is left at the correct address;

14.7.2.2 if sent by pre-paid first-class post, at 09:00 on the second Business Day after posting; and

14.7.2.3 if sent by email, one Business Day after transmission.

14.7.3 This condition 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.

#### 14.8 Third party rights

No one other than a party to the Contract shall have any right to enforce any of its terms.

#### 14.9 Governing law

The Contract 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.

#### 14.10 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 the Contract or its subject matter or formation (including non-contractual disputes or claims).