

TERMS AND CONDITIONS FOR SALE OF GOODS

These terms and conditions shall apply to all contracts of sale entered into by MGS

1. Definitions

"Goods Conditions" means these Terms and Conditions for Sale of Goods.
 "MGS" means MGS Precision Limited, whose registered office is Newcastle Street, Stone, Staffordshire, ST15 8JU, United Kingdom, company registration number 0118 5512, VAT number GB 280 158 661.
 "the Customer" means the party who has placed the Order with MGS.
 "the Order" means the Customer's instructions to MGS to supply the Goods.
 "the Goods" means the goods or articles which are the subject of the Order and any Specification as detailed and agreed in writing between the parties.
 "Specification" means any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and MGS.
 "the Confirmation of Order" means the written confirmation by MGS of the Order.
 "the Price" means the price for the Goods (exclusive of Value Added Tax) specified in the Confirmation of Order.
 "the Contract" means the contract for the sale of goods made between MGS and the Customer incorporating the Goods Conditions.
 "Delivery" means the satisfaction of INCOTERMS as specified in the original Contract of Sale.
 "you" and "your" refers to the person acting on behalf of the customer.
 "he" and "him" shall include the feminine and the singular shall include the plural
 Reference to a party includes its personal representatives, successors or permitted assigns.
 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.
 A reference to writing or includes emails.
 written

2. Customer's warranty

By placing an order with us, you warrant that:

- 2.1.If you are acting for a third party such as a partnership or company, you are authorised by that third party to place the order with us.
- 2.2.If you are acting as a sole trader, you warrant that you are over the age of 18.
- 2.3.The information which you provide to us during the process of placing an order is accurate, complete and not misleading and you agree that you are responsible for the consequences resulting from any inaccuracy or incomplete or misleading information.
- 2.4.You agree to be bound by these terms and conditions of sale and that all other contractual conditions are excluded unless expressly accepted in writing by MGS.
- 2.5.The contract has been entered into as a result of the offer received from MGS and has not been induced by any other representations orally or in writing made by MGS or its employees, directors or agents.
- 2.6.You agree to be bound by the laws of England and Wales and that any dispute will be settled exclusively within the jurisdiction of the courts of England and Wales, except in so far as it may be necessary to enforce a decision of the courts of England and Wales in another country.
- 2.7.Each order by you will be deemed to be an offer by you to purchase the Goods subject to these Goods Conditions. No contract of sale will come into existence until MGS has despatched the Goods or sent a confirmation of order. Each order placed by you will constitute a separate contract. No variation, amendment or cancellation will be valid unless agreed to in writing by MGS.
- 2.8.All materials, samples, drawings, patterns, descriptive matter, advertising material or any other data produced by MGS and any descriptions or illustrations contained in MGS's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force and same shall remain the exclusive property of MGS at all times.

3. Acceptance of Order

- 3.1. Customer orders are subject to MGS's confirmation of order. Normally MGS will accept the order by providing a written confirmation of order. However, especially in urgent cases, MGS may confirm the order by despatching the goods. No contract of sale will come into existence until MGS has sent this confirmation of order or until MGS has despatched the Goods, whichever shall occur first.
- 3.2. An Order is accepted by MGS exclusively upon these Goods Conditions and no other conditions, terms, provisions or other representations whatever whether referred to in negotiations or set out in the Order or otherwise shall be incorporated into the Contract unless the Customer and MGS expressly so agree in written memorandum which shall refer to the Contract and be annexed to the Confirmation of Order.
- 3.3. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify MGS against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by MGS in connection with any claim made against MGS for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the MGS's use of the Specification. This clause 3.3 shall survive termination of the Contract.
 MGS reserves the right at any time to amend the Specification if required by any applicable statutory or regulatory requirements.

4. Price

- 4.1. The price(s) payable for the Goods shall be MGS's prices ruling at the date of despatch so that MGS shall have the right at any time before delivery to revise quoted prices set out in the Confirmation of Order or otherwise.
- 4.2. Unless otherwise specified in the Confirmation of Order, the price(s) shown for the Goods are ex Works Stone (INCOTERMS 2020) [EXW], exclusive of packing costs, VAT and / or any other tax or duty, which may be applicable. Any such tax or duty shall be added to the price. VAT will be charged as per UK law.
- 4.3. MGS may, by giving notice to the Customer at any time up to 5

- 4.4. Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
 any factor beyond MGS's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or
- 4.5. any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
- 4.6. any delay caused by any instructions of the Customer or failure of the Customer to give MGS adequate or accurate information or instructions.

5. Delivery

- 5.1. Any delivery date specified in the Confirmation of Order or otherwise shall be deemed an estimate only, and the time of delivery is not of the essence. MGS shall not be liable for failure to deliver in accordance with that date nor for any loss, damage or expense whatsoever however caused or arising out of any loss or delay in delivery.
- 5.2. The Customer shall not be entitled to refuse to accept the Goods because of late delivery.
- 5.3. Delivery shall be in accordance with the definitions given under INCOTERMS. Unless otherwise agreed between MGS and the Customer and specifically stated accordingly in the Confirmation of Order, contractual delivery shall be EXW, United Kingdom. Any subsequent handling of the goods following delivery EXW, such as loading of the goods, shipment of goods, insurance of goods or customs clearance of the goods which may be arranged by MGS shall, unless otherwise stated in writing by MGS in the confirmation of order, be effected either as agents for the Customer or under a separate contract of carriage or contract of insurance and shall not affect the delivery terms contained in the Contract of Sale.
- 5.4. Where delivery is made by instalments, each such instalment shall be deemed to be the subject of a separate Contract.
 The quantity of Goods as set out in our despatch documentation will be conclusive evidence of the quantity received by you on delivery unless you can provide conclusive evidence to the contrary.
- 5.5. MGS's liability for non-delivery of Goods shall be limited to, at MGS's discretion, replacing the Goods within a reasonable time, issuing a credit note for those Goods not delivered, or a refund of any purchase price paid.
- 5.6. Any claim by you that any Goods have not been delivered to you must be notified by you to MGS within 7 days of the expected date of arrival of the Goods.
- 5.7. If the Customer fails to take delivery of the Goods within 3 Business Days of MGS notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or MGS's failure to comply with its obligations under the Contract: delivery of the Goods shall be deemed to have been completed at 9:00 am on the third Business Day after the day on which MGS notified the Customer that the Goods were ready; and MGS shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 5.9. If 10 Business Days after the day on which MGS notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, MGS may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 5.10. MGS reserves the right to deliver up to and including 10% more or less than the quantity of Goods ordered.
- 5.11. MGS may deliver the Goods 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.

6. Payment

- 6.1. The mode of payment of the invoice, and a note of any advance payment received or required by MGS may be stated on the Confirmation of Order and unless so stated the invoice shall be paid in full by the Customer no later than thirty (30) days from the date of MGS's invoice. The currency of payment shall be the currency of the Contract unless agreed in writing by MGS..
- 6.2. Where any advance payment is required by MGS, the Contract shall be conditional upon its receipt by MGS.
- 6.3. Time for payment as stipulated in the Confirmation of Order shall be the essence of the Contract. In the case of Goods sold or delivered by instalments, each instalment shall be paid for separately.
- 6.4. Where payment is to be made by bill(s) of exchange or cheque(s) payment shall be deemed not to have been made until the said bill(s) or cheque(s) are honoured by the Customer.
- 6.5. Where full payment has not been received by MGS on the due date MGS shall (without prejudice to its rights under the Contract or otherwise) be entitled to charge interest on the amount outstanding at a rate per annum equal to five (5) per cent above Barclays Bank PLC's Base Lending Rate for the time being in force.
- 6.6. The Customer shall in no circumstances be entitled to make any deduction from the invoice payable by way of set-off or otherwise in respect of any claim or counterclaim which it may have against MGS.

7. Passing of Risk and Title in the Goods

- 7.1. The Goods shall from delivery be at risk of the Customer. Where delivery is delayed at the request of the Customer for more than one month, MGS shall be entitled to place the Goods in store at the Customer's risk and expense.
- 7.2. The title in the Goods shall not pass to the Customer whether or not the Customer has taken delivery of the Goods or any part thereof until the Customer shall have paid to MGS the whole of all sums due to MGS hereunder and the Customer shall not without prior written consent of MGS sell, assign, pledge, mortgage, charge, let, part with possession, or otherwise dispose of the Goods or any part thereof until title in them has passed to the Customer.
- 7.3. Until such time as title in the Goods passes to the Customer, the Customer shall so long as it is possible so to do make such arrangements for the storage and identification of the goods as to ensure that they are identifiable as the property of MGS.

- 7.4. Until such time as title in the Goods passes to the Customer, MGS shall be entitled at any time to require the Customer to return the Goods to MGS and, if the Customer fails to do so forthwith, MGS shall be entitled to enter the premises where the Goods are being held in order to repossess them.
- 7.5. Until title to the Goods has passed to the Customer, the Customer shall:
- store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
 - not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - notify the Supplier immediately if it becomes subject to any of the events listed in clause 12; and
 - give the Supplier such information relating to the Goods as the Supplier may require from time to time.
8. Specifications
- 8.1. All data containing specifications of weights, dimensions, quantities and the like which are contained in MGS's website, catalogue or other literature are hereby declared to be approximate only as are also all weights and dimensions of shipments.
- 8.2. While MGS has taken care to ensure the accuracy of any information data or advice included in the website, any catalogue or other literature furnished to the Customer, MGS accepts no liability in respect of such information, data or advice, whether given negligently or not, or for the use of Goods in any particular way suggested thereby, and the Customer shall at the time the Contract is made be deemed to have carried out its own investigations and tests of the Goods.
- 8.3. Notwithstanding the provisions of clause 18 MGS reserves the right upon giving notice of its intention to the Customer to make modifications to the Goods at any time before delivery provided that upon receiving such notice the Customer shall (if the said modifications are material) be entitled to elect to terminate the Contract.
- 8.4. Subject to the foregoing the Customer shall inspect the Goods immediately upon arrival at its premises and shall within three days of their arrival notify MGS of any damage, shortage, loss or other particulars by reason of which it alleges that the Goods supplied do not conform with the Contract. If no such notice is received the Goods shall be deemed to have been supplied in accordance with the Contract and to have been accepted by the Customer.
- 8.5. Where the Customer gives notice to MGS by virtue of sub-clause 8.4 it shall preserve the Goods intact and as delivered for a period of fourteen days after receipt by MGS of the notification, during which period MGS its agents or servants shall be at liberty to attend the Customer's premises or Goods location, in person or virtually, and have unfettered access to the Goods, to investigate the complaint.
- 8.6. If the Customer fails to comply with either of sub-conditions 8.4 or 8.5 it shall be deemed to have waived all or any claim actions or rights or remedies it may have in respect of the non-conformity of the Goods to the Contract.
- If upon inspection or otherwise, by MGS, the Goods are confirmed by MGS whose decision is final, to be damaged, short or otherwise not in conformity with the Contract, MGS shall at its absolute discretion at its own expense replace, otherwise make good the same or credit the customer with the value of the damaged or missing goods.
- Damage, shortage, loss or other non-conformity with the Contract which is present only in a proportion of the Goods or, where delivery is made by instalments, in only some of the instalments shall entitle the Customer to the remedies given by this Condition only in respect of that proportion or instalment.
- 8.7. Notwithstanding the provisions of this Clause, MGS shall have no liability to the Customer pursuant to sub-clause 8.5 to the extent that the said damage, storage or loss occurred after risk in the Goods passed to the Customer.
9. MGS's Guarantee
- 9.1. In consideration of the guarantee given by MGS as set out below the Customer expressly agrees that:
- 9.1.1 The said warranty is given by MGS in lieu of and to the entire exclusion of every condition or warranty whether statutory or otherwise whatsoever, except to the extent that the statute prohibits such exclusion.
- 9.1.2 The liability of MGS howsoever arising is limited to exchange or repair (at MGS's discretion) of any part or parts of Goods to extent of and no further than as set out in the said Guarantee.
- 9.1.3. MGS is released from any other form of liability, whether in contract or tort, including consequential loss or damage caused or arising by reason on the Goods not being of the quantity, type or quality ordered or by reason of the Goods being delayed or by reason of any other matter whatsoever.
- 9.1.4. In no circumstance shall MGS be liable for any sum greater than the purchase price of the Goods in the contract of sale.
- 9.2. For a period of twelve (12) months from the date on which the Goods are delivered to the Customer MGS will exchange or repair (at MGS's discretion) any part or parts thereof requiring replacement or repair by reason of faulty design, workmanship or material, save that:
- 9.2.1 MGS will not be responsible for any expenses which the Customer and/or user may incur in removing or having removed or replacing any part or parts of the Goods sent for inspection or fitting or having fitted any replacement or new parts supplied in lieu thereof.
- 9.2.2 No claim for exchange or repair can be considered unless the defective part(s) are returned at sole cost of the Customer carriage paid to MGS's works stating the parts are being returned under the guarantee together with the following information:
- The Seller's reference on the Goods from which the part or parts were taken.
 - The defects claimed and the reasons for them.
 - The date of purchase.
- This Guarantee does not extend to any defect which in the opinion of MGS (whose opinion shall be final) was attributable to:
- 9.2.3 (i) Any form whatsoever of improper use.
- Wear and tear.
 - Non-compliance with any instructions issued by MGS.
 - Incorrect fitment howsoever caused.
 - Neglect of others.
 - Abnormal corrosive or abrasive conditions.
 - Any alteration or modification having been made to the Goods or any parts thereof or any connected parts without the express approval of MGS given in writing.
- 9.2.4 For any part(s) returned under the guarantee, either to MGS's works, or a place designated by MGS, title for the Goods shall pass to MGS on delivery. MGS then have thirty (30) days to inspect test or in any way analyse the part(s) to determine why the part(s) have been returned under the guarantee. In the event it is determined the part(s) are covered under the guarantee then repair, replacement or credit note, at MGS's sole discretion, shall be effected. In the event it is determined that the part(s) are not covered by the guarantee, they will be held available for collection for seven (7) days and then disposed of as MGS see fit. The proceeds and/or costs of disposal will be for the Customer's account.
- 9.2.5 Consumables are excluded from this Guarantee.
10. Customer's Undertakings
- The Customer accepts full liability for and shall at all times indemnify MGS against all actions claims demands costs charges and expenses whatsoever arising out of any loss or damage due to any person firm company or property by reason of MGS having relied on any data, documents, drawings gauges, samples, models or the like supplied to MGS by or at the instigation of the Customer in connection with the performance of the Contract.
11. Health and Safety at Work
- The Customer hereby undertakes to take all steps sufficient to ensure, so far as is reasonably practicable, that the Goods will be safe and without risks to health by properly using and handling them in accordance with the recommendations of MGS. Weights given are approximate and should be confirmed before lifting, manual or mechanical.
12. Termination of the Contract by MGS
- 12.1. MGS may terminate the Contract forthwith by written notice to the Customer upon the happening of any of the following events:
- Where full payment in respect of the Goods or any instalment of the Goods has not been received by MGS by the date specified as the date for payment.
 - the Customer 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; the Customer 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 the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (being a company) 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 Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - (being a company) 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 Customer;
 - (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - a creditor or encumbrancer of the Customer 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;
 - any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2.1 to clause 8.2.6 (inclusive);
 - the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
 - the Customer'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; and
 - (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 12.1 or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
2. On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
3. Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
4. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
5. The granting by MGS to the customer of time or any other indulgence forbearance or concession shall in no way prejudice or constitute a

waiver of MGS's entitlement to enforce any of its rights under the Contract except and to the extent that it shall either constitute a variation of these Goods Conditions which has been made in accordance with clause 18.

6. If MGS terminates the Contract in accordance with this clause, then, without prejudice to any other rights MGS may have, it shall be entitled to retain any advance payment made by the Customer.

2. Cancellation by the Customer

The Contract may be cancelled by the Customer only with MGS's written consent, which shall be given or withheld at the sole discretion of MGS and upon such terms as MGS may deem fit.

3. Force Majeure

In the event of:

riots, civil disturbance, strikes, lock-outs, industrial disputes, fire, floods, heat, frost, storm or other intemperate weather, Act of God, Act of Queen's enemies or war (whether declared or not) or other hostilities carried on by any parties whatsoever, restraints or rulers of peoples including interferences by departments of governments in the United Kingdom or abroad, perils of the sea, breakdown in machinery, shortages of raw material or fuel or labour, shortages or breakdown of shipping or other means of transport, failure or delay by customary suppliers or sub-contractors of MGS (whether their involvement in MGS's performance of the Contract is known to the Customer or not) to provide materials required in the production of the Goods or any other unforeseen or exceptional circumstances whatsoever affecting or hindering the performance of the Contract by MGS – MGS may in its discretion either:

- (i) terminate the Contract and return any advance payment made in respect thereof of the Customer; or
(ii) delay delivery for such period or periods as it shall consider necessary (in which case the provisions of sub-clause 5.1 and 5.2 shall apply) and in either case the Customer shall have no claims whatsoever howsoever arising against MGS in respect of such termination or delay.

15. Confidentiality

- 15.2. Any drawings or technical documents intended for use in the manufacture or construction of the Goods and submitted to the Customer prior or subsequent to the formation of the Contract remain MGS's exclusive property. Such drawings or technical documents may not without MGS's consent be utilised by the Customer or copied, reproduced, transmitted or communicated to a third party. The said drawings and documents shall become property of the Customer only if it is expressly so agreed in writing by MGS.

- 15.3. In the event that an Order or Contract is not proceeded with for any reason whatever, each party shall upon demand return to the other all such material as is referred to in the preceding sub-clause and undertake to destroy any copies thereof which may have been made by it.

16. Assignment and rights of third parties

The Contract is personal to the Customer, which shall not assign or charge the benefit thereof in any manner whatsoever without MGS's express written consent. For the avoidance of doubt all third party rights which might otherwise have been created under the 1999 The Contracts (Right of Third Parties) Act are specifically excluded. The Contract does not confer any rights or benefits to any third party whatsoever.

17. Law

The Contract shall in all respects be constructed and operate in accordance with the laws of England and Wales. All disputes shall be subject to the exclusive jurisdiction of the courts of England and Wales, except in so far as it may be necessary to enforce a judgement of the courts of England and Wales in another country.

A reference to a statute or statutory provision is a reference to such statute or 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.

18. Variation

Except as provided in clause 8.3 hereof after formation of the Contract any alterations amplifications modifications limitations or additions thereto must be agreed by the parties, made in writing, refer to the Contract, and be annexed to the Confirmation of Order.

19. Waiver

The granting by MGS to the Customer of time or any other indulgence forbearance or concession shall in no way prejudice or constitute a waiver of MGS's entitlement to enforce any of its rights under the Contract except and to the extent that it shall either constitute a variation of these Goods Conditions which has been made in accordance with clause 18.

20. Notices

- 20.2. Notices shall be made in writing and posted in a first-class pre-paid envelope to the Customer's address as shown respectively on the Order and Confirmation of Order or failing those to the address at which one party reasonably believes the other to be carrying on business.

- 20.3. A notice shall be deemed to have been given forty-eight hours after posting (or ninety-six hours after posting where the notice is sent from and/or addressed to an address outside the United Kingdom)

21. General

- 21.2. The clause headings hereto shall not affect the construction of these Goods Conditions.

- 21.3. MGS's rights are cumulative and not exclusive

If any provision or part of a provision of this agreement shall be, or held to be by any authority or court of competent jurisdiction, invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions or parts of such provisions of the contract, all of which shall remain in force.