

**MIDLAND TOOL AND DESIGN LIMITED**  
**CONDITIONS OF PURCHASE**  
**("Conditions")**

**1. DEFINITIONS**

1.1 In these Conditions:

"The Buyer" means Midland Tool and Design Limited (Company No. 962501) the registered office of which is at Barnfield Road, Tipton, West Midlands, DY4 9DF;

"Conditions" means the terms and conditions set out below that apply to a Purchase Order;

"Contract" means the contract between the Supplier and the Buyer for the supply of Goods which is subject to these Conditions (as varied, if it be the case, in accordance with clause 2.2 below);

"Purchase Order" means written instructions issued by the Buyer to purchase Goods, incorporating these Conditions;

"Specification" includes any specification, design, plan, prototype, drawing, software, data or other information relating to the Goods; and

"The Supplier" means the person or company who accepts a Purchase Order.

1.2 Where a Contract or Purchase Order is for the provision of services, the word "Goods" shall be read, where the context permits, as meaning and/or including any ancillary services which the Supplier contracts to provide.

1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.4 A reference to one gender includes a reference to the other gender.

1.5 Condition headings do not affect the interpretation of these Conditions.

**2. Exclusion of Supplier's Terms and Conditions**

2.1 Every Contract for the supply of Goods to the Buyer by the Supplier is made exclusively on these Conditions and all terms and conditions proposed by the Supplier are hereby expressly excluded.

2.2 The Purchase Order constitutes an offer by the Buyer to purchase the Goods from the Supplier subject to these Conditions. No verbal or written order, request or enquiry for Goods is binding on the Buyer unless set out in a Purchase Order signed by a duly authorized representative of the Buyer.

2.3 No variation to a Purchase Order or the Conditions is binding on the Buyer unless agreed in writing between the authorized representative of the Buyer and the Supplier.

2.4 Execution by the Supplier of a Purchase Order, expressly by notice of acceptance or impliedly by fulfilling the Purchase Order, in whole or in part constitutes acceptance thereof.

**3. Specification**

3.1 The quantity, quality and description of the Goods and each instalment of the Goods shall correspond exactly with those specified in the Purchase Order and/or in any applicable Specification supplied by the Buyer to the Supplier and referred to in the Purchase Order.

3.2 Any Specification supplied by the Buyer to the Supplier, or specifically produced by the Supplier for the Buyer, in connection with the Contract, together with any dies, moulds, tools and materials ("Tooling") and any intellectual property rights in the specification, shall be and remain the exclusive property of the Buyer.

3.3 The Supplier shall not disclose to any third party or use any Specification except to the extent that is or becomes within public knowledge otherwise than as a result of a breach by the Supplier of this clause 3.3, or as required for the purpose of the performance by the Supplier of the Contract.

**4. Prices**

4.1 Unless otherwise stated in the Purchase Order all prices are fixed and include the cost of packing, delivery, all other charges and all taxes (other than VAT) and other dues.

4.2 No variation in the price nor extra charges shall be accepted by the Buyer.

**5. Delivery**

5.1 The Goods shall be delivered, carriage paid, to the Buyer's address or such other address specified for delivery by the Buyer and on the date or within the period in the Purchase Order, between 08.00 and 16.30 hours (08.00 and 15.30 in the case of Fridays) on a week day which is not a bank holiday. The Supplier shall off-load the Goods at its own risk as directed by the Buyer.

5.2 If no date for delivery of the Goods is specified then delivery shall take place within 28 days of the date of the Purchase Order.

5.3 The time of delivery of the Goods (and of performance of any services comprised therein) is of the essence of the Contract.

5.4 A packing note quoting the number of the Purchase Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

5.5 The Goods shall be securely and properly packed in a manner acceptable to the Buyer.

5.6 If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable. Failure by the Supplier to deliver any one instalment shall entitle the Buyer at its option to treat the whole Contract as repudiate

5.7 Notwithstanding the provisions of clause 5.1 the Buyer may by notice in writing to the Supplier given at any time before actual delivery of the Goods, postpone delivery, in which case the Supplier shall store the Goods at the Supplier's risk and cost.

5.8 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall be deemed not 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.

If Goods are not delivered in accordance with the Contract, then without prejudice to any other remedy to which it shall be entitled, whether pursuant to the Conditions or otherwise, the Buyer shall be entitled to:

Terminate the Contract;

Be repaid forthwith any price paid;

Obtain equivalent Goods or rectification from a suitable source, the cost of which will be reimbursed by the Supplier to the Buyer; and Claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to deliver the Goods on the due date.

If the Supplier requires the Buyer to return any packaging material to the Supplier that fact must be clearly stated on any delivery note delivered to the Buyer and any such packaging material shall only be returned to the Supplier at the cost of the Supplier

**6. Terms of Payment**

6.1 The Supplier shall be entitled to invoice the Buyer on or at any time after delivery of all the Goods (or performance of all services comprised therein), and each invoice shall quote the number of the Purchase Order.

6.2 Unless otherwise stated in the Purchase Order, the Buyer shall pay the price of the Goods within 60 days after the end of the month of receipt by the Buyer of a proper invoice or, if later, within 60 days after acceptance of the Goods by the Buyer. Any invoice which fails to state clearly the correct reference of the Goods as set out in the relevant Purchase Order shall not be a proper invoice for the purpose of this Condition.

6.3 Without prejudice to any other right or remedy, the Buyer shall be entitled to set off against the price any sums owed to the Buyer by the Supplier on whatever account.

6.4 The Supplier shall not be entitled to suspend or to cancel any delivery by reason of any failure by the Buyer to make any payment (under the Contract or otherwise) on the due date.

**7. Risk and Property**

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer once delivery (including off-loading and stacking where appropriate) to the Buyer has been completed.

7.2 The property in the Goods, including any components thereof and/or raw materials incorporated therein, shall pass to the Buyer upon delivery.

7.3 All property of the Buyer (including without limitation the Goods and the Specification) for the time being in the custody or possession of the Supplier shall be at the risk of the Supplier which shall at its own expense insure such property against the risk of loss and/or damage from whatever cause and all other usual risks.

7.4 All Tooling of the Buyer in the custody or possession of the Supplier shall be maintained in good condition at the Supplier's expense.

**8. Warranties, Liability, Rights of Access, Quality Requirements and Notifications**

8.0 The supplier will have systems in place to manage Quality to give assured products or services

8.1 The supplier will notify the buyer of any instances of non-conformities, changes in product and / or processes, changes of suppliers or changes of manufacturing facility location and where required obtain approval from the buyer prior to doing so.

8.2 The supplier will obtain approval from the buyer for nonconforming product disposition

8.2.1 The supplier will manage their processes to prevent introduction of counterfeit parts.

8.3 The supplier will give right of access to the buyer, their customers and regulatory authorities to the applicable areas of all facilities, at any level in the supply chain, involved in the order and to all applicable records.

8.4 Records will be retained for minimum period of 25 years. After this period, authorization from the buyer must be obtained before disposal of records.

8.4.1 When requested, the supplier will provide test pieces for approval, inspection / verification, investigation or auditing.

8.5 The Supplier will flow down to sub-suppliers the applicable purchase order requirements including any customer requirements stated on the Purchase Order.

8.5.1 Where requested by the buyer, the supplier will use customer-designated or the buyers approved external providers, including process sources.

8.6 The Supplier warrants to the Buyer that the Goods shall be of the best quality and fit for any purpose held out by the Supplier in writing at the time of the Purchase Order, are and will for twelve months after delivery, be free from defects, whether of design, material, workmanship or otherwise, correspond with any Specification or sample, and comply with the Purchase Order and with all statutory requirements and regulations relating to their supply. The Buyer's rights under these Conditions are in addition to the statutory conditions implied in favour of the Buyer by the Sale of Goods Act 1979.

8.7 Without prejudice to any other remedy, if the Goods or any part of them are not delivered or in the case of services are not performed in accordance with the Contract, the Buyer is entitled to require the Supplier to either repair the Goods or to supply replacement Goods in accordance with the Contract or in the case of services to perform the same by such date as the Buyer shall

notify to the Supplier to treat the Contract as discharged by the Supplier's breach and to require immediate repayment of any part of the price which has been paid.

8.8 The Supplier shall indemnify and keep the Buyer indemnified in full against all direct, indirect and consequential liability, loss (including loss of profit and goodwill), damages, costs and expenses (including legal and other professional expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:

8.8.1 Late delivery of, or breach of any warranty given by the Supplier in relation to, the Goods;

8.8.2 Defective workmanship, quality or materials;

8.8.3 Any claim or alleged claim that the Goods infringe, or their importation, use or resale, infringes, any intellectual property or other right of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;

8.8.4 Any liability under the Consumer Protection Act 1987 in respect of the Goods;

8.8.5 Any breach of the Contract and any other act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering or installing the Goods; and

8.8.6 Any claim made against the Buyer in respect of any liability, loss, damage, injury, cost or expense sustained by the Buyer's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the Goods as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the Contract by the Supplier.

**9. Inspection and Testing**

9.1 The Buyer, through such persons as it shall nominate, shall have the right to inspect and test the Goods at the Supplier's premises during manufacture, processing and storage. For the purposes of such inspection and test the Supplier shall, free of charge to the Buyer, afford all reasonable assistance and facilities. Such inspection and testing by the Buyer shall not relieve the Supplier of any obligation to the Buyer to which the Supplier would otherwise be subject nor shall create any estoppels in favour of the Supplier against the Buyer.

9.2 If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, then the Buyer shall be entitled within seven days thereafter to terminate the Contract and any monies paid to the Supplier by the Buyer and an amount equal to the cost to the Buyer of any material provided to the Supplier by the Buyer shall be repaid immediately by the Supplier to the Buyer.

9.3 The Supplier represents warrants and undertake to the Buyer that it has carried out all testing and evaluation and other work necessary to eliminate any risk to health or safety from the use of the Goods and that if in any circumstance there is or maybe any such risk then no later than the delivery of the Goods the Supplier will bring such circumstances to the attention of the Buyer in writing and provide free of cost full and proper information about such circumstance and the safeguards to be observed to ensure that the Goods are used safely and without risk to health. Goods which are hazardous must have prominent warning in English on all packaging and documents.

9.4 The Supplier undertakes to the Buyer that prior to delivery it will inspect and test the Goods to ensure that they comply in all respects with the Contract and, on request by the Buyer, will free of charge provide a certificate that the Goods comply in all respects with the Contract.

**10. Termination**

10.1 In addition to and without prejudice to the rights conferred on it by any other of these Conditions, the Buyer shall be entitled by written notice at any time to terminate the Contract in whole or in part upon payment to the Supplier of whichever is the lesser of:

10.1.1 The balance of the amount payable by the Buyer to the Supplier under the Contract; or

10.1.2 The aggregate of the amounts already expended by the Supplier in purchasing materials specifically for the purpose of and necessary for its performance of the Contract which have not then been incorporated in finished Goods delivered to the Buyer and in unavoidable cancellation costs incurred by the Supplier will benefit in consequence of such termination of the Contract after deducting from such aggregate the amount of any savings from which the Supplier will benefit in consequences of such termination. But such payments shall not include loss of anticipated profits or any consequential loss.

10.2 The Buyer shall be entitled by notice in writing to the Supplier to terminate the Contract forthwith without compensation in any of the following events:-

10.2.1 The Supplier committing any irremediable breach of its obligations under the Contract or any other contract between the Buyer and the Supplier;

10.2.2 The Supplier failing within seven days of written notice requiring it so to do to remedy any remediable breach of its obligations under the Contract or any such other contract;

10.2.3 The Supplier compounding with or negotiating for any composition with its creditors generally or failing to satisfy any final judgment within seven days thereof or suffering any distress, execution or other process over any of its assets;

10.2.4 The Supplier ceasing or threatening to cease business;

10.2.5 The financial position of the Supplier deteriorates to such an extent that in the opinion of the Buyer the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or

10.2.6 The Supplier has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Supplier or notice of intention to appoint an administrator is given by the Supplier or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Supplier or for the granting of an administration order in respect of the Supplier, or any proceedings are commenced relating to the insolvency or possible insolvency of the Supplier.

**11. Remedies**

11.1 Without prejudice to any other right or remedy which the Buyer may have, if any Goods are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract the Buyer shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Buyer:

11.1.1 To rescind the Order;

11.1.2 To reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier;

11.1.3 At the Buyer's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

11.1.4 To refuse to accept any further deliveries of the Goods but without any liability to the Supplier;

11.1.5 To carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract; and

11.1.6 To claim such damages as may have been sustained in consequence of the Suppliers breach or breaches of the contract

**12. Confidentiality**

The Supplier 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 Supplier by the Buyer or its agents and any other confidential information concerning the Buyer's business or its products which the Supplier may obtain and the Supplier shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the Supplier's obligations to the Buyer and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the Supplier.

**13. Force Majeure**

The Buyer reserves the right to defer the date of delivery or payment or to cancel the Contract or reduce the volume of the Goods ordered if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Buyer including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

**14. General**

14.1 The Purchase Order is personal to the Supplier and the Supplier 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.

14.2 Failure on the part of the Buyer to exercise any right conferred by the Contract or at law shall not be deemed a waiver of such right nor bar the exercise on enforcement thereof at any time thereafter.

14.3 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.

14.4 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

14.5 Any notice required or permitted to be given by either party to the other under the Contract shall be in writing addressed to the 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.

14.6 The Contract shall be governed by the laws of England. The Supplier submits to the jurisdiction of the English courts.

14.7 The provisions of The Contracts (Rights of Third Parties) Act 1999 are hereby excluded and shall not apply.

14.8 The supplier shall operate good Ethical behavior and be aware of the importance of their contribute towards product safety and product/service conformity