

## Ensinger Machined Parts Limited ("EMP") General Terms and Conditions of Sale (Goods)

### **I. Interpretation**

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

- a) Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
- b) Conditions: the terms and conditions set out in this document as amended from time to time in accordance with condition 11.1;
- c) Contract: the contract between EMP and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
- d) Customer: the person or firm who purchases the Goods from EMP;
- e) Delivery Location: the address in the United Kingdom set out in the Order or such other location as the parties may agree;
- f) EMP: Ensinger Machined Parts Limited a company registered in England and Wales with registration number 00845737;
- g) Force Majeure Event: has the meaning given in condition 10;
- h) Goods: the goods (or any part of them) set out in the Order;
- i) Order: the Customer's order for the Goods;
- j) Specification: any specification for the Goods, including any related plans and drawings agreed in writing by the Customer and EMP;
- k) VAT: Value added tax

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 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.
- e) A reference to writing or written includes faxes and e-mails.

### **II. Basis of contract**

- 1. 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. The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 3. The Order shall be deemed to be accepted on the earliest of:
  - a) EMP issuing a written acceptance of the Order; or
  - b) EMP accepting the Order verbally; or
  - c) EMP doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.
- 4. The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of EMP which is not set out in the Contract.
- 5. Any samples, drawings, descriptive matter, or advertising produced by EMP and any descriptions or illustrations contained in 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.
- 6. A quotation for the Goods given by EMP shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.
- 7. No cancellation of the contract shall be permitted unless agreed in writing by EMP and the Customer.

### **III. Goods**

1. To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify EMP 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 professional costs and expenses) suffered or incurred by EMP in connection with any claim made against EMP for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with EMP's use of the Specification. This condition 3.1 shall survive termination of the Contract.

2. EMP reserves the right to amend the Goods or any Specification if required by any applicable statutory or regulatory requirements.

### **IV. Delivery**

- 1. EMP shall ensure that each delivery of the Goods is accompanied by an advice note which shows the delivery address, the invoice address, the despatch date and despatch method and all relevant Customer and EMP references and the Goods to be delivered.
- 2. EMP shall deliver the Goods to the Delivery Location.
- 3. Delivery of the Goods shall be completed on the arrival of the Goods at the Delivery Location.
- 4. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. EMP shall not be liable for any delay or failure in delivery of the Goods 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 Goods.
- 5. If the Customer postpones the date for delivery or fails to accept delivery of the Goods within three Business Days of EMP notifying the Customer that the Goods are ready then, except where such failure or delay is caused by a Force Majeure Event:
  - a) delivery of the Goods shall be deemed to have been completed at 9.00am on the third Business Day after the day on which EMP notified the Customer that the Goods were ready; and
  - b) EMP shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 6. The Customer shall not be entitled to reject the Goods if EMP delivers up to and including 10% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.
- 7. EMP 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.

### **V. Quality**

- 1. EMP warrants that on delivery the Goods shall:
  - a) conform in all material respects with their description and any applicable Specification;
  - b) be free from material defects; and
  - c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
- 2. Subject to condition 5.1, if:
  - a) the Customer gives notice in writing to EMP within 7 days of delivery that some or all of the Goods do not comply with the warranty set out in condition 5.1;
  - b) EMP is given a reasonable opportunity of examining such Goods; and
  - c) the Customer (if asked to do so by EMP) returns such Goods to EMP's place of business; EMP shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 3. EMP shall not be liable for the failure of any Goods to comply with the warranty set out in condition 5.1 in any of the following events:
  - a) the Customer makes any further use of such Goods after giving notice in accordance with condition 5.1;
  - b) the defect arises because the Customer failed to follow EMP's oral or written instructions as to the storage, commissioning, installation, use and maintenance of

the Goods or (if there are none) good trade practice regarding the same;

- c) the defect arises as a result of EMP following any drawing, design or Specification supplied by the Customer;
  - d) the Customer alters or repairs such Goods without the written consent of EMP;
  - e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - f) the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
4. Except as provided in this condition 5, EMP shall have no liability to the Customer in respect of any failure of the Goods to comply with the warranty set out in condition 5.1.
5. EMP gives no warranty that the Goods are fit for any purpose express or implied and the Customer shall be responsible for ensuring that the Goods and any equipment or materials supplied by the Customer are fit for purpose.
6. Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
7. These Conditions shall apply to any repaired or replacement Goods supplied by EMP.

### **VI. Title and risk**

- 1. The risk in the Goods shall pass to the Customer on completion of delivery.
- 2. Title to the Goods shall not pass to the Customer until EMP has received payment in full (in cash or cleared funds) for:
  - a) the Goods; and
  - b) any other goods or services that EMP has supplied to the Customer in respect of which payment has become due.
- 3. Until title to the Goods has passed to the Customer, the Customer shall:
  - a) hold the Goods on a fiduciary basis as EMP's bailee;
  - b) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as EMP's property;
  - c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - d) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - e) notify EMP immediately if it becomes subject to any of the events listed in condition 8.1; and
  - f) give EMP such information relating to the Goods as EMP may require from time to time, but the Customer shall be liable to pay EMP for the Goods and may resell or use the Goods in the ordinary course of its business.
- 4. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in condition 8.1, or EMP reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy EMP may have, EMP may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

### **VII. Price and payment**

- 1. The price of the Goods shall be the price set out in EMP's published price list in force as at the date of delivery or as otherwise agreed in writing by EMP and the Customer.
- 2. EMP may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
  - a) any factor beyond EMP's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);

b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

c) any delay caused by any instructions of the Customer or failure of the Customer to give EMP adequate or accurate information or instructions.

3. The price of the Goods is ex works and exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.

4. The price of the Goods is exclusive of amounts in respect of VAT. The Customer shall, on receipt of a valid VAT invoice, pay to EMP such additional amounts in respect of VAT as are chargeable on the supply of the Goods.

5. EMP may invoice the Customer for the Goods on or at any time after the Goods are ready for despatch.

6. The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by EMP. Time of payment is of the essence.

7. If the Customer fails to make any payment due to EMP under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 8% per annum above HSBC's base lending rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

8. The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against EMP in order to justify withholding payment of any such amount in whole or in part. EMP may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by EMP to the Customer.

9. The Customer shall indemnify EMP against all costs and expenses arising out of any breach of the Contract by the Customer.

**VIII. Customer's insolvency or incapacity**

1. If the Customer becomes subject to any of the events listed in condition 8.1, or EMP reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy EMP may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and EMP without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.

2. For the purposes of condition 8.1, the relevant events are:

a) the Customer fails to pay any amount due under the Contract or 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) 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;

b) 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;

c) (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;

d) (being an individual) the Customer is the subject of a bankruptcy petition or order;

e) a creditor or encumbrance 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;

f) (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;

g) (being a company) a floating charge holder over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;

h) a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;

i) 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 condition 8.1 to condition 8.1 (inclusive);

j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;

k) the Customer's financial position deteriorates to such an extent that in EMP's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

l) (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.

3. Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.

#### **IX. Limitation of liability**

1. Nothing in these Conditions shall limit or exclude EMP's liability for:

a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or

b) fraud or fraudulent misrepresentation; or

c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

d) defective products under the Consumer Protection Act 1987

2. Subject to condition 9.1:

a) EMP shall not 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) EMP'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 not exceed the Contract price of the Goods.

#### **X. Force majeure**

1. Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event.

2. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

3. If the Force Majeure Event prevents EMP from complying with the Contract for more than five weeks, EMP shall without limiting its other rights or remedies have the right to terminate the Contract immediately by giving written notice to the Customer.

#### **XI. General**

1. Assignment and subcontracting.

a) EMP may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

b) The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of EMP.

2. Notices.

a) Any notice or other communication given to a party under or in connection with the 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 condition, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, 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 condition 11.1; if sent by pre-paid first class post or recorded delivery, 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 condition shall not apply to the service of any proceedings or other documents in any legal action.

3. Severance.

a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

4. Waiver. A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

5. Third party rights. A person who is not a party to the Contract shall not have any rights under or in connection with it.

6. Variation. Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by EMP.

7. Confidentiality. The Customer shall keep confidential all secret and confidential information disclosed by EMP from time to time.

8. Governing law and jurisdiction. 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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.