

GLOBAL MANUFACTURING SUPPLIES LIMITED

CONDITIONS OF SALE

1. DEFINITIONS

In these Conditions, the following expressions shall have the following meanings, unless the context otherwise requires:

"Business Day"	a day (other than a Saturday, Sunday or public holiday) when banks are open for business in London;
"Buyer"	the person, firm or company who purchases Goods from GMS;
"Conditions"	the terms and conditions for the sale of Goods set out in this document;
"Contract"	the contract between GMS and the Buyer for the sale and purchase of the Goods in accordance with these Conditions;
"GMS"	Global Manufacturing Supplies Limited (CRN: 3675121); and
"Goods"	the goods set out in GMS' order acknowledgement form.

2. BASIS OF THE SALE

- 2.1 GMS shall sell and the Buyer shall buy the Goods subject to these Conditions, which supercede any other terms and which govern the Contract to the exclusion of any other terms and conditions which the Buyer purports to apply or which are implied by trade, custom or course of dealing.
- 2.2 No terms and conditions endorsed upon, delivered with or contained in the Buyer's order or other document will form part of the Contract simply as a result of such document being delivered to GMS or referred to in the Contract.
- 2.3 These Conditions constitute the entire agreement between GMS and the Buyer for the supply of Goods and shall apply to any sale and purchase of Goods between GMS and the Buyer (unless varied in accordance with Clause 2.4) notwithstanding the fact that the terms are not attached to GMS's order acknowledgement form.
- 2.4 Any variation to these Conditions is of no effect unless agreed in writing by an authorised representative of GMS.
- 2.5 GMS' employees or agents are not authorised to make any representation concerning the Goods unless confirmed by GMS in writing and the Buyer acknowledges that it does not rely on and waives any claim for breach of any such unconfirmed representation.
- 2.6 Any advice or recommendation given by GMS or its employees or agents to the Buyer as to the storage, application or use of the Goods which is not confirmed in writing by GMS is followed or acted upon entirely at the Buyer's own risk.

3. QUOTATIONS, ORDERS AND SPECIFICATIONS

- 3.1 A quotation by GMS is not an offer. Quotations are subject to withdrawal or revision at any time before acceptance of the Buyer's order by GMS.
- 3.2 No order submitted by the Buyer is accepted by GMS until GMS confirms its written acceptance on its acknowledgement of order form or (if earlier) GMS delivers the Goods to the Buyer.
- 3.3 The Buyer must ensure that the terms of any order (including any specification, whether produced by the Buyer or GMS or its employees, agents or sub-contractors) are complete and accurate.
- 3.4 Where the Goods are manufactured or where standard goods are altered in either case in accordance with information, drawings or instructions supplied by the Buyer:
- 3.4.1 no guarantee or warranty is given by GMS as to the practicability, efficiency, safety or otherwise of the Goods;
- 3.4.2 the Buyer shall indemnify GMS against all liability incurred by GMS as a result of:
- (a) the Goods infringing any intellectual property right or statutory provision; or

- (b) any impracticability, inefficiency, lack of safety or defect in the Goods where any of these is due wholly or partly to faults or omissions in any such information, drawings or instructions;

- 3.4.3 GMS shall not be liable to the Buyer in respect of any loss, damage or claim incurred by or made against the Buyer if any Goods infringe any intellectual property right; and

- 3.4.4 GMS reserves the right to make any changes in the specification of the Goods which are required for the Goods to conform to any applicable safety or other statutory requirements.

4. DESCRIPTION

- 4.1 Any samples, drawings, descriptive matter or advertising issued by GMS and any descriptions, illustrations and particulars of heights and dimensions contained in GMS' catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them.
- 4.2 From time to time, GMS may provide the Buyer with a sample of the Goods to be manufactured. It is the Buyer's responsibility to thoroughly check the sample and to immediately bring any problem or defect to GMS' attention in writing.

5. CANCELLATION AND DELAY

- 5.1 No order may be cancelled by the Buyer except with GMS' written agreement and on terms that the Buyer shall indemnify GMS against all loss (including loss of profit), costs, damages, charges and expenses incurred by GMS as a result of cancellation.
- 5.2 GMS reserves the right to defer the date of delivery, to cancel the Contract or reduce the volume of Goods ordered without liability to the Buyer if it is prevented from or delayed in carrying on its business by any cause beyond GMS' reasonable control which includes (without limitation) Act of God, explosion, flood, tempest, fire or accident, war or threat of war, sabotage, insurrection, civil disturbance, acts, restrictions, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary, local or other authority, import or export regulations or embargoes, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of GMS or of a third party), difficulties in obtaining materials, labour, fuel, parts or machinery, power breakdown or breakdown in machinery.

6. PRICE AND PAYMENT

- 6.1 The price of the Goods is GMS' quoted price, unless otherwise agreed in writing by GMS. GMS reserves the right at any time before delivery to amend the price of the Goods to take in any variation in cost to GMS including (without limitation) exchange rates, import duty, labour, materials, transport or taxes.
- 6.2 All prices are exclusive of the cost of delivery to the Buyer (including transport, packaging, insurance and any taxes, duties or discharges) and any applicable VAT.
- 6.3 Where account facilities are not approved, payment will be cash with order. Where facilities have been approved, payment will be due 30 days from invoice date. Time of payment is of the essence.
- 6.4 Interest at an annual rate of [4%] above Barclays Bank plc base rate from time to time will accrue daily (both before and after judgment) and be calculated on a daily basis on overdue accounts from the date of invoice until payment.
- 6.5 If the Buyer fails to make any payment as the due date then the whole price of all goods bought or agreed to be bought by the Buyer shall be immediately due and payable without demand and GMS may:

- 6.5.1 cancel the Contract or suspend deliveries or performance to the Buyer; and/or

- 6.5.2 appropriate any payment made by the Buyer to such of the Goods (or goods supplied under any other contract between the Buyer and GMS) as GMS sees fit.

- 6.6 Payment to the Buyer shall be made without any deduction or set off.

7. DELIVERY

- 7.1 Delivery of the Goods shall be within a reasonable time by the Buyer collecting the Goods at GMS' premises at any time after GMS has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by GMS, by GMS delivering the Goods to that place at the Buyer's cost. Any dates for delivery are approximate only and time of delivery is not of the essence.
- 7.2 GMS reserves the right to deliver by instalments. Instalment deliveries shall be apportioned over a period of not more than 3 months following the date of the first delivery. Each delivery shall constitute a separate

Contract and failure by GMS to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated.

8. CLAIMS

8.1 The Contract shall be deemed to have been duly performed and the Goods accepted, unless a written claim is received:

8.1.1 in respect of damaged Goods, delay or less (or partial loss), by GMS and the carrier, within 3 days of delivery (seven days in case of export sales where the customer and any local agent must also be notified in writing);

8.1.2 in respect of non-delivery, by GMS and the carrier within 7 days of despatch (or in the case of export sales within 7 days of the expected date of arrival and the insurer and local agent must also be notified in writing);

8.1.3 in respect of defects reasonably apparent on inspection on delivery by GMS, within 3 days of delivery;

8.1.4 in respect of defects not reasonably apparent on inspection on delivery by GMS, within 28 days of delivery.

8.2 Any claim under **Clause 8.1** will not be considered unless the Goods subject to compliant have been stored free of charge for GMS' inspection and full access to the Goods granted for investigation by GMS or its agents.

8.3 In the event of failure by the Buyer to give the appropriate notices as specified by **Clause 8.1** or to fulfil the conditions set out in **Clause 8.2**, any claim by the Buyer is deemed to have been waived.

8.4 Where the Goods are to be delivered in instalments, each delivery shall be a separate contract and failure by GMS to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalment shall not entitle the Buyer to treat the Contract as a whole as repudiated.

8.5 In no event shall the Buyer be entitled to reject the Goods on the basis of any defect or failure which is so slight that it would be unreasonable for the Buyer to reject them.

9. RISK AND PROPERTY

9.1 The Goods remain the property of GMS until:

9.1.1 their full price has been received by GMS; and

9.1.2 all other sums which are or which become due from the Buyer on any account with GMS have been received in full by GMS.

9.2 The Goods are at the risk of the Buyer from the time of delivery or, where GMS gives notice to the Buyer that the Goods are available for collection, on the expiry of 7 days from the date of notice.

9.3 Until ownership of the Goods passes to the Buyer, the Buyer must:

9.3.1 store them at its own cost on its premises separately from any other goods and in a manner which makes them readily identifiable as the goods of GMS;

9.3.2 not destroy, deface or obscure any identifying mark or packaging of the Goods;

9.3.3 maintain the Goods in a satisfactory condition insured on GMS's behalf for their full price against all risks; and

9.3.4 hold the proceeds of insurance referred to in **Clause 9.3.3** on trust for GMS and not mix them with any other money, nor pay the proceeds into an overdrawn account.

9.4 GMS may, so as to discharge any overdue payment, recover or resell the Goods.

9.5 In order to verify the Buyer's compliance with its obligations under **Clause 9.3** and to exercise its rights under **Clause 9.4** GMS shall be entitled by its employees or agents without notice to enter the Buyer's premises or such other premises where the Goods are stored.

9.6 If the Goods shall be sold by the Buyer before payment for them has been made, any such sale shall be a sale of GMS' property on its behalf and the proceeds of such sale should become immediately due to GMS.

10. LIABILITY

10.1 GMS shall not be liable under the Contract (or any other warranty, condition or guarantee) if:

10.1.1 the total price of the Goods has not been paid by the due date for payment;

10.1.2 any defect in the Goods arises from fair wear and tear, wilful damage, negligence, working conditions, storage, failure to follow GMS' instructions (whether oral or written) or maintenance requirements, misuse or alteration or repair of the goods without GMS' prior approval or where the Goods have been manufactured, designed or altered to the Buyer's specific instructions; or

10.1.3 the Goods have been improperly installed or connected by the Buyer, its employees, agents or sub-contractors.

10.2 All warranties, conditions or other terms implied by statute, common law, trade usage or otherwise are excluded to the fullest extent permitted by law.

10.3 Nothing in these Conditions excludes or limits GMS' or the Buyer's liability for death or personal injury caused by that party's negligence or for fraudulent misrepresentation or any other liability which may not be excluded or limited as a matter of law.

10.4 GMS shall not be liable for any defect in any part, material or equipment not manufactured by GMS in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as given by the manufacturer to GMS and which GMS is entitled to and able to assign to the Buyer.

10.5 Subject to **Clause 10.3**:

10.5.1 GMS shall not be liable to the Buyer for any loss of profit, loss of production, financial loss, depletion of goodwill or any indirect or consequential loss, damage, costs or expenses whatsoever which arise out of or in connection with the Contract or its contemplated performance or lack of performance; and

10.5.2 GMS' total liability in contract, tort, misrepresentation or otherwise arising in connection with the performance or contemplated performance of lack of performance of the Contract shall be limited to the price of the Goods.

11. GENERAL

11.1 Each right or remedy of GMS under the contract is without prejudice to any other right or remedy of GMS whether or not under the Contract.

11.2 If any provision of the Contract is found by any competent authority to be invalid, unenforceable or unreasonable, it shall be severed from the remainder of the Contract which shall remain in full force and effect.

11.3 Failure or delay by GMS in enforcing or partially enforcing any provision of the Contract is not a waiver of any of its rights under the Contract.

11.4 Any notice to be given by either party to the other under these Conditions must be in writing addressed to that other party at its registered office or principal place of business or such other address as may have been notified for these purposes. Notices shall be delivered personally or sent by first class post. A notice is deemed to have been received:

11.4.1 if delivered personally, at the time of delivery; or

11.4.2 if sent by pre-paid first class post, on the second working day after posting (exclusive of the day of posting).

11.5 The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it by virtue of the Contracts (Rights of Third Parties) Act 1999.

11.6 GMS may assign or sub-contract the Contract or any part of it and may dispose of or deal in any manner with any of its rights or beneficial interests under it. The Buyer may not assign the Contract or dispose of or deal in any manner with any of its rights or beneficial interests under it.

11.7 The Contract and these Conditions shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.