



***The following are the general terms and conditions of purchase (“Terms”) of ELG Metals UK Limited (UK company number 01517971) (“we” “our” or “us”) on which we have agreed to purchase goods (“Goods”) and/or services (“Services”) from you (“Supplier”).***

These Terms shall apply exclusively to all contracts concluded between us and the Supplier concerning the purchase of Goods. We do not acknowledge any general terms and conditions of the Supplier which are contrary to or differ from our Terms unless we have expressly approved their validity in writing. Our Terms shall also apply if we accept or pay for deliveries of Goods by the Supplier in the knowledge of terms and conditions of the Supplier which are contrary to or differ from our Terms. Terms and conditions of the Supplier shall not apply even if we do not specifically object separately to their validity.

## **1. Conclusion of contracts and amendments of contracts, prices**

1.1 Subject to clause 1.2 a contract (“Contract”) shall only be formed if ELG’s Purchasing Department issues an order confirmation (“Order Confirmation”) for the purchase of Goods and/or Services from the Supplier in accordance with these Terms. Verbal agreements prior to or upon conclusion of the Contract shall only be valid when confirmed by an Order Confirmation.

1.2 If the Supplier does not wish to proceed with an Order Confirmation it must inform us within five (5) calendar days of receipt of the Order confirmation, otherwise the Contract shall be irrevocably binding. The Supplier shall not be required to countersign/return the Order Confirmation.

1.3 These Terms 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.

1.4 The agreed prices are the fixed prices set out in the purchase order. Unless otherwise agreed in writing, prices are DDP in accordance with Incoterms 2020 including packaging. The price of the Goods does not include any applicable value added tax (VAT) or other sales taxes at the prevailing rate subject to the receipt of a valid VAT invoice.

1.5 Our purchase orders are based on the Supplier’s warranty that the Goods are registered under REACH. We shall have the right to request the Supplier to submit certificates of origin and inspection with respect to the Goods, especially with respect to the REACH Regulation, free of charge.

## **2. Delivery, passing of risk**

2.1 Changes to the Contract may only be made with our prior written consent.

2.2 The order date, contact partner and purchase order reference number (purchase order number) must be indicated on all shipping documents (delivery note, consignment notes etc.), all invoices and all correspondence with us.

2.3 Agreed delivery dates and periods are binding. Compliance with a delivery date or period shall be determined by receipt of the Goods by us. Where a calendar week is agreed as the delivery period, the last date shall be Friday of that week. In the absence of an express agreement, the Goods shall be delivered to our premises as stated in the purchase order.

2.4 If agreed delivery dates are not complied with, we are entitled to the remedies set out in clause 15. If the Supplier anticipates difficulties regarding compliance with the delivery date or similar circumstances which could prevent the Supplier from supplying on time or supplying in the agreed quality, the Supplier shall notify our Purchasing Department immediately in writing.

2.5 Unconditional acceptance of a late delivery of Goods or Services shall not constitute a waiver of claims for compensation, to which we are entitled due to the late or incomplete delivery of Goods or Services. This shall also apply after payment from us for the Goods or Services in question has been made in full.

2.6 We shall only take delivery of the quantities or numbers of items we have ordered. Excess deliveries or short deliveries will only be accepted if previously agreed with us or if they are reasonable for us. We may at our discretion reject Goods delivered late or excess Goods and any rejected Goods shall be returnable at the Supplier’s risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and we accept the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

2.7 Values determined by us during the incoming Goods inspection shall be decisive as to the numbers of items, weights and dimensions unless otherwise proved.

2.8 Goods shall be packed to prevent loss or damage during transport. The use of packaging materials shall be limited to the extent required for that purpose. Only environment-friendly, non-toxic, easily recyclable packaging materials may be used. Reuse systems are to be preferred. The Supplier shall ensure that if it requires us to return any packing material, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.

2.9 The Supplier shall provide any freight forwarders engaged with shipping documents to be handed over at the place of destination which indicate the nature of the Goods supplied, the quantity and number on the order confirmation. Where different types of Goods are supplied, a loading list shall be enclosed. If one or several of these details are omitted, we shall not assume any liability for any reduction in valuation and billing arising therefrom, save for a case in clause 11 below.

2.10 The combination of different types of Goods shall only be permitted on the basis of a specific written agreement. Sorting costs incurred shall be borne by the Supplier.

2.11 Irrespective of any delivery terms pursuant to Incoterms 2020 being agreed as part of the Contract, risk in the Goods (including the risk of accidental loss or accidental deterioration) shall pass to us on acceptance of the Goods by ourselves or our representative at the place where the Goods are to be delivered according to the Contract.

## **3. Force majeure**

3.1 Force majeure and industrial disputes shall release us from our obligations to perform for the duration of the disruption and to the extent of its effect. We shall, however, be obliged to the extent reasonable to give the Supplier all relevant information immediately and to adapt our obligations to the changed circumstances in good faith.

3.2 We shall be released from the obligation to take delivery of the Goods and/or Services in whole or in part and shall have the right to rescind the Contract in this respect if the Goods and/or Services can no longer be used, taking into account economic considerations and the justified interests of the Supplier, due to the delay caused by force majeure and industrial disputes.

## **4. Notice of dispatch and invoice**

The information in our purchase orders and call-offs for delivery shall apply. One copy of the complete and valid invoice shall be addressed to us at the address in our purchase order, indicating the invoice number and other identifiers. It may not be enclosed with the shipments.

## **5. Terms of payment**

5.1 Unless otherwise specifically agreed, we shall pay invoices either within 14 days less a 3 % cash discount, or within 30 days without deduction, as of the due date of the request for payment and receipt of both the invoice and the Goods and/or Services by us. Payment shall be subject to verification of the invoice and made to the bank account nominated in writing by the Supplier.

5.2 Invoices that are not correctly submitted (i.e. accurate, complete, correct and auditable) shall be deemed received by us only when correct. The term of payment for invoices shall begin upon receipt of a complete, valid, correct and auditable invoice. Where Goods or Services is defective, we shall have the right to withhold a proportionate amount of the payment until proper performance.

5.3 We may at any time, without limiting any of our other rights or remedies, set off any liability of the Supplier to us against any liability of us to the Supplier.

## **6. Guarantee, warranty, product liability**

6.1 The Supplier warrants that:

- a) the Goods shall correspond with their description;



- b) the Goods are of satisfactory quality (within the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by us expressly or by implication, and in this respect we rely on the Supplier's skill and judgment;
- c) the Services shall be performed with all reasonable care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- d) it shall provide all equipment, tools and vehicles and such other items as are required to provide the Services; and
- e) it shall use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract.

6.2 The Supplier further warrants that the Goods and Services shall be free from defects in materials and workmanship for a period of 36 months from the date of delivery.

6.3 We shall examine the Goods within a reasonable period for any defects in quality or deviations in quantity to the extent that is reasonably and technically possible for us. We shall notify the Supplier of obvious defects in the Goods and/or Services immediately in writing as soon as they are determined but at the latest within 14 calendar days of their detection.

6.4 We shall give notice of hidden defects immediately but at the latest within 14 days of their detection.

6.5 If we give notice in writing pursuant to clause 6.3 the Supplier shall be given a reasonable opportunity to examine such Goods. Where a valid claim is made, we shall be entitled to a replacement of the defective Goods or reperformance of the defective Services (as the case may be) or a refund of the price.

6.6 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.

6.7 The Supplier warrants that all Goods and Services comply with the relevant legal provisions and the regulations and guidelines of authorities, and trade associations. If deviations from these regulations are necessary in individual cases, the Supplier must obtain our written consent for this. This consent shall not limit the Supplier's liability for defects.

6.8 If a claim is asserted against us for violation of official safety regulations or by reason of domestic or foreign product liability regulations or laws because of the defectiveness of goods which is attributable to the Supplier's Goods, we shall then have the right to request compensation for this damage from the Supplier if this was caused by the Goods delivered by the Supplier. The Supplier shall carry out quality assurance which is appropriate in nature and scope and corresponds to state-of-the-art technology and shall provide us with proof of this upon request. The Supplier shall conclude a corresponding quality assurance agreement with us if we deem this necessary. The Supplier shall furthermore insure itself for an adequate amount against all risks arising from product liability including the risk of recall and upon request submit the insurance policy to us for inspection.

## **7. Radioactivity, danger of explosion, hollow bodies**

7.1 The Supplier guarantees that all Goods, raw materials or commodities supplied by it are free from substances which have been exposed to radiation, parts suspected of containing explosive material and hollow bodies.

7.2 The Supplier furthermore warrants that all material supplied was checked for radioactivity using measuring devices which conform with state-of-the-art technology. The Supplier supplies exclusively material where there were no indications, within the scope of the measuring accuracy of the measuring equipment, of ionising radiation above naturally occurring background radiation. All legal regulations applicable to the Goods (including Directive 96/29 EURATOM) must be complied with.

7.3 If the Supplier breaches clause 7.1 above, it shall be liable for all contractual losses, including without limitation loss of profits and consequential loss. The Supplier shall also be liable for consequential damages due to production stoppages and/or plant closure, personal injury

and their consequential costs as well as the costs for disposing of the contaminated material.

## **8. Origin of goods**

8.1 The Supplier shall specify the country of origin of the Goods in commercial documents and shall at our request provide a certificate of origin concerning the origin of the Goods.

8.2 The Goods shall fulfil the origin requirements of the bilateral or multilateral preferential agreements or the unilateral origin requirements of the Generalised System of Preferences for beneficiary countries (GSP) if the deliveries are made within the scope of such transactions.

## **9. Intellectual Property Rights**

9.1 The Supplier guarantees and warrants that all Goods and Services are free of third-party property rights and in particular that the delivery and use of the Goods and Services does not infringe patents, licences or other third party property rights.

9.2 The Supplier shall indemnify us in accordance with clause 10.

9.3 We shall have the right, at the Supplier's expense, to obtain approval from the beneficiary to use the Goods in question.

## **10. Indemnity**

10.1 The Supplier shall keep us indemnified against all liabilities, costs, expenses, damages, losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation 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 us as a result of or in connection with:

- a) any claim made against us for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the manufacture, supply or use of the Goods, or receipt, use or supply of the Services to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- b) any claim made against us by a third party for death, personal injury or damage to property arising out of or in connection with defects in the Goods or Services, to the extent that the defects in them are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
- c) any claim made against us by a third party arising out of or in connection with the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

10.2 This clause 10 shall survive termination of the Contract.

## **11. Liability of ELG**

Except in respect of death or personal injury caused by our negligence or any other liability which cannot be excluded by law, our entire liability under or in connection with these Terms shall not exceed the price payable under the Contract. Notwithstanding anything else contained in these Terms we shall not be liable to the Supplier for loss of profits or contracts, indirect or consequential losses whether arising from negligence, breach of contract or otherwise.

## **12. Quality and documentation**

12.1 The Supplier shall continuously verify the quality of the Goods. The Supplier shall notify us of any potential improvements immediately.

12.2 If minimum and/or maximum values of parameters are specified in a purchase order, these values may not be exceeded or fall short of the minimum values in any area of the Goods. This shall be assured and documented by suitable test and measurement procedures. We shall have the right to request the notification of the results of such verification in writing at any time and without additional costs.

12.3 Product-specific and/or technical documentation, certificates of conformity and other documents, certificates and operating instructions



required for the contractual item or its use, and the marking of the parts and Goods and/or their packaging required by law shall form part of the scope of delivery without separate charge.

12.4 The Supplier shall ensure that the Goods can be traced exactly through batches.

### **13. Title**

Title to the Goods passes to us on delivery.

### **14. Execution of work**

Persons who carry out work at our business premises in the performance of the Contract shall comply with our respective internal rules. We shall not be liable for accidents which befall such persons on our business premises shall be excluded unless they were caused by intentional or grossly negligent breach of duty by us or our legal representatives or vicarious agents.

### **15. Remedies**

15.1 If the Supplier fails to deliver the Goods and/or perform the Services in accordance with the Terms, we shall, without limiting or affecting our other available rights or remedies, have one or more of the following rights:

- a) to terminate the Contract with immediate effect by giving written notice to the Supplier;
- b) to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- c) to recover from the Supplier any costs incurred by us in obtaining substitute goods and/or services from a third party;
- d) to require a refund from the Supplier of sums paid in advance for the Services that the Supplier has not provided and/or Goods that it has not delivered; and
- e) to claim damages for any additional costs, loss or expenses incurred by us which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

15.2 If the Goods are not delivered in accordance with clause 2 we may, at our option, claim or deduct 0.5 % of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 10% of the total price of the Goods. If we exercise our rights under this clause 15.2, we shall not be entitled to any of the remedies set out in clause 15.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).

15.3 If the Supplier has delivered Goods that do not comply with the warranty in clause 6.2, then, without limiting or affecting other rights or remedies available to us, we shall have the right to 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).

15.4 These Terms shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

15.5 Our rights and remedies under these Terms are in addition to our rights and remedies implied by statute and common law.

### **16. Provision**

Substances, parts, containers and special packaging provided by us shall remain our property. They may only be used for their intended purpose. Substances shall be processed and parts assembled for us.

### **17. Confidentiality**

All business, technical or product-related information, especially calculation data, manufacturing specifications, internal production information and data, of whatever kind, made accessible by us to the Supplier, including other development or manufacturing features to be taken from any objects, documents or data provided shall not be disclosed to third parties and may only be made available to the Supplier's employees, agents or subcontractors who must necessarily be involved in their use for the purpose of the Goods and/or Services provided to us and have confirmed in writing to treat them as confidential and to comply with the obligations as set out in this clause as though they were a party to the Contract. We shall retain the exclusive title to

such items. This shall not apply insofar and as long as such information is proven to be in the public domain or a legal or official obligation of disclosure exists. Such information may not be reproduced or used commercially, other than for deliveries to us, without our prior written consent.

### **18. Data protection**

We store data arising from the contractual relationship for the purpose of data processing and solely for the purpose of implementing concluded contracts.

### **19. Employment law compliance**

19.1 The Supplier shall ensure that the employees used by it or the subcontractors it uses or personnel service providers to execute contracts with customers are paid the legal minimum wage. The Supplier shall likewise ensure that mandatory obligations to pay contributions to social security institutions, employers' liability insurance associations and other bodies, are complied with. The Supplier shall verify compliance with the preconditions pursuant to this clause 19.1 when selecting sub-contractors or personnel service providers.

19.2 Illegal employment of any nature is prohibited.

19.3 We have declared the notion of compliance to be a key company value. We expect the Supplier, therefore, to comply with respectively applicable national statutory provisions within the scope of its business activities on behalf of and with us. This applies in particular to legal requirements in relation to industrial safety and employee protection, compliance with human rights, prohibition of child labour, criminality of corruption and the granting of advantages of any kind and in relation to environmental protection etc. Furthermore, we expect the Supplier to communicate these principles and requirements to its sub-contractors and suppliers and to encourage them to comply with these laws as well.

### **20. Compliance with relevant laws and policies**

20.1 In performing its obligations under the Contract, the Supplier shall:

- a) comply with all applicable laws, statutes, regulations and codes from time to time in force; and
- b) comply with our mandatory policies (including anti-slavery and human trafficking, data protection, privacy and anti-bribery) in force from time to time. Copies of these are available on request.

### **21. Termination**

21.1 Without affecting any other right or remedy available to us, we may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- a) there is a change of control of the Supplier; or
- b) the Supplier's financial position deteriorates to such an extent that in our opinion, the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- c) the Supplier commits a material breach of clause 20.

21.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

- a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of that party being notified in writing to do so;
- b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any other composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

21.3 On termination of the Contract, the Supplier shall immediately deliver to us all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in



any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts) whether or not then complete, and return all materials, equipment and tools, drawings, specifications and data supplied by us to the Supplier. If the Supplier fails to do so, then we may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.

21.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination.

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

## **22. General**

22.1 Contracts concluded with us may only be transferred to third parties with our written consent. This shall also apply to claims arising from the Contracts concluded with us.

22.2 Amendments to and modifications of these Terms shall only be valid when given in writing and signed by the parties (or their authorised representatives).

22.3 If any provision of these Terms is declared by any judicial or any other competent authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by us from any competent authority then that provision shall be limited or eliminated to the minimum extent necessary so these Terms shall otherwise remain in full force and effect and enforceable.

22.4 Each party acknowledges that these Terms contain the entire agreement between them and that the Supplier has not relied on any verbal or written representations made by us or our employees or agents.

22.5 These Terms supersede any prior agreement whether written or oral.

22.6 Any notice or other information required or permitted to be given under these Terms shall be deemed to have been validly given if served personally on that party or if sent by first class pre-paid post or email to the last known address of that party. If sent by first class pre-paid post, it shall be deemed to have been received 2 days after the date of posting. If sent by email (and provided the email is supported by a valid server delivery receipt), it shall be deemed to have been received on the same day if sent during normal working hours or on the next working day where sent outside such hours.

22.7 No waiver by us of any breach of these Terms by the Supplier shall be considered as a waiver of any subsequent breach of the same or any other provisions.

22.8 These Terms shall not be enforceable by a person who is not a party to them under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

22.9 Place of performance for deliveries and payments is England and Wales.

22.10 These Terms shall be governed by English law and the English Courts shall have exclusive jurisdiction to decide any dispute concerning these Terms. We shall also have the right at our option to bring an action against the Supplier at its place of general jurisdiction.

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