

**MAGNESIUM ELEKTRON LIMITED  
T/A MEL CHEMICALS (“COMPANY”)  
TERMS AND CONDITIONS OF PURCHASE**

**1 INTERPRETATION**

1.1 In these Conditions, the following definitions apply:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 13.7.

**Contract:** the contract between the Company and the Supplier for the sale and purchase of the Goods in accordance with these Conditions.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** a purchase order for the Goods submitted by the Company in writing.

**Specification:** any specification for the Goods issued to the Supplier by the Company, including any related plans and drawings.

**Supplier:** the person or firm from whom the Company purchases the Goods.

1.2 In these Conditions, unless the context requires otherwise, the following rules apply:

- (a) 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.
- (b) 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.
- (c) A reference to **writing** or **written** includes e-mails but not faxes.

**2. BASIS OF CONTRACT**

2.1 These Conditions apply to and form part of 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.

2.2 The Order constitutes an offer by the Company to purchase the Goods in accordance with these Conditions.

2.3 The Order shall be deemed to be accepted on the earlier of the Supplier issuing a written acceptance of the Order or the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

### **3. THE GOODS**

3.1 The Supplier shall ensure that the Goods shall:

- (a) correspond with their description, any applicable Specification and all classifications and standards referred to in the Order;
- (b) be of satisfactory quality (within the meaning of 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 the Company expressly or by implication, and in this respect the Company relies on the Supplier's skill and judgement; and
- (c) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 Without limitation to clause 3.1, if the Goods comprise raw materials the Supplier shall:

- (a) notify the Company of changes in product and/or process definition and, where required, obtain organisational approval;
- (b) allow rights of access for the Company, its customers and regulatory authorities to all relevant facilities and all applicable records;
- (c) flow down to sub-tier suppliers the applicable requirements in the purchasing documents, including key characteristics where required; and
- (d) maintain records of all quality related information pertaining to the Order for a minimum of 15 years.

3.3 The Supplier shall ensure that at all times it has, and that it shall maintain, all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

### **4. DELIVERY**

4.1 The Supplier shall ensure that:

- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered;
- (c) any declarations or documents providing confirmation of the origin of the Goods shall be supplied to the Company immediately upon request; and

- (d) if the Supplier requires the Company to return any packaging material to the Supplier, 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.

4.2 The Supplier shall deliver the Goods:

- (a) by no later than the date specified in the Order;
- (b) to the location set out in the Order, or as instructed by the Company prior to delivery (**Delivery Location**); and
- (c) during the Company's normal business hours, or as instructed by the Company.

4.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.

4.4 If the Supplier delivers more or less than the quantity of Goods ordered by a differential of 10% or more, the Company may reject the delivery. If the Company elects to accept the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

4.5 The Supplier shall not deliver the Goods in instalments without the Company's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Company to the remedies set out in clause 5.

## 5. **REMEDIES**

5.1 If the Goods are not delivered on the date they are due as referred to in clause 4.2(a), or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, the Company shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods:

- (a) to terminate the Contract;
- (b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
- (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;
- (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- (e) to recover from the Supplier any costs incurred by the Company in obtaining substitute goods from a third party; and

- (f) to claim damages for any other costs, loss or expenses incurred by the Company which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
  
- 5.2 If the Goods are not delivered on the due date the Company may at its option claim or deduct 1% of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 5% of the total price of the Goods. If the Company exercises its rights under this clause 5.2, it shall not be entitled to any of the remedies set out in clause 5.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).
  
- 5.3 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
  
- 5.4 The Supplier shall keep the Company indemnified in full against all liabilities, costs, expenses, damages and 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 the Company as a result of or in connection with:
  - (a) any claim made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods, 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 the Company by a third party arising out of, or in connection with, the supply of the Goods, 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; and
  - (c) any claim made against the Company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.

This clause 5.4 shall survive termination of the Contract.

- 5.5 The Company's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

**6. TITLE AND RISK**

- 6.1 Title in the Goods shall pass to the Company on delivery unless payment for the Goods is made beforehand, in which case title shall pass to the Company at the time of payment.
- 6.2 Risk in the Goods shall pass to the Company on delivery. If the Goods are rejected pursuant to clause 5.1, risk shall pass to the Supplier upon the Company notifying the Supplier of its rejection of the same.

**7. PRICE AND PAYMENT**

- 7.1 The price of the Goods shall be the price set out in the Order.
- 7.2 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**), but (unless otherwise stated in the Order) includes the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing by the Company.
- 7.3 The Company shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 7.4 The Company shall pay correctly rendered invoices (which quote the correct Order number) within the time period specified in the Order.

**8. COMPANY MATERIALS**

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Company to the Supplier (**Company Materials**) and all rights in the Company material are and shall remain the exclusive property of the Company. The Supplier shall keep the Company Materials in safe custody at its own risk, maintain them in good condition until returned to the Company, and not dispose or use the same other than in accordance with the Company's written instructions or authorisation.

**9. INSURANCE**

During the term of the Contract and for a period of 12 months thereafter, the Supplier shall maintain in force, with a reputable insurance company, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Contract, and shall, on the Company's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **10. CONFIDENTIAL INFORMATION**

- 10.1 A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are of a confidential information and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.
- 10.2 This clause 10 shall survive termination of the Contract.

## **11. COMPLIANCE WITH LAWS**

- 11.1 In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force, including without limitation;
- (a) all anti-bribery and anti-corruption laws, including but not limited to the Bribery Act 2010; and
  - (b) all anti-slavery and human trafficking laws, including but not limited to the Modern Slavery Act 2015;
- and the Supplier shall maintain in place throughout the term of the Contract its own policies and procedures to ensure compliance with the same and will enforce them where appropriate.
- 11.2 Without limitation to clause 11.1, the Supplier shall ensure that it includes in all contracts with its subcontractors and suppliers appropriate provisions to ensure compliance with applicable laws, statutes, regulations and codes in terms that are at least as onerous as those set out in this clause 11.1.
- 11.3 The Company may immediately terminate the Contract for any breach of clause 11.

## **12. TERMINATION**

- 12.1 The Company may terminate an Order, in whole or in part at any time before delivery with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on such Order. The Company shall pay the Supplier fair and reasonable compensation for any work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

12.2 Without limiting its other rights or remedies the Company may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within 7 days of being notified in writing to do so;
- (b) the Supplier takes any step or action in connection with its entering administration, provisional liquidation or any 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 Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with his creditors, having a receiver appointed to any of his 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;
- (d) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (e) the Supplier's financial position deteriorates to such an extent that in the Company's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

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

### **13. GENERAL**

#### **13.1 Assignment and subcontracting.**

- (a) The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, charge or deal in any other manner with any or all of its rights or obligations under the Contract without the Company's prior written consent.
- (c) The Supplier may not subcontract any or all of its rights or obligations under the Contract without the prior written consent of the Company. If the Company consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

13.2 **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 clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier 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 clause 13.2(a); 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 e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.3 **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.

13.4 **Entire agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.5 **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.

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



- 13.7 **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 the Company.
- 13.8 **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, law of England and Wales, and the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any such dispute or claim.