

## **SSS SUPER ALLOYS LIMITED – CONDITIONS OF PURCHASE (SERVICES)**

### **1. DEFINITIONS AND INTERPRETATION**

In these Conditions (unless the context otherwise requires), the following words and phrases shall have the following meanings:

“Buyer” means SSS Super Alloys Limited a company registered in England and Wales under number 5045017 whose registered office is at Mill House, Forge Lane, Minworth, Sutton Coldfield, B76 1AH, and any subsidiary of the Company.

“Commencement Date” means the date the Contract is signed by both Parties.

“Conditions” means these terms and conditions of purchase.

“Contract” means a contract for the purchase of Services including any Order made by or on behalf of the Buyer with a Supplier pursuant to these Conditions.

“Force Majeure Event” means any circumstance beyond the reasonable control of the parties including, but not limited to acts of God, fire, explosion, adverse weather conditions, flood, earthquake, terrorism, riot, civil commotion, war, hostilities, strikes, work stoppages, slow-downs or other industrial disputes, accidents, riots or civil disturbances, acts of government, lack of power and delays by suppliers or materials shortages.

“Intellectual Property” includes patents, inventions, know how, trade secrets and other confidential information, registered designs, copyrights, database rights, design rights, rights affording equivalent protection to copyright, database rights and design rights, semiconductor topography rights, trademarks, service marks, logos, domain names, business names, trade names, moral rights, and all registrations or applications to register any of the aforesaid items, rights in the nature of any of the aforesaid items in any country or jurisdiction, rights in the nature of unfair competition rights and rights to sue for passing off.

“Order” means an order in writing on the Buyer’s official purchase order form for the Services issued by the Buyer to the Supplier together with all documents referred to in it.

“Services” means the various services each of which is described in the Order to be supplied by the Buyer to the Supplier in accordance with these Conditions and the relevant Order.

“Supplier” means any person, firm or company to whom an Order is addressed.

“Working Day” means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or a statutory holiday.

1.1 In these Conditions (unless the context otherwise requires):

1.1.1 construction of these Conditions shall ignore the headings (all of which are for reference only);

1.1.2 obligations undertaken by a party which comprises more than one person shall be deemed to be made by them jointly and severally;

1.1.3 words importing persons shall include firms, companies and bodies corporate and vice versa;

1.1.4 words importing the singular shall include the plural and vice versa;

1.1.5 words importing any one gender shall include either other gender;

1.1.6 any reference to any legislative provision shall be deemed to include any subsequent re-enactment or amending provision.

1.2 Unless otherwise expressly stated in the Order if there is any conflict between the terms of the Order and these Conditions the terms of the Order shall prevail.

### **2. APPLICATION**

Subject to the terms of Clause 1.2 these Conditions shall govern and be incorporated into every Contract, and shall prevail over any terms or conditions (whether or not inconsistent with these Conditions) contained or referred to in any correspondence or documentation submitted by the Supplier or elsewhere or implied by custom, practice or course of dealing.

### **3. ACCEPTANCE OF ORDER**

3.1 The Supplier’s execution and return of the acknowledgement copy of the Order, or the execution or commencement of delivery of the Services, constitutes the Supplier’s acceptance of the Order subject to these Conditions.

3.2 The Buyer is not liable for any Order unless:

3.2.1 it has been placed on behalf of the Buyer by its duly authorised representative; and

3.2.2 the Supplier confirms its acceptance of such Order and these Conditions as set out in condition 3.1.

### **4. SUPPLY OF SERVICES**

4.1 The Supplier shall provide each of the Services to the Buyer in accordance with its Order and the Buyer agrees to purchase from the Supplier each of the Services in accordance with these conditions.

4.2 Unless otherwise expressly provided in the relevant Order, the Supplier shall provide each of the Services to the Buyer with all the skill, care and diligence that would be expected from a supplier of similar or identical services providing such services to a high standard.

4.3 The Supplier shall carry out its obligations in accordance with any dates specified in any Order and such dates shall be of the essence of the Contract.

4.4 Each Order shall create a separate and binding supply relationship between the parties in respect of its subject matter on the terms contained in these Conditions. In respect of each of the Services the parties shall comply with the provisions of the relevant Order.

## **5. TERM**

The Contract shall come into force on the Commencement Date and shall continue in force until termination of the Contract in accordance with the provisions of Condition 10, or the expiry of the term stated in the Order, whichever is the earlier.

## **6. PRICE**

6.1 The price for each of the Services to be paid by the Buyer to the Supplier and the provisions for adjusting such price are set out in the relevant Order. The Supplier shall not be entitled to increase the price of the Services without the prior written consent of the Buyer.

6.2 If an Order refers to a published price index or market price and such price index or market price ceases to be published the parties shall use their best endeavours in good faith to agree an alternative price index or market price and any amendments required to the relevant price review provisions in the relevant Order.

6.3 If the parties are unable to agree an alternative price index or market price and any relevant price review provisions within 21 Working Days, the matter shall be referred to the dispute resolution procedure set out in Condition 12.

6.4 Until an alternative price index or market price is agreed or determined, the parties shall make and accept payments for the relevant Services on the basis that the last published price index or market price applies to the calculation of the relevant payments.

## **7. PAYMENT**

7.1 Notwithstanding any other provision to the contrary in the Contract or the relevant Order, the Supplier shall invoice the Buyer for all Services provided at the end of the month in which the provision of the Service being invoiced was successfully completed by the Supplier.

7.2 The Buyer shall make all payments due to the Supplier under this Agreement by cheque within 90 days of the receipt of the relevant invoice.

7.3 Unless otherwise provided in the Order, the Supplier shall (if applicable) add to the price of the Services, and the Buyer shall pay, an amount equal to any VAT or other sales tax or duty applicable from time to time to sales or supplies of such Services. In the case of VAT, the Supplier shall issue to the Buyer a proper VAT invoice in respect of such payment and if the Buyer has paid VAT to the Supplier in respect of the supply of Services and any adjustment is made to the price with the effect that the Supplier has to make a payment to the Buyer, the Supplier shall, in addition to the payment of such amount, refund VAT on such payment.

7.4 Any dispute regarding any invoice or other request for payment shall be referred to the dispute resolution procedure set out in Condition 12. Disputed portions of payments may be withheld until the dispute is resolved, and no interest shall be payable.

7.5 The Supplier shall maintain proper records for at least three years in order to verify the prices for each Service as determined in accordance with the relevant Order and, where an independent expert is appointed under the dispute resolution procedure set out in Condition 12, the Supplier shall allow such independent expert reasonable access to such records provided the independent expert agrees to be bound by reasonable confidentiality restrictions.

## **8. INTELLECTUAL PROPERTY**

Unless otherwise provided in the relevant Order, the Supplier acknowledges that title to all Intellectual Property created, developed, subsisting or used in or in connection with the provision of the Services under the Contract will be the absolute property of and will vest and remain vested in the Buyer and that the Supplier shall have no right in or to the Intellectual Property save the right to use it as permitted in the relevant Order.

## **9. CONFIDENTIALITY**

9.1 In this Condition 9, "Confidential Information" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by the Buyer to the Supplier whether before or after the date of the Contract including, but not limited to, information relating to the Buyer's products, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business affairs.

9.2 During the term of the Contract and after termination or expiry of the Contract for any reason the Receiving Party:

9.2.1 shall not use Confidential Information for a purpose other than the performance of its obligations under the Contract;

9.2.2 shall not disclose Confidential Information to any person except with the prior written consent of the Buyer or in accordance with Conditions 9.3 and 9.4; and

9.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.

9.3 During the term of the Contract the Supplier may disclose Confidential Information to any of its directors, other officers, employees, sub-contractors and customers (a "Recipient") to the extent that disclosure is necessary for the purposes of the Contract.

9.4 Before disclosure of Confidential Information to a Recipient, the Supplier shall ensure that such Recipient is made aware of and complies with the Supplier's obligations of confidentiality under these Conditions as if the Recipient was a party to the Contract.

9.5 Clauses 9.2 to 9.4 do not apply to Confidential Information which:

9.5.1 is at the Commencement Date or becomes at any time after that date publicly known other than by the Supplier's or Recipient's breach of these Conditions;

9.5.2 can be shown by the Supplier to the Buyer's satisfaction to have been known by the Supplier before disclosure by the Buyer to the Supplier;

9.5.3 is or becomes available to the Supplier otherwise than pursuant to the Contract and free of any restrictions as to its use or disclosure; or

9.5.4 is required to be disclosed by law.

## **10. TERMINATION**

10.1 Save as otherwise provided in the relevant Order, the Contract and the supply of any Services under the Contract may be terminated by the Buyer on not less than one month's prior written notice to the Supplier.

10.2 If:

10.2.1 there is a breach of the Supplier's obligations under these Conditions and:

10.2.1.1 the Buyer gives notice to the Supplier setting out details of:

(a) the breach;

(b) the steps required to remedy the breach; and

(c) a period of 30 days in which the breach is required to be remedied;

10.2.1.2 the Supplier fails to remedy the breach in accordance with such notice to the Buyer's reasonable satisfaction; and

10.2.1.3 the breach complained of was not at the time such notice was given of such seriousness as to fall within Condition

10.2.3; or

10.2.2 the Supplier becomes insolvent; or

10.2.3 there is either a single breach of the Supplier's obligations under these Conditions which is individually of such seriousness as to allow the Buyer to treat the Contract as repudiated and discharged by breach or more than one breach of such obligations which are cumulatively of such seriousness, then the Buyer may terminate the Contract forthwith by giving notice to that effect to the Supplier.

10.3 In this Condition the Supplier shall be deemed insolvent if:

10.3.1 a meeting is convened, or a petition is presented, or an order is made, or an effective resolution is passed, or notice is given for its winding up or dissolution (other than for the sole purpose of amalgamation and reconstruction); or

10.3.2 an application is made for, or any meeting of its directors or members resolves to make an application for an administration order in relation to it or any party gives or files notice of intention to appoint an administrator of it or such an administrator is appointed; or

10.3.3 an incumbrancer takes possession, or a receiver or manager or administrative receiver is appointed, of the whole or any part of its assets; or

10.3.4 it ceases or suspends payment of any of its debts or is unable to pay its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986; or

10.3.5 a proposal is made for a composition in satisfaction of its debts or a scheme or arrangement of its affairs including a voluntary arrangement within the meaning of part I of the Insolvency Act 1986; or any similar step or proceeding is taken or made in any jurisdiction to which the Supplier is subject.

## **11. CONSEQUENCES OF TERMINATION**

11.1 Upon cessation of provision of any Services, the Supplier at the request of the Buyer shall co-operate with the Buyer for a period of 3 months and give the Buyer such assistance as the Buyer may

reasonably request to ensure an efficient and economical transition to the new supplier of the relevant Services.

11.2 Save as provided in Condition 11.1, upon termination of the supply or purchase of any Services under the Contract all rights and obligations of the parties in respect of those Services only shall cease to have effect except that termination shall not affect:

11.2.1 accrued rights and obligations of the parties in respect of those Services at the date of termination; and

11.2.2 any express obligations in these Conditions of a continuing nature.

## **12. DISPUTE RESOLUTION**

12.1 In the event of any dispute or difference arising between the parties in connection with the Contract, the parties shall attempt to resolve such dispute or difference in good faith and without recourse to legal proceedings.

12.2 If the parties are unable to resolve such dispute or difference within 15 Working Days of initial discussions between the parties taking place, either party may request the other in writing that the matter be referred to senior representatives of the parties with authority to settle the dispute, who shall attempt to resolve the dispute within 30 Working Days of the written request to do so.

12.3 If the dispute or difference is not resolved as a result of a meeting of the senior representatives of the parties pursuant to Condition 12.2, or if no meeting of the senior representatives occurs within the prescribed time periods set out in that Condition, either party may request the Centre for Dispute Resolution ("CEDR") in writing to appoint an independent expert.

12.4 If either party so requests CEDR to appoint an independent expert, such party must instruct CEDR to ensure that the expert:

12.4.1 acts as an expert and not an arbitrator;

12.4.2 affords the parties the opportunity within reasonable time limits to make representations to him;

12.4.3 informs each party of the representations of the other;

12.4.4 affords each party the opportunity within reasonable time limits to make submissions to him on the representations of the other; and

12.4.5 notifies the parties of his decision with reason as quickly as practicable.

12.5 The fees and expenses of the expert including the cost of his nomination shall be borne equally by the parties who shall bear their own costs as to the submission and determination of the dispute or difference by the expert, save as where otherwise directed by the expert.

12.6 The expert's determination is to be conclusive and binding on the parties except where there is fraud or a manifest error or on a matter of law.

12.7 The above Conditions shall not prevent either party issuing legal proceedings prior to commencement or completion of the expert determination procedure set out above where that party seeks injunctive relief from the courts in circumstances where damages will not provide adequate remedy to that party.

## **13. FORCE MAJEURE**

13.1 If a party (the "Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under these Conditions by a Force Majeure Event:

13.1.1 the Affected Party's obligations under these Conditions are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;

13.1.2 within 5 days of the start of the Force Majeure Event, the Affected Party shall notify the other party (the "Non-Affected Party") in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under these Conditions;

13.1.3 if the Affected Party does not comply with Condition 13.1.2 it forfeits its rights under condition 13.1.1;

13.1.4 the Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under these Conditions; and

13.1.5 within 5 days starting on the day of the end of the Force Majeure Event, the Affected Party shall notify the other party in writing that the Force Majeure Event has ended and resume performance of its obligations under these Conditions.

13.2 If the Force Majeure Event continues for more than [one] month starting on the day the Force Majeure Event starts, either party may terminate the Contract forthwith by giving notice in writing to the other party.

## **14. LICENCES AND CONSENTS**

If a licence or consent of any government or other authority is required for the performance of the Services, the Supplier will obtain such licence or consent at its own expense and produce evidence of it to the Buyer on demand.

## **15. ASSIGNMENT**

15.1 The Supplier may not assign or deal in any way with all or any part of the benefit of, or its rights or benefits under, the Contract without the prior written consent of the Buyer.

15.2 The Supplier may not subcontract the performance of the whole or any part of the Contract without the prior written consent of the Buyer.

## **16. NOTICES**

Any notice given by one party to the other in connection with the Contract must be in writing and may be delivered personally or by pre-paid first class post and in the case of post sent from one party within the UK to another party also located in the UK it will be deemed to have been given 2 Working Days after the date of posting and in all the circumstances it will be deemed to have been given 7 Working Days after the date of posting. Notices shall be delivered or sent to the last known addresses of the parties or to any other address notified in writing by one party to the other for the purpose of receiving notices in connection with a Contract. Each party may specify by notice to the other a particular individual or office holder to whom any notices served on it are to be addressed, in which case a notice shall not be validly given unless so addressed.

## **17. SEVERANCE**

17.1 If any of these Conditions is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other Conditions which shall remain in full force and effect.

17.2 If any of these Conditions is so found to be invalid or unenforceable but would cease to be invalid or unenforceable if some part of the provision were deleted, the provision in question shall apply with such modification as may be necessary to make it valid and enforceable.

## **18. NO PARTNERSHIP OR AGENCY**

Nothing in these Conditions, the Contract or the Order is intended to create a partnership or joint venture or legal relationship of any kind that would impose liability upon one party for the act or failure to act of the other party between the parties, or to authorise either party to act as agent for the other. Save where expressly stated in the Conditions or the Order, neither party shall have authority to make representations, act in the name or on behalf of or otherwise to bind the other.

## **19. WAIVER**

The rights and remedies provided by any Contract or in these Conditions may be waived only in writing and specifically, and any failure to exercise or any delay in exercising a right or remedy by the Buyer shall not constitute a waiver of that right or remedy or of any other rights or remedies. A waiver of any breach of any of the terms of the Contract or of a default under the Contract shall not constitute a waiver of any other breach or default and shall not affect the other terms of such Contract.

## **20. VARIATION**

No variation or alteration of any of the provisions of the Contract or these Conditions shall be effective unless it is in writing and signed by or on behalf of the Buyer.

## **21. ENTIRE AGREEMENT**

21.1 These Conditions, together with the documents referred to in them constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in them and supersedes cancels and nullifies any previous agreement between the parties relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

21.2 Each of the parties acknowledges and agrees that in entering into a Contract governed by these Conditions it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) other than as expressly set out in these Conditions, the Contract and the Order. The only remedy available to either party in respect of any such statement, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

21.3 Nothing in this Condition 21 shall operate to exclude any liability for fraud.

## **22. GOVERNING LAW AND JURISDICTION**

22.1 A Contract and any matter arising from or in connection with it shall be governed by and construed in accordance with English law.

Each party irrevocably agrees to submit to the exclusive jurisdiction of the English courts over any claim or matter arising from or in connection with a Contract or the legal relationships established by or in connection with such Contract.