

STANDARD CONDITIONS OF SALE (1ST October 1994 until further notice)

ALL ORDERS ARE ACCEPTED SUBJECT TO OUR STANDARD CONDITIONS OF SALE, A COPY OF WHICH IS REPRODUCED BELOW

HEALTH AND SAFETY AT WORK ETC. ACT 1974

In compliance with the Health and Safety at Work etc. Act 1974 and to assist customers in the United Kingdom in carrying out their statutory obligations, our product labels give warnings of known hazards associated with the goods and our sales literature states their properties. However, almost all materials may be hazardous in certain conditions or if handled without due care. In particular, the customer agrees that only qualified and trained individuals will handle any of our products. Our resources are readily available on request to provide any additional information that customers may require.

STANDARD CONDITIONS OF SALE

1. **INTERPRETATION** In these conditions the following expressions shall where the context so admits have the following meanings:

“United Kingdom” United Kingdom of Great Britain and Northern Ireland, the Channel Islands and the Isle of Man.
“overseas” all countries other than the United Kingdom (as defined).
“the goods” the goods which are the subject of this contract of sale or supply between us and the customer.
“business day” any day other than a Saturday, Sunday, or a day which is a public or Bank Holiday in the United Kingdom.

2. **ACCEPTANCE AND VARIATION OF CONDITIONS.** The following conditions and the provisions of the Sale of Goods Act 1979 not inconsistent therewith shall apply to all our contracts with customers except to the extent that they are varied in writing in the express terms of the contract.

No alteration, variation, amendment or addition to these conditions shall be valid unless made in writing and signed by our authorised representative.

If the terms and conditions stated in the customer's order are inconsistent with these conditions, or if they contain a provision purporting to override these conditions, our Acknowledgement of Order shall constitute a counter offer. The contract shall come into being when the customer has accepted our counter-offer either expressly or impliedly. If the customer, after receiving our counter offer, notifies us that he does not accept these conditions, then the formation of a contract shall be subject to negotiation. The customer agrees that in entering into this contract he does not rely upon any express or implied representation made by any of our employees or agents or any representations made in any of our sales/promotional literature and that such representations shall not form part of the contract or a collateral contract.

3. **AVAILABILITY OF MATERIALS AND INFORMATION** Acceptance of orders and completion of contracts are subject to:

3.1 such materials, components and services (including supplies from sub-contractors); and
3.2 such specifications, information and other material being available or being made available which will enable us to proceed with and complete the contract and to continue manufacture without interruption.

4. **PRICES** We shall be entitled to take into account fluctuations in the cost of materials, components, labour and services, including services provided to us (such as gas, electricity, water, etc.) as well as services provided by us (such as metal handling and financing) at the date of despatch of the goods. Where a contract is for the sale of goods by a number of separate deliveries, we shall be entitled to take fluctuations in such costs into account up to the date of despatch of each delivery. Unless otherwise agreed:

4.1 products containing Gold or Silver will be charged at prices based on the next available market fixing following the receipt of the customer's order, or on a subsequent date at our discretion;
4.2 products containing Platinum Group Metals and/or metals other than Gold or Silver will be charged at the prices ruling either:
4.2.1 on the day of receipt of the customer's order, or where this is not possible on the next available business day thereafter; or
4.2.2 on the day of despatch of the goods, or where this is not possible on the next available business day thereafter at our discretion.

Unless otherwise stated, freight and insurance will be charged to the customer at rates ruling on the day of despatch of the goods.

5. **FORWARD CONTRACTS** In the event that the customer instructs us to enter into forward purchasing contracts on its behalf, then if at any time or times before the dates fixed for the performance of the contract:

5.1 the current market value of the metal, currency or sterling bought or sold on behalf of the customer is, in the case of a purchase, less than the contract price, or, in the case of a sale, greater than the contract price, we shall be entitled to call upon the customer to pay to us such sum of currency or sterling or to deliver to us such quantity of metal or other security by way of margin or further margin as does not exceed in value the amount by which the said current market value is less than or greater than the said contract price as the case may be. The customer shall pay the said sum of sterling or currency or deliver the said metal or other security to us within three days of our demand therefor;
5.2 the current market value of the currency, metal or other security provided by the customer by way of margin or further margin shall fall, we shall be entitled to call upon the customer to pay to us within three days of our demand therefor such sum of sterling or currency or to deliver to us such quantity of metal or other security as is equal to the said fall in value.

6. **TAXES AND CUSTOMS DUTIES** The price shall be exclusive of any value-added, sales, excise, customs or other tax or duty payable on the sale of the goods, which shall be paid by the customer in addition to the price for the goods.

Any customs duties or other charges, fines or assessments whatsoever levied on overseas customers in respect for the goods on importation shall be borne by such customers.

7. **QUANTITIES** Although we will use our best efforts to supply the exact quantity of material ordered, the customer shall accept the supply of a quantity (whether more or less) within 5 per cent of the stipulated amount of his order. In such circumstances the invoice value of the goods shall be subject to a corresponding adjustment except where, in the case of sales overseas, such course shall be impracticable.

Subject as aforesaid, the prices quoted are for the quantities and despatch conditions stipulated in our Quotation and do not necessarily apply to other quantities or to different conditions of despatch.

8. **DESPATCH DATES** Although we will use all reasonable efforts to meet our despatch forecasts, such forecasts are estimates only and accordingly time for delivery shall not be of the essence. We shall not be liable in any circumstances for loss, whether direct, indirect, or consequential (whether for loss of profit or otherwise), arising from delay in despatch.

In the case of orders for despatch overseas, despatch will be conditional upon all necessary governmental or other consents governing the importation of goods into the country of destination being obtained by the customer prior to despatch.

9. **WITHHOLDING OF DELIVERY** We shall be entitled without prejudice to any of our other remedies to withhold delivery of any goods if either:

9.1 any amount is outstanding and overdue from the customer in respect of any invoice issued by us or by any other company in the Johnson Matthey group of companies; or
9.2 upon the invoicing of such goods, the customer's credit limit (if any) either with us or with any other company in the Johnson Matthey group of companies would therefore be exceeded.

In determining the customer's credit limit for such purposes the aggregate invoice value of all invoices issued to the customer by us or by any other company in the Johnson Matthey group of companies (as the case may be) and which are then outstanding, including unpaid accounts, shall be taken into account.

10. PASSING OF RISK

10.1 The risk in the goods shall pass to the customer either:
10.1.1 on delivery by us or by our delivery agent or by a common carrier to the address specified by the customer; or
10.1.2 on delivery to the customer, the customer's servant or the customer's agent.

10.2 In the case of overseas sales risk in the goods shall pass to the customer either under 10.1.1 or 10.1.2 above, or as agreed between ourselves and the customer. In this connection trade terms (such as CIF and FOB) shall be interpreted according to Incoterms 1990 published by the International Chamber of Commerce.

11. PASSING OF OWNERSHIP

11.1 Notwithstanding delivery of the goods to the customer and/or the passing of risk in the goods to the customer until we have received full payment from the customer for all goods delivered to the customer pursuant to this contract the following terms shall apply:

11.1.1 The property in the goods supplied by us shall remain in us as legal and equitable owner thereof and the customer shall be entitled to possession of the goods only which shall be held by the customer as a bailee on our behalf and the customer shall store the goods in such a way as to be identifiable as our property;

11.1.2 The customer shall keep the goods insured against all risks in their full replacement value and if requested by us shall execute an assignment in favour of us of all rights of the customer to claim against the insurers in respect of the goods covered by such insurance and shall join us in notifying such insurers of our interest in any policy effected hereunder;

11.1.3 Notwithstanding the provisions of clause 11.1.1 the customer shall have a licence to sell (by way of bona fide sale at arm's length) the goods supplied by us to the customer which licence may be immediately terminated by us at any time by giving the customer written notice thereof provided that (without prejudice to any other right of ours) such licence shall automatically terminate if the customer (being an individual) becomes bankrupt or if the customer (being a company) adopts a resolution for its winding up or if any petition is presented for the appointment of an administrator or a receiver or an administrative receiver is appointed in respect of any part of the customer's undertaking or assets or if the customer is unable to pay its debts (within the meaning of Section 123 of the Insolvency Act 1986 (or any re-enactment or further enactment thereof)) unless we otherwise agree to the continuation of such licence;

11.1.4 The proceeds of any such sale and the benefit of any such contract of sale shall be held in trust for us absolutely and the customer shall forthwith pay all proceeds of such sales (but only to the extent of sums referred to us by the customer) into a bank account in its own name separate from all other monies of the customer and shall notify us thereof and the bank of our interest in such account. The proceeds of such sales paid into such bank account by the customer shall not be used by the customer but shall immediately be paid to us and notwithstanding that any period of credit extended to the customer by us (under this or any other contract) shall not have expired;

11.1.5 At any time after the termination of the above licence we may repossess the goods and for this purpose the customer grants to us an irrevocable licence to enter upon any premises of the customer and to use such measures as may be reasonably necessary to gain access to such premises and recover possession of the goods.

11.1.6 We or any person nominated by us shall at any time have full access to all the books of account and documents and papers of the customer relating to any one or more of the following:

11.1.6.1 the customer's dealings with us;
11.1.6.2 the customer's dealings with the goods;
11.1.6.3 the customer's dealings with the proceeds of sale of the goods.

11.2 Nothing in this condition shall confer any right upon the customer to return the goods or to refuse or delay payment for them.

11.3 For the avoidance of doubt nothing in this condition shall be construed as creating a lien or charge or any other form of security over any property of the customer or any third party.

12. **INSURANCE FOR OVERSEAS CONSIGNMENTS** Where requested to do so by the customer, we will on the customer's behalf arrange insurance to destination on every consignment of goods overseas at the customer's expense. Unless otherwise stated, the premium paid will cover the value of the consignment as shown on our invoice. Details of the insurance cover are available upon request. The arrangement of any additional insurance required by the customer is the customer's responsibility.

13. **DAMAGE IN TRANSIT AND NON-DELIVERY** (applicable in United Kingdom only). Where the risk in the goods has not passed to the customer, we will accept responsibility

13.1 for damage in transit (by repairing or at our option replacing the goods) provided that we are given written notice of such damage within such time and in such manner as will enable us to comply with the carrier's conditions of carriage applicable to damage in transit, and are given the opportunity to inspect the goods and on the condition that the customer shall have no further use of the goods and will not attempt to alter or repair the goods itself; and

13.2 for non-delivery (by at our option recovering or replacing the goods within a reasonable time) provided that where we have notified the customer of despatch of the goods we are given written notice of non-delivery within such time and in such manner as will enable us to comply with the carrier's conditions of carriage applicable to non-delivery.

14. **PAYMENT BY CUSTOMERS IN THE UNITED KINGDOM** Unless otherwise stipulated payment in full is due by the last business day of the month following the month of the date of the invoice by cheque or by bank credit transfer in accordance with clause 15.2 below. Time for payment is of the essence.

15. PAYMENT BY CUSTOMERS OVERSEAS

15.1 unless otherwise stipulated payment in full is due 30 days after the date of the invoice in the currency stated thereon. Time for payment is of the essence.

15.2 unless otherwise stipulated payment should be made by bank credit transfer to Lloyds TSB Bank Plc, PO Box 17328, 11-15 Monument Street, London EC3V 9JA. Bank Code 30-00-02, account number 0133871, IBAN: GB67 LOYD 3000 0200 1338 71, Account Johnson Matthey Plc – PMD – Metal Joining.

15.3 exceptionally, where we agree that payment may be made in US \$, payment must be made by bank credit transfer to JP Morgan Bank, One Chase Manhattan Plaza, New York, NY 10081, USA. Swift Code CHASUS33, Account No. 323-112919, ABA Code 021000021, Chips UID P0002, Johnson Matthey Plc – PMD – Noble Metals. Euro payments by bank credit transfer should be made to Lloyds TSB Bank Plc, City International, PO Box 17328, 11-15 Monument Street, London EC3V 9JA, Bank Code 30-12-18, account number 59021368, IBAN: GB13 LOYD 3012 1859 0213 68, SWIFT Code LOYDGB2LCTY.

15.4 where we agree that payment may be made by irrevocable confirmed letter of credit, confirmation is required by a London clearing bank.

15.5 Payment must be made by the customer without deduction, set-off or counter-claim.

16. **FAILURE TO PAY** If the customer fails to make payment when due, the amount unpaid may, in our sole discretion, incur interest at the rate of 4 per centum per annum above the base rate of Lloyd's TSB Bank Plc from time to time from the date of the invoice to the date of actual payment (both before as well as after judgement).

17. **GENERAL LIEN** Without prejudice to any other remedies we may have in respect of unpaid debts due to us from customers we shall have a general lien on all such customer's goods or property in our possession (whether worked on or not) and we shall be entitled on the expiration of 21 days' notice in writing to the customer to dispose of such goods or property as we think fit and to apply any proceeds received towards such debts.

18. **METAL EXCHANGE ACCOUNTS** If the customer is sent written notice from us that any metal account or accounts which the customer holds with us is or are overdrawn and fails to make sufficient payment or deposit of metal to achieve zero or credit balance on such account or accounts within one calendar month of the date of such notice, the provisions of conditions 9, 16 and 17 hereof shall apply. Interest may be charged at the rate specified at condition 16 on the sterling value of the overdrawn metal calculated on a daily basis for the period during which the account or accounts are overdrawn from the date of the said notice. It is the responsibility of the customer to regularly reconcile their metal exchange account or accounts, and to report any discrepancies therein.

19. **PACKING** In the case of orders for delivery in the United Kingdom, containers charged for will be credited in full if returned carriage paid in good condition within 21 days from the date of invoice and the return duly advised.

A charge to cover packing will normally be made for orders for consignment overseas. Unless otherwise stated such packing is non-returnable

20. SUITABILITY AND FITNESS

20.1 although we use every effort to ensure that all goods are manufactured to specification, it is in all cases, including repeat orders, for the customer to ensure by tests or otherwise, that the goods are fit and suitable for the purpose for which the customer requires them in the conditions in which they will be used. We accept no liability for issue of the goods or failure of the customer to carry out its statutory obligations.

20.2 any customer who claims that goods are defective as regards materials or workmanship must give us written notice to that effect and, if requested by us, return the goods to us properly packed, carriage paid within 30 days of the date of receipt of the goods and in such notice give details of the alleged defect.

20.3 we will replace goods which we accept are defective either as regards materials or workmanship provided that they have not been tampered with or subjected to improper treatment and provided that the defects are not as a result of faulty design or incorrect specification by the customer. Goods returned to us and replaced shall become our property.

20.4 under no circumstances shall we be under any liability for negligence or for any direct loss, damage or injury to the customer (other than for death or personal injury caused by our negligence,) and our liability to the customer shall not under any circumstances exceed the purchase price of the goods.

20.5 under no circumstances shall we be under any liability for any indirect, contingent or consequential loss, damage or injury to the customer, howsoever arising.

20.6 we shall not be under any liability in respect of any claim made against the customer by any third party, and the customer shall indemnify us against any claims brought by third parties against us relating to the goods. This condition is in substitution for and (to the extent permitted by English Law) excludes all conditions and warranties as to merchantable quality and fitness whether express or implied and whether conferred by statute, common law or otherwise.

21. **CONFIRMATION ORDERS** In order to avoid orders being duplicated, all orders that are merely confirmations of orders previously placed must clearly indicate that fact, for example, by being prominently over-stamped "Confirmation Order. Do Not Duplicate".

We reserve the right to treat any confirmation order that is not so marked as a separate order.

22. **CUSTOMER'S FREE ISSUE MATERIALS** Where the customer supplies us with metal or other materials or parts for processing, unless otherwise agreed our liability for loss and/or damage shall in no circumstances exceed three times the contract price for processing and no claim will be considered for an amount of less than 2.5 per cent of the value of the free issue materials as received by us. The customer must notify us in writing of the value of such materials at the time of despatch, to us of the materials.

23. **MANUFACTURING EQUIPMENT** Special arrangements may be made for customers to retain exclusive use of designs or patterns but all property rights in all plant, tools, dies, jigs and other special equipment used in the manufacturing process shall remain ours whether or not a charge is made towards their cost.

24. CANCELLATION OR VARIATION BY CUSTOMERS

24.1 no order for goods may be cancelled or varied by the customer without our written agreement. If the customer purports to cancel or vary his order without such agreement or refuses to accept delivery and at the time of such purported cancellation or variation or refusal the market price of any item purchased by us for the execution of the order is lower than the price at which we acquired the same, then without prejudice to any other contractual rights that we may have we shall be entitled to charge the customer the difference. In addition, we shall be entitled to charge the customer the full cost of manufacture incurred by us up to the date of the purported cancellation, variation or refusal of any goods manufactured to the customer's order, including the costs incurred by us in respect of all items ordered, supplied or manufactured specifically for execution of the order in question. In such circumstances we shall be entitled to store the goods at the customer's cost and to dispose of the goods on such terms as we see fit to any third party.

24.2 if work on an order is suspended because of the customer's instructions or lack of instructions, we reserve the right to treat such circumstances as a cancellation by the customer and the provisions of this clause 24 shall apply.

25. **CANCELLATION BY SELLER** We shall be entitled to cancel the contract by written notice and to suspend all future deliveries and without prejudice to any other rights which we may have if:

25.1 the customer shall go into liquidation;
25.2 the customer shall have an administration order made against it;
25.3 a distress or execution is levied or enforced upon any of the property or assets of the customer and is not paid out or discharged within 14 days;
25.4 an encumbrancer takes possession or a receiver is appointed over the undertaking of the customer or any of his property or assets; or
25.5 the customer stops payment or ceases or threatens to cease to carry on his business or to pay his debts as and when they fall due.

26. **FORCE MAJEURE** In the event of the normal course of manufacture or delivery of the goods being prevented, interrupted, hindered or delayed by any cause whatsoever beyond our control, (including, but without limitation, Acts of God, strikes, war (whether declared or not) or lock-out), we shall have the option without incurring liability to the customer, either to defer the date of despatch or, according to the nature and extent of each supervening event, to cancel the order on the terms referred to in condition 24.

27. INDUSTRIAL PROPERTY

27.1 we accept no liability (to the extent permitted by English Law) for any claims made against a customer for any infringement of patent, registered or unregistered designs, copyright, trade names, trade marks or other intellectual property rights of any third party in connection with the use, possession, resale or offering for resale of the goods either as originally sold by us or otherwise;

27.2 where we execute the order in accordance with the customer's designs, plans or specifications, the customer shall indemnify us against all actions, losses, damages, expenses, cost or other liabilities (including legal fees) arising from any claims made against us for infringement of any third party's patent, registered or unregistered designs, copyright, trade names, trade marks or other intellectual property rights arising therefrom.

27.3 Nothing contained herein shall be construed as, or operate to grant, any licence to the customer in respect of any of our existing or future patent rights, registered or unregistered designs, copyright, trade names, trademarks or other intellectual property rights.

28. **SEPARATE DELIVERIES** Where the contract is for the sale of goods by a number of separate deliveries to be separately paid for, a breach affecting one delivery shall not affect any other, provided that for so long as payment for any delivery has become due and is unpaid, we shall not (without prejudice to our rights under condition 25) be liable pending payment to make any further delivery pursuant to the contract.

29. **PROPER LAW** The construction, validity and performance of all our contracts shall be governed by English Law and by the non-exclusive jurisdiction of the English Courts.

30. **HEADINGS** The headings to the paragraphs of these conditions are inserted for convenience of reference only and shall not affect their interpretation.

31. **SEPARATE PROVISIONS** Each of the foregoing conditions or sub-clauses thereof is to be construed as a separate provision applying and surviving even if for any reason one or other of the said conditions or sub-clauses thereof is held void or unenforceable in any circumstances.

32. **WAIVER** The waiver by us of any breach of any of these conditions shall not prevent the subsequent enforcement of that condition and shall not be deemed to be a waiver of any subsequent breach of that or any other condition hereof.

33. **NOTICES** Any notices required to be served hereunder may be given by first-class post to the parties at their registered office for the time being or the last known place of business and any notice so given shall be deemed served, in the case of UK customers, 48 hours after it has been posted and, in the case of overseas customers, 5 days after it has been posted, and in proving such service it shall be sufficient to prove that the notice was properly addressed and posted as a pre-paid envelope.

Without prejudice to the generality and importance of all the above Standard Conditions of Sale, we draw the customer's attention particularly to conditions, 9, 11, 16, 17, 18 and 28 which define certain of our contractual rights in the event of non-payment.

