

1. **DEFINITIONS**

1.1 In these Conditions the following expressions shall have the following meanings;

- "Conditions"** means the terms and conditions set out in this document (as amended by the Seller and notified to the Buyer from time to time).
- "Contract"** means the contract between the Seller and the Buyer for the sale and purchase of the Goods in accordance with these Conditions, the quotation and any other documentation agreed by the Seller;
- "Buyer"** means any person, firm or company receiving a quotation from and/or placing an order with the Seller;
- "Goods"** means all and every item of Goods or part thereof supplied by the Seller and where relevant includes any work carried out by the Seller on items supplied by the Buyer;
- "Seller"** means GW Atkins & Sons Ltd T/A Shield Aluminium Die-Castings (registered in the UK with company number 00944323), 365 Fosse Way, Syston, Leicester, LE7 1NL, United Kingdom.

1.2 In addition to the specific meanings of the words detailed above, the following rules apply to the general construction of these Conditions:

- 1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and a reference to a party includes its personal representatives, successors or permitted assigns.
- 1.2.2 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.
- 1.2.3 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.
- 1.2.4 A reference to writing or written includes faxes and/or e-mails.

2. **APPLICATION OF THESE CONDITIONS**

2.1 All quotations are made and all orders are accepted subject to these Conditions. All other terms, conditions or warranties whatsoever are excluded from the Contract or any variation thereof unless expressly accepted by the Seller in writing (order acknowledgements do not constitute such acceptance).

2.2 In no circumstances will any conditions of purchase submitted at any time by the Buyer be applied to this Contract and any failure by the Seller to challenge any such conditions of purchase does not imply acceptance. Acceptance by the Buyer of delivery of the Goods shall be deemed to constitute unqualified acceptance of these Conditions.

2.3 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract. All brochures, catalogues, price lists, websites, samples, particulars of dimensions and other advertising or descriptive material submitted to the Buyer are intended to be approximate only and to give a general impression of the Goods. Unless expressly incorporated the same shall not form part of the Contract.

3. **QUOTATION AND ORDERS**

3.1 No Contract for the supply of Goods will be created by the acceptance of a quotation or an order until the Seller acknowledges the order in writing or (if sooner) the Seller commences work on the order.

3.2 The Seller reserves the right to refuse to accept any order based upon a quotation unless the quotation is stated to be open for a defined period and the quotation has not been withdrawn in that period. The Seller reserves the right to amend its quotation at any time to reflect any increases in the price of the raw materials it will be using to supply the Goods. For the purposes of these Conditions, a quotation shall include a "budget" quotation provided by the Seller.

3.3 Where any order is based upon the current agreed price list of the Seller then, subject to Conditions 3.2, 4.2 and 4.3, the price shall be valid provided that delivery is to take place within 30 days from the date of order.

3.4 The Seller reserves the right to increase or decrease the number of items in the Goods to be supplied by a variation not exceeding 5 per cent and to make an appropriate increase or decrease (as the case may be) to the price, and it is agreed that such a variation shall be so slight as to make it unreasonable for the Buyer to reject the delivery.

4. **PRICE AND PAYMENT TERMS**

4.1 Prices quoted are for the supply of Goods to a pre-agreed specification unless otherwise stated. The finish will be the usual components commercial finish unless otherwise specified by the Buyer and accepted in writing by the Seller.

4.2 The Seller shall be entitled at any time on written notice to make a reasonable adjustment to the price in the event of any alteration in quantity, design or specification requested by the Buyer.

4.3 The Seller reserves the right at any time prior to delivery and on written notice to increase the price in line with the agreed Metal Escalator Agreement or if there is any other increase in the cost of materials, labour, transport, utilities, foreign currency fluctuation, currency regulation or alteration of duties or if the costs of the Seller are increased by any other factor beyond its reasonable control.

- 4.4 Unless otherwise agreed with the Buyer and subject to Condition 4.7, the Seller shall be entitled to submit its invoice when the Goods are delivered or at any time thereafter. Payment in full (without any deduction by way of set off or abatement or counter claim) shall be due [on or before the 30th day of the month following the month of the Seller's invoice]. In the event of late payment the Seller shall (without prejudice to its other remedies) be entitled to suspend without notice all further deliveries on any Contracts between the Seller and the Buyer.
- 4.5 The Seller reserves the right to charge interest at 8% above the Natwest Bank PLC base lending rate per annum on any overdue payments until repaid in full.
- 4.6 The Seller reserves the right to recover from the Buyer all expenses reasonably incurred by the Seller in the collection of any overdue sums.
- 4.7 Without prejudice to any other rights of the Seller, the Seller reserves the right to require payment in full before delivering or performing any other work or services whatsoever for the Buyer.
- 4.8 The Buyer shall indemnify the Seller against all losses sustained or extra expenditure incurred as a result of such a suspension of manufacturing, ordering, delivery or other work or services including a reasonable allowance for storage.
- 4.9 Late delivery of an instalment of Goods by the Seller does not entitle the Buyer to refuse to pay for that instalment or future instalments or to cancel future instalments.
- 4.10 Unless otherwise agreed, where a payment requested in accordance with this Condition 4 is not received by the due date for payment, the Seller reserves the right to sell or dispose of the Goods produced for the Buyer and to recover any additional loss from the Buyer.
- 4.11 The price quoted by the Seller shall be an ex works price and exclude (and the Buyer shall be liable for) any taxes (including value added tax), duties or other charges levied by any governmental or other authority in respect of or by reason of the sale, delivery, export or import of the Goods or any part thereof, but excluding taxes assessed on profits or gains; any transportation costs (including where the Buyer has requested express, same day overnight delivery or any other similar service); storage costs under Condition 7.5.

5. TITLE

- 5.1 The risk in the Goods shall pass to the Buyer on completion of delivery or deemed delivery (in accordance with Condition 7.1).
- 5.2 Title to the Goods shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for the Goods and any other goods or services that the Seller has supplied to the Buyer in respect of which payment has become due.
- 5.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
- 5.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;

- 5.3.2 store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Seller's property;
 - 5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 5.3.5 grant the Seller, its agents and employees an irrevocable licence at any reasonable time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 5.4 Notwithstanding Conditions 5.2 and 5.3, the Buyer may use or resell the Goods in the ordinary course of its business.
- 5.5 The Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller, and if the Buyer fails to do so within a reasonable period of time, the Seller shall be entitled to enter upon the Buyer's premises or any third party's premises and recover and/or dispose of the Goods. For the avoidance of doubt, the Buyer shall make no claim against the Seller in respect of any such entry or disposal.
- 6. PERFORMANCE AND FORCE MAJEURE**
- 6.1 The Seller shall take all reasonable steps to perform its obligations and deliver within the time specified, but such times are estimates only. The Seller shall not be liable for expenses, losses or damages caused by late performance or delay in delivery and any such delays shall not entitle the Buyer to rescind the Contract.
- 6.2 Without prejudice to the generality of Condition 6.1, the Seller shall have no liability for any expenses, losses or damages caused by delay or default in performance of any obligation caused directly or indirectly by breakdown or unavailability of plant or machinery, failure of raw material or supply of raw material, inability to obtain sufficient labour or sufficient skilled labour or any other cause or causes beyond the reasonable control of the Seller.
- 6.3 The Seller reserves the right to make part deliveries and to submit invoices for Goods supplied as part of an order.
- 7. DELIVERY**
- 7.1 Unless otherwise agreed in writing by the Seller, delivery shall be ex-works (as defined in the edition of "Incoterms" current at the date of the Buyer's order).
- 7.2 All dates and time periods for delivery are estimated and do not constitute fixed times for delivery by the Seller and time of delivery shall not be of the essence of the Contract nor shall the Buyer be entitled to make, or purport to make, time for delivery of the essence of the Contract.

- 7.3 The date for delivery shall in every case be dependant upon prompt receipt of all necessary information, final instructions and/or approvals from the Buyer.
- 7.4 Notwithstanding Condition 7.2, the Buyer shall be obliged to take delivery of the Goods within 14 days of the Seller giving it notice that the Goods are ready for delivery. Where the Buyer requests and the Seller agrees to postpone delivery, or where delivery is otherwise postponed without default by the Seller, the Buyer shall pay upon demand all reasonable costs and expenses including reasonable storage and transport costs.
- 7.5 The Buyer shall pay for the Goods in accordance with these Conditions as if the same had been delivered on the due date but for any postponement at the request of or due to the default of the Buyer.
- 7.6 Unless otherwise expressly agreed in writing the Seller may deliver in instalments in which case each instalment shall be treated as a separate Contract governed by these conditions. No delay in the delivery of any instalment of Goods or any defect therein shall entitle the Buyer to terminate remaining Contracts.
- 7.7 If it is necessary to despatch Goods in crates, cases, pallets, stillages or skids the Seller reserves the right to charge for packaging. The amount charged for packaging will be credited in full to the Buyer if the packaging is returned in good condition at the expense of the Buyer within 1 month of delivery.

8. **WARRANTY**

- 8.1 The Seller warrants that for a period of six (6) months from the date of delivery (the "**Warranty Period**"), the Goods shall conform in all material respects with any pre-agreed specification and be free from material defects in material and workmanship.

- 8.2 Subject to Condition 8.3, if:

8.2.1 the Buyer gives notice in writing to the Seller within 4 days of the date of discovery that some or all of the Goods do not comply (during the Warranty Period) with the warranty set out in Condition 8.1; and

8.2.2 the Seller is given a reasonable opportunity of examining such Goods; and

8.2.3 the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Buyer's cost,

the Seller shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, and, in any event the Seller's liability shall not exceed the amount paid by the Buyer for the affected Goods.

- 8.3 The Seller shall not be liable for the Goods' failure to comply with the warranty set out in Condition 8.1 if:

- 8.3.1 the Buyer makes any further use of such Goods after giving notice in accordance with Condition 8.2; or
 - 8.3.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice; or
 - 8.3.3 the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer; or
 - 8.3.4 the defect arises as a result of the Seller using any patterns, dies or tools supplied by the Buyer; or
 - 8.3.5 the Buyer alters or repairs such Goods without the written consent of the Seller; or
 - 8.3.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working Conditions.
- 8.4 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 8.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller pursuant to Condition 8.2.
- 9. LIMITATION OF LIABILITY**
- 9.1 Nothing in these Conditions shall limit or exclude the Seller's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - 9.1.2 fraud or fraudulent misrepresentation; or
 - 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 9.1.4 any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 9.2 Subject to Condition 9.1, the Seller shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss or costs (whether direct or indirect) in respect of (a) any loss of profit; (b) loss of use of money; (c) loss of anticipated savings; (d) loss of business; (e) loss of opportunity; (f) loss of goodwill; (g) loss of reputation; (h) loss of data; (i) any wasted expenditure; or (j) any indirect or consequential loss or damage howsoever caused arising under or in connection with the Contract.

For the avoidance of doubt, the sub-Conditions in this Condition 9.2 are intended by the parties to be severable.

9.3 Subject to Conditions 9.1 and 9.2, the Seller's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall not exceed the price paid for the Goods.

9.4 The Buyer shall fully indemnify the Seller against all losses, damages, costs, actions, claims, demands, fees and other expenses (legal or otherwise) the Seller may incur in consequence of the Goods being (whether in whole or in part and directly or Indirectly) involved in a claim under the Consumer Protection Act 1987 except to the extent that the alleged defect in the product the subject of such claim was directly caused by an act or omission of the Seller.

10. TERMINATION

10.1 The Seller shall, at its option, be entitled by notice to terminate all or any of its contracts with the Buyer forthwith and recover all expenses, losses and damage resulting to the Seller including (but without limitation to) loss of profit or other indirect or consequential loss if:

10.1.1 any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the other party or if the other party makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding up passed or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the other party or if the other party ceases or threatens to cease to carry on business or

10.1.2 the Buyer fails to make any payment owed to the Seller on the due date and for this purpose "the Seller" shall be deemed to include any other company which is a subsidiary of GW Atkins & Sons Ltd T/A Shield Aluminium Die-Castings, and "the Buyer" shall be deemed to include, where it is a member of a group of companies, any other company in that group; or

10.1.3 the Buyer fails to make payment in advance when requested in accordance with Condition 4.7 above, within 7 days of being requested to do so; or

10.1.4 the Buyer fails to take delivery of or to collect the Goods within 14 days of being notified by the Seller that the Goods are ready for delivery; or

10.1.5 the Buyer is in breach of the terms and conditions of any contract with the Seller (including breach of these Conditions) and for this purpose "the Seller" shall be deemed to include any other company which is a subsidiary of GW Atkins & Sons Ltd T/A Shield Aluminium Die-Castings, and "the Buyer" shall be deemed to include, where it is member of a group of companies, any other company in that group.

11. DIES AND TOOLS

11.1 If dies or other tools are produced by the Seller, and "part cost" is stated on his quotation, the Seller reserves the right to charge a greater amount (not exceeding full cost) if the Buyer orders a

lesser quantity of Goods than that quoted for, or fails to take delivery of the full quantity within the period stated on the quotation.

- 11.2 The Buyer shall be responsible for the accuracy and suitability of dies or other tools supplied by it; and in the event of any inaccuracy or unsuitability (of which the Seller shall be the sole judge) the Seller shall have the right to increase the price of the Goods to cover any increase in its costs or to make a new die or new dies at the cost of the Buyer.
- 11.3 All reasonable care will be taken in the maintenance of dies or other tools but any which may be worn out or damaged shall be replaced or repaired at the cost of the Buyer. The Buyer will also be responsible for the cost of cleaning, heating and redressing dies or other tools used at infrequent intervals.
- 11.4 The Buyer's own dies and tools are operated at the Buyer's sole risk and responsibility and without any liability either in contract or in tort being attached to the Seller.

12. **FREE-ISSUE MATERIALS**

- 12.1 Free issue materials shall be insured by and remain at the risk of the Buyer at all times and the Seller shall not be liable for loss of or damage to any such free issue materials during use by the Seller, or by any sub-contractor employed by the Seller or whilst on the premises of the Seller or of any such sub-contractor or in transit to or from the premises of the Seller or of any such sub-contractor provided that the Seller may at its sole discretion make a contribution towards the replacement costs of such free issue materials.
- 12.2 The Buyer shall indemnify the Seller against all losses costs claims damages liabilities and expenses in respect of any injury, loss or damage whatsoever arising out of or in connection with the supply by the Seller of free issue materials except where any such loss or damage is a direct result of any negligent act or default of the Seller.
- 12.3 An allowance for material lost as process scrap is (where applicable) included in the Contract price and no such losses shall be the subject of any claim by the Buyer or contribution by the Seller.
- 12.4 Where materials used in the manufacture of the Products are supplied by or on behalf of the Buyer to the Seller, the Buyer shall be responsible for ensuring that the material is of satisfactory quality and is fit for its purpose and shall indemnify the Seller against any loss, damage, injury or expenses whatsoever arising directly or indirectly from any fault in or incorrect specification of the said materials.

13. **INTELLECTUAL PROPERTY**

- 13.1 For the purposes of this Condition 13, "**Intellectual Property Rights**" means any patents, inventions, copyright and related rights, trade marks, trade names, rights to goodwill or to sue for passing off rights in designs, rights in computer software, database rights, rights in confidential information (including know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or

extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

- 13.2 The Buyer acknowledges that the Seller is the absolute owner of the Seller's Intellectual Property Rights and the Buyer shall not assert or attempt to assert any rights in relation to the Seller's Intellectual Property Rights.
- 13.3 The Buyer shall not use or exploit the Seller's Intellectual Property Rights other than as set out in these Terms or as agreed with the Seller in writing.
- 13.4 The Buyer shall indemnify the Seller and keep the Seller indemnified from and against all claims, damage, losses, costs (including all reasonable legal costs), expenses, demands or liabilities arising out of or in connection with any claim alleging that the Seller has infringed the Intellectual Property Rights of a third party in supplying the Goods in accordance with the Buyer's instructions or to a specification provided by the Buyer.

14. **BUYER'S PROPERTY**

If any property of the Buyer of any nature is used in connection with the Goods (whether for the purpose of manufacture, display or any other reason) the Buyer shall indemnify the Seller for any loss or claim suffered by the Seller as a result of using such property. If such property has not been removed within three months of the date for payment, the Seller reserves the right to charge a storage fee to the Buyer.

15. **CONFIDENTIALITY**

All information and all data provided by the Seller to the Buyer in connection with the Contract shall be used solely in the performance of the Contract (the "Information"). The Buyer shall treat the Information as confidential and shall not disclose the Information to any third party without the Seller's prior written consent. The Buyer shall ensure that all of its employees, agents or sub-contractors to whom it discloses the Information are aware of and comply with the obligations under this Condition 15.

16. **ANTI-BRIBERY**

16.1 The Buyer shall:-

- 16.1.1 comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and US Foreign Corrupt Practices Act 1977;
- 16.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 16.1.3 promptly report to the Seller any request or demand for any undue financial or other advantage of any kind received by the Buyer in connection with the performance of this Contract; and

16.1.4 immediately notify the Seller if a foreign public official becomes an officer or employee of the Buyer or acquires a direct or indirect interest in the Buyer, and the Buyer warrants that it has no foreign public officials as officers, employees or direct or indirect Sellers at the date of this Contract.

16.2 The Buyer shall ensure that any person associated with the Buyer who is performing services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Buyer in this Condition 16.

16.3 For the purpose of this Condition 16, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively.

17. GENERAL

17.1 The Contract is between the Seller and the Buyer as principals and neither the benefit nor the burden is assignable by the Buyer without the Seller's written consent. The Contract may be assigned, sub-contracted or otherwise disposed of by the Seller.

17.2 Any notice, consent, notification, acknowledgement authority or agreement required or referred to in the Contract shall be in writing and given to the party for whom it is intended at such party's registered office or last known address. Notices shall be given by registered or recorded delivery post, e-mail or fax transmission and shall be deemed to have been received 5 days after the date of posting or 1 day after the date of transmission (as the case may be).

17.3 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. 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.

17.4 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.

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

17.6 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

17.7 The Contract, these Conditions and any dispute or claim arising out of or in connection with them or their subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

18. **DIVISIBILITY CLAUSE**

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