

Kimber Drop Forgings Limited

(Terms & Conditions of sale)

1. Definition and interpretation

1.1 In these conditions these words have the following meaning:-

'the company' Kimber Drop Forging Ltd
'the contract' any contract under which the company sells goods and/or services to the Customer.
'the customer' the individual, firm, company or other party with who the Company is to supply
'the relevant date' the date referred to in clause 5 hereof.
'schedule of orders' a schedule supplied by a customer to the company indicating the customers requirements for goods to be supplied by the company for a future period or periods
'supply' includes (but is not limited) any supply under contract for sale
'international supply' such a contract as is described in section

26(3) of the Unfair Contract Terms Act 1977

1.2 References to clauses (except where the context otherwise requires) are references to the clauses set out below.

1.3 Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-acted or extended at the relevant time.

2. Contract Terms, Variations and representations

2.1 No order in pursuance of a quotation or otherwise shall be binding on the company unless and until the company in writing accepts such order.

2.2 The contract will be subject to these conditions, except as provided in clause

2.3 No representative or agent of the company has authority to agree any term or make any contract except on the basis of them.

2.4 Any term or representation inconsistent with these conditions will only bind the company if it is in writing and signed by one of the Directors. The words 'unless otherwise agreed in writing by the company' in these conditions means unless otherwise agreed in writing by the director of the company.

2.5 Unless otherwise agreed in writing by the company these conditions will override any terms or conditions stipulated or referred to by a customer in his order or pre-contract negotiations.

2.6 Any illustrations, weights, measures temperatures, capacities, descriptions or specification contained in the company's catalogues, samples, price lists or other advertising material is intended merely to present a general picture of the goods and/or services and will not form a representation or be part of the contract unless otherwise agreed by the company in writing.

2.7 Where the company has not acknowledged the customer's order in writing, these conditions will apply to the contract provided the customer has had prior notice of them.

2.8 The company reserves the right to correct any clerical or typographical errors made by its employees at any time.

3 Specification and Information

3.1 If goods are made or services carried out to specification, instruction or design supplied by the customer or any third party of the customer then.

3.1.1 the suitability and accuracy of that specification, instruction or design will be the customers responsibility, and

3.1.2 the customer will indemnify the company any infringement of any patent, design right, registered design, trademark, tradename, copyright or other intellectual property right and any loss, damage or expense it may incur because of any such infringement or alleged infringement in any country, and

3.1.3 the customer will indemnify the company against any loss, damage or expense in respect of any liability arising under the Consumer Protection Act 1987 by reason of the specification or design of the goods.

3.2 The company reserves the right to make any change in the specification the goods or services which are required to conform with any applicable safety or other statutory requirements. Where the goods are to be supplied, or services completed to the customers specification the company reserves the right to make any changes in the specification of the goods or services which do not materially affect the quality or performance of the goods.

3.3 The customer warrants that it will pass on to all third parties to whom it may supply the goods all information as to the use and safe handling of the goods which have been provided to the customer by the Company.

4. Prices

4.1 Unless otherwise agreed in writing by the company the company's quotations for the goods and services are provisional and may be altered at any time for any reason.

4.2 Prices charged will be those current at the time of delivery of the goods or completion of the services. The company may increase its prices at any time to take account of any increase in the cost to the company of Purchasing any (goods or materials or manufacturing, working on or supplying the goods and/or services) The company may also increase its prices at any time to take account of any error or inadequacy in any specification, instruction or design provided by the customer or any modification carried out by the company at the customer's request.

4.3 All prices quoted are exclusive of VAT and the customer shall pay any and all duties, taxes, or other government charges payable in respect of the goods and/or services.

4.4 The costs of pallets and returnable containers and packaging will not be charged when Forgings are dispatched and invoiced. Containers that are advised as returnable must be sent back to us as soon as practicable. Any containers which have not been returned one month after the end of the month of dispatch will be advised to you and if not returned within a further month, an invoice payable within 30days will be issued for each container outstanding.

5. Payments

5.1 For the purpose of these conditions the relevant date means the earlier of the date on which.

5.1.1 The customer takes delivery of any consignment of the goods.

5.1.2 The company dispatched any consignment of the goods.

5.1.3 The customer defaults in his obligations under clause 6.1 or

5.1.4 The customer is invoiced by the company, or 5.1.5 (in the case of services) the services or any part thereof are carried out

5.2 Unless otherwise agreed in writing by the company, full payment will be made by the customer in cash not later than thirty days after the relevant date. No discounts will be granted.

5.3 Time for payment will be of the essence of the contract.

5.4 Without prejudice to any other rights of the company, interest will be payable on all overdue accounts at 4% above Lloyds Bank base rate from time to time. For the purpose of clauses 7.2 and 10 the full purchase price of the goods and/or services will include any interest payable under this clause.

5.5 Non-payment on a due date will entitle the company to demand payment of all outstanding balances whether due or not and/or cancel all outstanding orders without prejudice to any other rights it may have.

5.6 The customer will not be entitled to withhold payment of any invoice by reason of any right of sell-off or any claim or dispute with the company.

5.7 Without prejudice to any other rights it may have the company will have the right to suspend performance of its obligations if it reasonably believes that the customer will not make payment in accordance with this clause.

6. Delivery or Completion of Services

6.1 Unless otherwise agreed in writing by the company the customer will take delivery of the goods at the nearest convenient unloading point to the customers nominated address and the customer shall be responsible for notifying the Company of any restriction of access such as weight, width, height or unloading hours. The company shall have the sole right to determine the unloading point. The customer will give the company all necessary instructions and approvals for delivery within seven days of notification that the goods are ready for delivery and off-loading will be at the customers risk and expense.

6.2 Unless otherwise stated the contract price includes the cost (where applicable) of delivery in the United Kingdom by road or rail PROVIDED THAT any extra cost over and above normal delivery charges and consequent insurance charges shall be borne by the customer.

6.3 If the contract is an international supply contract it will be deemed to incorporate the latest edition of 'incoterms' current at the date of the contract. If there is any inconsistency between 'incoterms' and any express term of the contract the latter will prevail. The company will be

under no obligation to give the customer the notice specified in section 32(3) of the Sale of Goods Act 1979

6.4 The company will try to deliver the goods or complete the services by any agreed date or within any agreed period by such dates or periods are estimates only given in good faith and the company will not be liable for any failure to delivery or complete by such dates or within such periods. Time for delivery will not be of the essence for the contract and will also be conditional upon final Instructions for delivery being received promptly. The goods may be delivered by the company in advance of any agreed date upon giving reasonable notice to the

6.5 If the company is delayed in or prevented from delivering the goods or carrying out the service due to war, governmental or parliamentary restrictions, strike, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of goods, breakdown of machinery, shortages of labour or of raw material or Act of God or due to any other cause beyond the reasonable control of the company, the company may cancel or suspend the customer's order without incurring any liability for loss or damage.

6.6 For the avoidance of doubt the company reserves the right to suspend or terminate the supply of goods pursuant to a schedule of orders at any time upon giving notice in writing to the customer at least five working days before such supply is terminated or suspended.

6.7 If the company ceases to supply goods pursuant to a schedule of orders the customer will make full payment in accordance with clause 5 for all goods which have already been supplied to it by the company. The customer will have no claim against the company as a result of such cessation including but without limitation any claim for specific performance for the completion of the schedule of orders or any claim for loss suffered by any customer as a direct or indirect result of the suspension or termination of supply of goods pursuant to the schedule of orders.

6.8 The company will try to comply with reasonable requests by the customer for postponement of delivery but shall not be under day obligation to do so. Where delivery is postponed otherwise than due to the company's default the customer shall pay all costs and expenses of delay including a reasonable charge for storage and transportation.

7 Cancellation or Deferment

7.1 The company may defer any deliveries of goods or performance of services or treat the contract as determined if the customer: -

7.1.1 fails to make any payment when it becomes due.

7.1.2 Enters into any composition or arrangement with its creditors.

7.1.3 has a winding-up order made against it

7.1.4 has an administrative receiver or administrator appointed,

7.1.5 passes a resolution for winding-up or a court makes an order to that effect,

7.1.6 Breaches any of these conditions

7.2 Clause 7 is without prejudice to the company's right to the full purchase price for any loss suffered in consequence of the determination of the contract.

7.3 Cancellation by the customer will only be accepted at the discretion of the company. Acceptance of the cancellation will only be binding on the company if in writing and signed by a director. Any costs or expenses incurred by the company up to the date of cancellation including the contract price of forgings already produced, the costs of the purchase of unused raw materials and unrecovered die and tool costs and all direct and indirect loss or damage resulting from the cancellation will be paid by the customer to the company forthwith.

8. Quantity and Dimensional Tolerances

8.1 The company reserves the right to under or over deliver the order quantity within the margin established under current British Standards Institution procedure for forgings.

8.2 Unless otherwise agreed in writing by the company the work will be performed to the appropriate standard of commercial tolerances as established under current British Standards Institution.

9. Defective Goods or Services- Limitation of Liability

9.1 The customer will carefully examine the goods on receipt and notify the company and the carrier immediately of any damage or shortage. Within three days of receipt (in the case of total loss) of receipt of the invoice or other notification of dispatch the customer will give the company written confirmation of the damage, loss or shortage within

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fourteen days of request the customer will provide authority for the company's servants or agents to inspect any damaged goods. The company's liability, if any, will be limited to replacing or (its option) repairing such goods. The customer will not be entitled to make any claim against the company for consequential loss arising out of such damage, loss or shortage. The company will not be liable for any damage of loss in transit to the goods unless the customer complies with this clause.

9.2 Save as otherwise provided in these conditions the company's liability in respect of any defect in or failure of goods supplied is limited to replacing or (at its option) repairing or paying for the repair or replacement of goods which are found to be defective by reason of faulty or incorrect design, workmanship, parts or materials or (if replacement or repair is not practicable in the opinion of the company) the granting of credit to the customer by the company of the value of the goods at the invoice price and, in respect of any default in the services shall not exceed the contract price of such services as if has failed to perform properly in accordance with the contract.

9.3 The company's liability for any direct loss or damage sustained by the customer as a result of any error in any weight, dimension, capacity performance or other description or information which has formed a presentation or is part of the contract will not exceed the price of the goods and/or services in respect of which the description or information is incorrect.

9.4 The company will only be liable to the customer in respect of the matters set out in clauses 9.2 and 9.3 provided that the customer informs the company of defect or default as soon as reasonably practicable and in any event the defect is notified to the company within thirty days of the delivery of the goods or completion of the services. If the defective goods must be returned by the customer, then the company will pay all costs of the return transport to the company's premises within such six-month period.

9.5 Save as provided in these conditions the company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the customer arising from or in connection with any such defect, default or error as aforesaid.

9.6 Where the customer supplies free issue material for a part under development the company will not be liable for any scrappage incurred during the development process. The company will be liable for excess scrappage of a normal production part, subject to the material being provided in a fully usable condition.

9.7 Where the company supplies scrapped metal or sub-standard metal (described as such) no warranty is given by the company in respect of the quality or condition of such goods and the company shall not be liable for any direct or consequential loss incurred by the customer by reason of such quality or condition.

9.8 Where the company agrees to repair or replace goods any time specified for delivery under the contract will be extended for such period as the company may reasonably require.

9.9 Except for the terms implied in the contract by section 12 of the Sale of Goods Act 1979 (or as amended) or section 2 of the Supply of Goods and Services Act 1982 (or as amended) all conditions, warranties and other terms express or implied, statutory or otherwise are expressly excluded, save insofar as they are contained in these conditions or otherwise expressly agreed by the company in writing. If any legislation makes it unlawful to exclude or purport to exclude any term from the contract this clause will not apply to such term.

9.10 Except in respect of death or personal injury the company shall not be liable to the customer for any damage or for any direct or consequential loss incurred by the customer in consequence of any negligence on the part of the company or negligence or wilful default on the part of its servants or agents in or in connection with the supply of any goods or their design or manufacture or the provision of any information.

10 Retention of Title

The following provisions shall apply to all contracts (save for international supply contracts) relating to goods which under the contract the company agrees to supply to the customer. No termination of the contract shall prejudice limit or extinguish the company's rights under this paragraph.

10.1 Upon delivery of the goods the customer shall hold the goods solely as bailee for the company and the goods shall remain the property of the company until such time as the customer shall have paid to the company the full purchase price of the goods supplied under the contract or any other contract. Until such time the company shall be entitled to recover the goods or any part thereof and for the purchase of exercising such rights the company its employees and agents with appropriated transport may enter upon the customer's premises and any other location where the goods are situated.

10.2 The company to incorporate the goods in any product hereby grants the customer a licence.

10.3 The customer is hereby licensed to sell on the goods and any products incorporating any of them. The customer shall, immediately upon receipt of the proceeds of sale, and whether or not payment has become due under clause 5 remit to the company the full purchase price of the goods sold on less any part which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the company.

10.4 The customer shall maintain all appropriate insurance in respect of the goods from the date or dates on which the risk in the goods passes to it. In the extent of any loss or damage occurring while the goods remain the property of the company the customer shall immediately on receipt of the insurance monies remit to the company the full purchase price of the goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such an amount as trustees and agents of the company.

10.5 The licences granted under sub-paragraphs 10.2 and 10.3 above shall be terminable forthwith at any time upon notice by the company to the customer.

11 Die & Tools

11.1 Dies and tools are the property of the company, which will normally but without obligation to do so, retain them for one year from the date of completion of the relevant order. Unless otherwise agreed the customer will have the exclusive right to the use of the dies, which will not be used for the benefit of any other customer without its consents. Unless otherwise agreed in writing by the company, the dies will not become the property of the buyer.

11.2 The customer's own dies and tools are operated at the customer's sole risk and responsibility and the company will not accept any liability either in contract or in tort for any loss or damage arising out of the use or operation of the dies or tools (save in respect of death or personal injury arising from negligence of the company).

11.3 The company will have a general lien in respect of all sums owing by the customer to the company (whether such sums have become due and payable or not) over any dies and tools which are the property of the customer.

11.4 If the customer fails to order 75% of the annual quantity of goods anticipated at the time of the production of the relevant dies and tools by the company, the company may charge the customer's contribution towards the cost of dies and tools.

12 Risk in Goods

12.1 Except for international supply contracts and unless otherwise agreed in writing by the company, the risk in the goods will pass to the customer on the relevant date or, if delivery is postponed at the customer's request, when the goods are ready for despatch.

13 Composite Orders

13.1 Notwithstanding that the customer may, in a single contract purchase several different patterns, each pattern shall be continued as forming a separate contract and failure to supply any of these patterns shall not constitute a breach of the contract in respect of the other items.

14 Trademarks

14.1 Unless agreed otherwise by the company in writing the company's customer may not use trademarks and any other intellectual property rights.

15 Written Trade References

15.1 The customer shall, if required by the company, provide two satisfactory trade references and a banker's reference

16 Property Information

16.1 All information which the company has divulged to the customer and any information relating to the company's business, products or processes which may come into the possession of the customer in the course of quoting and/or carrying out the contract shall be treated by the customer

in confidence and shall not without the prior written consent of the company be disclosed to any third party.

17 General

17.1 English law governs these conditions and the contract and the parties agree to submit to the jurisdiction of the English Court in the event of any dispute.

17.2 The headings in these conditions are inserted for convenience only. They are not to affect their interpretation or construction.

17.3 If any provision of these conditions becomes illegal or void for any reason the validity of the remaining provisions shall not be affected.

17.4 Failure by the company to enforce strict compliance with these conditions by the customer will not constitute a waiver of any of the conditions.

17.5 These terms are updated regularly and the issue in force at the time of order acceptance shall be deemed to apply. If a copy of the latest terms is required, then it must be specifically requested at time of placing order.

These terms and conditions are agreed and accepted by the undersigned as applying to all transactions between the companies

Signed: _____

Position: _____

Date: _____

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