

CONDITIONS OF PURCHASE – ENODIS PLC

1. DEFINITIONS

1.1 In these Conditions the following definition shall apply:

The "**Company**" means Enodis plc;

The "**Contract**" means the contract made between the Company and the Supplier incorporating these Conditions;

The "**Goods**" means goods, equipment, materials (including parts) that the Company agrees to purchase from the Supplier in the Contract;

The "**Purchase Order**" means the Company's instruction to supply the Goods and/or Services incorporating these Conditions;

The "**Services**" means any services performed or procured by the Supplier whether or not in connection with the supply of Goods that the Company agrees to purchase from the Supplier in the Contract;

The "**Supplier**" means the person who accepts the Company's Purchase Order.

2. GENERAL

2.1 The Company does business and concludes Contracts for the purchase of Goods and Services subject to these Conditions and the Supplier accepts that these Conditions shall govern the Contract to the exclusion of any other terms or conditions.

2.2 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document will form part of the Contract, and the Seller waives any right which it might otherwise have to rely on such terms and conditions.

3. VARIATION OF TERMS

No variation, extension or cancellation of the terms of the Contract shall be valid unless agreed to in writing by the Company.

4. PRICES

4.1 The price of the Goods and/or Services shall be stated in the Company's Purchase Order inclusive of:

4.1.1 all materials and services necessary for the satisfactory execution of the Contract;

4.1.2 the cost of packing and carriage to the designated place of delivery or address of the Company;

4.1.3 all duties and costs on importation into the United Kingdom.

4.2 Supplier represents that the prices for the Goods and /or Services covered by this Purchase Order are the lowest prices charged by Supplier to buyers of the same class as Company under conditions similar to those specified in this Purchase Order . Supplier agrees that any price reduction made in the Goods and /or Services covered by the Purchase Order subsequent to its placement but prior to payment therefore will be applicable to it.

5. DESCRIPTION AND QUALITY

5.1 In addition to Supplier's customary warranties, the Goods delivered and Services performed by the Supplier shall:

5.1.1 correspond as to description, quality and condition with the particulars stated or referred to on the Company's Purchase Order or any agreed specification;

5.1.2 conform with any sample, pattern, drawing or design approved or supplied by the Company;

5.1.3 be of sound materials and workmanship;

5.1.4 meet all standards of inspection or performance stated or referred to on the Company's Purchase Order, or otherwise notified to the Supplier by the Company;

5.1.5 be fit for any purpose expressly or impliedly made known to the Supplier, or otherwise for their ordinary purposes;

5.1.6 Supplier's warranties shall survive acceptance, payment, inspection, test, and use and shall be for the benefit of the Company and its successors, assigns, customers and users of Goods sold by Company

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- 5.1.7 Comply with the relevant requirements of common law and any statute, statutory rule or order or other regulation having the force of law, which may be in operation at the date of delivery, in particular but without limitation, the Supplier undertakes to comply in every respect with the requirements of the current Sale of Goods Act, Safety at Work Act, EU Directive 2002/96/EC on waste Electrical And Electronic Equipment (WEEE), CE marking directive (93/68/EEC), Directive 2002/95/EC and on the Restriction of the USE of Certain Hazardous Substances in EEE (RoHs), as applicable and all applicable regulations and standards promulgated thereunder to which the clause is intended.
- 5.2 At any time prior to delivery of the Goods or Services, the Company shall have the right to inspect and test the Goods and Services at all times. If the results of such inspections or tests cause the Company to be of the opinion that the Goods or Services do not conform with the Company's Purchase Order, or to any other specifications etc set out in clause 5, the Company shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity. Any inspection or testing does not affect the Supplier's obligations under a Contract.

6. ORDER OR EXECUTION AND TIME OF DELIVERY

- 6.1 The Supplier shall carry out Services specified in the Contract and/or Purchase Order in the order stated in the Contract.
- 6.2 Completion of the Services or delivery of the Goods shall be made at the time(s) stated on the Company's Purchase Order. Time for delivery is of the essence. The Company is not bound to accept delivery in instalments.
- 6.3 Without prejudice to clause 6.2 before the Goods are delivered, authorisation to deliver the Goods must be received from the Company and any part of the Goods ready for delivery before receipt of such authorisation shall be stored at the Supplier's risk and expense.
- 6.4 At the time of delivery in the UK, the Supplier shall provide the Company with an advice note indicating the Company's order number and item number, the number of packages, and describing the contents of each package.
- 6.5 Before delivery of the Goods per the Purchase Order the Supplier shall provide the Company with a shipping specification giving the same information as set out in clause 6.4 as well as the net weight and dimensions of each package.
- 6.6 The outside of all containers and packages containing Goods are to be indelibly marked or labelled with the Company's Order number and marked to show the correct side up and slinging points.
- 6.7 Supplier shall affix prominent and adequate warning labels to the containers and packages to indicate any hazardous or injurious materials.

7. NON-COMPLIANCE WITH TERMS

In the event the Supplier fails to complete the Services or deliver the Goods in all respects in compliance with the provisions of clause 5 and/or clause 6, the Company shall be entitled to refuse to accept or to reject such Goods or Services and charge Supplier for the amount including shipping and incidental charges to return such Goods and in addition be entitled to terminate the Contract. Without prejudice to the Company's other rights in the event of such refusal, rejection or determination the Company shall be entitled to make or procure substitute goods or obtain alternative services and to recover from the Supplier any financial loss incurred thereby. Any failure by the Company to exercise such rights shall not be a waiver thereof and the Company shall be entitled, without prior notice, to exercise such rights until all the Goods have been delivered and accepted or until the required Services have been performed in full.

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8. PROPERTY AND RISK

- 8.1 Without prejudice to clause 6, all risk of loss or damage to the Goods shall remain with the Supplier until the Goods reach the agreed place of delivery as specified in the Purchase Order.
- 8.2 If the Supplier shall suffer any distress or execution to be levied against him or makes or proposes to make any arrangements with his creditors, or being a company shall go into liquidation (other than a members voluntary liquidation) then any of the Goods which are in a deliverable state shall become the sole property of the Company forthwith but subject to the Company's rights under clause 7.

9. PACKING MATERIALS

The Supplier shall supply Goods suitably packed to withstand freight handling and periods of storage. If the Goods are damaged due to faulty or inadequate packing the damaged Goods shall be repaired or replaced at the expense of the Supplier, whether or not delivery has been accepted.

10. THE COMPANY'S MATERIALS

- 10.1 The Supplier shall bear all risk of loss of or damage to all patterns, dies, moulds, gauges, or other instruments, original designs, drawings, other articles, free issue materials or any materials whatsoever supplied by the Company in connection with the Contract or for incorporation in the Goods ("Materials") and without prejudice to the Company's other rights, the Company may instruct the Supplier to replace or reinstate any item suffering such loss or damage. All such property shall be identified and marked as Company's property, used only for this Contract and adequately insured by Supplier at its expense for Company's protection. The property in the Materials shall not pass to the Supplier who shall keep such articles or Materials as bailee for the Company and shall return them immediately on demand by the Company.
- 10.2 Supplier shall return the same to Company in its original condition, reasonable wear and tear excepted, and when such property is no longer required hereunder, Supplier shall furnish Company with a list thereof and shall comply with any Company disposition instructions applicable thereto.
- 10.3 The Supplier shall keep secret all Materials, and all technical or commercial know-how, inventions, processes or initiatives which are of a confidential nature, and any other confidential information relating to the Company's business or its products that have been disclosed to it by the Company. The Supplier shall restrict disclosure of such confidential information to such of its employees as need to know, and shall immediately return any confidential information (and all copies containing such information) to the Company on request.
- 10.4 The provisions of clause 10.3 above shall not apply to any confidential information which:-
- 10.4.1 is in or enters the public domain other than by breach of the Contract or other act or omissions of the recipient;
- 10.4.2 is obtained by a third party who is lawfully authorised to disclose such information; or
- 10.4.3 is authorised for release by the prior written consent of the discloser; or
- 10.5 Nothing in clause 10.4 shall prevent the Recipient from disclosing confidential information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.

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11. MODIFICATIONS OR VARIATIONS

- 11.1 The Company may by notice in writing before delivery of the Goods and/or completion of performance of Services, require the Supplier to carry out modifications or variations to the Goods and/or Services including the processes or methods of manufacture of the Goods, subject only to the parties agreeing the costs of and the time for carrying out such modification or variation.
- 11.2 Any claim by Supplier for modifications or variations of the Goods and/or Services pursuant to the preceding sentence must be asserted in writing within fifteen (15) days after receipt by Supplier of notification of change and must be approved by Company in writing, but nothing shall excuse Supplier from proceeding with the delivery of Goods and/or Services as changed.

12. SUSPENSIONS AND CANCELLATION

- 12.1 The Company shall be entitled by written notice:
- 12.1.1 to suspend or postpone the execution of the Services or delivery of Goods at its discretion; and/or
 - 12.1.2 without prejudice to its other rights, to cancel the Contract in whole or in part at any time;
 - 12.1.3 to cancel the Contract if the Supplier goes into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or has a receiver appointed over all or any of its assets or makes any arrangements with or for the benefit of its creditors; or
 - 12.1.4 to take the actions set forth in Section 12.2 below, if, in the view of the Company the Supplier is:
 - 12.1.4.1 failing to carry out the Company's reasonable instructions; or
 - 12.1.4.2 failing to carry out the Services specified in the Contract at a rate of progress sufficient to meet the specified completion date; or
 - 12.1.4.3 otherwise in breach of any part of the Contract.
- 12.2 The Company may give the Supplier 7 days' written notice to correct its default. If the Supplier fails to comply with such notice to the satisfaction of the Company, the Company may without prejudice to any other rights cancel the Contract and will not be liable to the Supplier for any loss or damage whatsoever resulting from such termination.

13. DISCLOSURE

The Company reserves the right to disclose to its customers any articles, drawings, information or any other Materials whatsoever received from the Supplier in connection with the performance of its obligations under the Contract.

14. INTELLECTUAL PROPERTY

The Supplier warrants that the manufacture, delivery, use and/or repair of the Goods to be supplied and each of the parts thereof and the application of the associated functions and the performance of the Services do not infringe any industrial and intellectual property rights held by third parties. The Supplier shall fully indemnify the Company against any action, claim, demand, costs, charges or expenses arising out of or in connection with any infringement or alleged infringement of any patent, registered design, trade mark or trade name or copyright or any other intellectual property right of any third party by reason of the Company's use or sale of the Goods or Services PROVIDED THAT this indemnity shall not apply to any infringement or alleged infringement which is due to the Supplier having used any item supplied by the Company or having followed an instruction given by the Company.

15. PAYMENT

- 15.1 Unless otherwise stated in the Contract, payment will be made on the last day of the third month following that in which the Supplier's invoice is received.

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15.2 Without prejudice to any other right or remedy, the Company reserves the right to set off any amount owing at any time from the Supplier to the Company against any amount payable by the Company to the Supplier under a Contract.

16. INDEMNITY

The Supplier shall indemnify the Company in respect of all loss, damage or injury whatsoever involving any person or property and against any action, claim, demand, costs, charges or expenses arising in connection therewith, to the extent that the same shall have been caused or contributed to by any breach by the Supplier of his obligations under the Contract or by the negligence or wilful misconduct of the Supplier, its directors, employees or agents.

17. LIMITATION OF LIABILITY

In no event shall Company be liable for anticipated profits or for incidental or consequential damages. Company's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from the Purchase Order or from the performance or breach thereof shall in no case exceed the price allocable to the articles or unit thereof which gives rise to the claim. Company shall not be liable for penalties of any description. Any action resulting from any breach on the part of Company as to the articles delivered under the Purchase Order must be commenced within one (1) year after the cause of action has accrued.

18. EXCUSABLE DELAYS

- 18.1 Neither party will be liable or responsible for any failure to perform, or delay in performance of, any obligations under this Contract that is caused by events outside reasonable control (Force Majeure Event).
- 18.2 A Force Majeure Event includes any act, event, non-happening, omission or accident beyond reasonable control and includes in particular (without limitation) the following:
- 18.2.1 Strikes, lock-outs or other industrial action.
 - 18.2.2 Civil commotion, riot, invasion, terrorist attack or threat of terrorist attack, war (whether declared or not) or threat or preparation for war.
 - 18.2.3 Fire, explosion, storm, flood, earthquake, subsidence, epidemic or other natural disaster.
 - 18.2.4 Impossibility of the use of railways, shipping, aircraft, motor transport or other means of public or private transport.
 - 18.2.5 Impossibility of the use of public or private telecommunications networks.
 - 18.2.6 The acts, decrees, legislation, regulations or restrictions of any government.
- 18.3 In the occurrence of a Force Majeure Event, the Supplier shall notify the Company as within ten (10) days after the beginning of such Force Majeure Event. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Supplier and any action proposed to mitigate its effect.

19. INSURANCE

Seller agrees to maintain in effect insurance coverage with reputable insurance companies covering employers' liability, third party motor insurance, public liability, including products liability and excess liability, all with such limits as are sufficient, in Buyer's reasonable judgment, to protect Seller and Buyer from the liabilities insured against by such coverage's. Seller shall furnish a certificate evidencing the obligation set forth in this paragraph. Seller's insurance carriers shall not cancel or materially amend such policies without thirty (30) day's prior written notice to Buyer. The obligation to provide insurance set forth in this paragraph is separate and independent of all other obligations contained in this Agreement. Seller's insurance carriers shall not cancel or materially amend such policies without thirty (30) day's prior written notice to Buyer.



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20. GENERAL

- 19.1. The Supplier shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company. The Company may assign the Contract or any part of it.
- 19.2 Any consent by Company to assignment shall not be deemed to waive Company's right to recoupment and/or set off of claims arising out of this or any other transactions with Supplier, its divisions, affiliates or subsidiaries, or to settle or adjust matters with Supplier without notice to permitted successors and assigns.
- 19.3 The parties to a Contract do not intend that any term will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

21 LAW

- 20.1 Any dispute arising under this Purchase Order which is not settled by agreement of the parties may be settled by appropriate legal proceedings. Pending any decision, appeal or judgment in such proceedings or the settlement of any dispute arising under this Purchase Order, Supplier shall proceed diligently with the performance of this Purchase Order in accordance with the decision of Company
- 20.2 The Contract shall be governed by English law and the Supplier agrees to submit to the exclusive jurisdiction of the English courts.