

HARSCO METALS GROUP LIMITED
TERMS OF PURCHASE – EFFECTIVE FROM 11 JULY 2018
(EDITION 2018/2)

1. Interpretation

1.1. In these Purchase Terms:

“Buyer” means Harsco Metals Group Limited (registered in England under number 702790);

“Contract” means the contract for the sale and purchase of the Goods and the supply and acquisition of the Services;

“Data Protection Legislation” means the Data Protection Act 2018 and (i) unless and until the General Data Protection Regulation (EU) (2016/679) (“GDPR”) is no longer directly applicable in England and Wales, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in England and Wales and then (ii) any successor legislation to the GDPR or the Data Protection Act 2018;

“Delivery Address” means the address stated on the Order;

“Goods” means the goods (including any instalment of the goods or any part of them) described in the Order;

“Order” means the Buyer’s purchase order which refers to these Purchase Terms;

“Personal Data” has the meaning given in the applicable Data Protection Legislation;

“Price” means the price of the Goods and/or the charge for the Services;

“Purchase Terms” means the standard terms of purchase set out in this document and (unless the context otherwise requires) includes any special terms agreed in Writing between the Buyer and the Seller;

“Seller” means the person so described in the Order;

“Services” means the services (if any) described in the Order;

“Specification” includes any plans, drawings, data or other information relating to the Goods or Services;

“Writing”, and any similar expression, includes facsimile transmission and comparable means of communication, but not electronic mail.

1.2. Any reference in these Purchase Terms to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3. The headings in these Purchase Terms are for convenience only and shall not affect their interpretation.

2. Basis of purchase

2.1. The Order constitutes an offer by the Buyer to purchase the Goods and/or acquire the Services subject to these Purchase Terms.

2.2. These Purchase Terms shall apply to the Contract to the exclusion of any other terms on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

- 2.3. No variation to the Order or these Purchase Terms shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

3. Specifications

- 3.1. The quantity, quality and description of the Goods and the Services shall, subject as provided in these Purchase Terms, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in Writing by the Buyer.
- 3.2. Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the Buyer, and the Seller assigns with full title guarantee to the Buyer all such copyright, design rights and other intellectual property for no further consideration.
- 3.3. The Seller shall not –
- 3.3.1. disclose to any third party any Specification referred to in clause 3.2 except to the extent that it is or becomes public knowledge through no fault of the Seller; or
- 3.3.2. use any such Specification except as required for the purpose of the Contract.
- 3.4. The Seller shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging, packing and delivery of the Goods and the performance of the Services.
- 3.5. The Seller shall not unreasonably refuse any request by the Buyer to inspect and test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and the Seller shall provide the Buyer with all facilities reasonably required for inspection and testing.
- 3.6. If as a result of inspection or testing the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within seven days of inspection or testing, the Seller shall take such steps as are necessary to ensure compliance.
- 3.7. The Goods shall be marked in accordance with the Buyer's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition in the ordinary course.

4. Price of the goods and services

- 4.1. The Price of the Goods and the Services shall be as stated in the Order and, unless otherwise so stated, shall be:
- 4.1.1. exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and
- 4.1.2. inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.
- 4.2. No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in Writing.

- 4.3. The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller.

5. Terms of payment

- 5.1. The Seller may invoice the Buyer on or at any time after delivery of the Goods or performance of the Services, as the case may be, and each invoice shall quote the number of the Order.
- 5.2. Unless otherwise stated in the Order, the Buyer shall pay the Price of the Goods and the Services on the first payment run following 60 days after the end of the month in which a proper invoice is received or the acceptance of the Goods or Services in question by the Buyer, whichever is the later.
- 5.3. The Buyer may set off against the Price any sums owed to the Buyer by the Seller.

6. Delivery

- 6.1. The Goods shall be delivered to, and the Services shall be performed at, the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.
- 6.2. Where the date of delivery of the Goods or of performance of the Services is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.
- 6.3. The time of delivery of the Goods and of performance of the Services is of the essence of the Contract.
- 6.4. The Buyer may at any time and at no cost to the Buyer require the Seller to postpone delivery of the Goods or performance of the Services in whole or in part.
- 6.5. If, for any reason, the Buyer cannot accept delivery of the Goods at the time or place stipulated in the Order, the Seller shall at its own cost store the Goods, safeguard them and take all reasonable steps to protect the Buyer's interests until their actual delivery.
- 6.6. A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.
- 6.7. If the Goods are to be delivered, or the Services are to be performed, by instalments, the Contract will be treated as a single contract and not severable.
- 6.8. The Buyer may reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 6.9. The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.
- 6.10. The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the Goods, whether or not any Goods are accepted by the Buyer.
- 6.11. A certificate of conformity must accompany each delivery of Goods certifying to the Buyer's satisfaction that all Goods within the delivery or consignment are manufactured in accordance with the Specification provided by the Buyer or the sample of the Goods upon which the Buyer has relied when placing the Order.

7. Risk and Property

- 7.1. Risk of damage to or loss of the Goods shall pass to the Buyer on delivery to the Buyer in accordance with the Contract.
- 7.2. The property in the Goods shall pass to the Buyer on delivery, unless payment for the Goods is made (in whole or part) prior to delivery, when it shall pass to the Buyer once payment has been made and the Goods have been appropriated to the Contract.

8. Warranties and liability

- 8.1. The Seller warrants to the Buyer that the Goods:
 - 8.1.1. will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed;
 - 8.1.2. will be free from defects in design, material and workmanship;
 - 8.1.3. will correspond with any relevant Specification or sample; and
 - 8.1.4. where a sample has been provided, will be of the same or superior quality to that sample; and
 - 8.1.5. will comply with all statutory requirements and regulations relating to the sale of the Goods.
- 8.2. The Seller warrants to the Buyer that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances.
- 8.3. Without limiting any other remedy, if any Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:
 - 8.3.1. to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within seven days; or
 - 8.3.2. at the Buyer's sole option, and whether or not the Buyer has previously required the Seller to repair the Goods or to supply any replacement Goods or Services, to treat the Contract as discharged by the Seller's breach and require the repayment of any part of the Price which has been paid.
- 8.4. The Seller shall indemnify the Buyer in full against all liability, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Buyer as a result of or in connection with:
 - 8.4.1. breach of any warranty given by the Seller in relation to the Goods or the Services;
 - 8.4.2. any claim that the Goods infringe, or their importation, use or resale, infringes, the patent, copyright, design right, trade mark or other intellectual property rights of any other person in any country, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
 - 8.4.3. any liability under the Consumer Protection Act 1987 in respect of the Goods;
 - 8.4.4. any act or omission of the Seller or its employees, agents or sub-contractors in supplying, delivering and installing the Goods; and
 - 8.4.5. any act or omission of any of the Seller's personnel in connection with the performance of the Services.

9. Termination

- 9.1. The Buyer may cancel the Order in respect of all or part only of the Goods and/or the Services without having to justify such cancellation by giving notice to the Seller at any time prior to delivery or performance. In such event:-
- 9.1.1. where the Goods are not stock merchandise of the Seller, the Buyer shall make and the Seller shall accept payment on the basis of a fair valuation, supported by documentary evidence, for work actually done under the Order prior to receipt by the Seller of notice of termination but be limited to monies not otherwise recoverable by the Seller;
- 9.1.2. where the Goods are standard stock merchandise of the Seller, the Buyer shall have no further obligation in respect of the cancellation except to make payment for reasonable consignment and re-delivery charges to the Seller in respect of Goods dispatched but not delivered prior to such cancellation.
- 9.2. The Buyer may terminate the Contract without liability to the Seller by giving notice to the Seller at any time if:
- 9.2.1. the Seller is in breach of any of its obligations in terms of the Contract; or
- 9.2.2. the Seller makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation; or
- 9.2.3. an encumbrance takes possession, or a receiver is appointed, of any of the property or assets of the Seller; or
- 9.2.4. the Seller ceases, or threatens to cease, to carry on business; or
- 9.2.5. the Buyer reasonably apprehends that any of the events mentioned above is about to occur in relation to the Seller and notifies the Seller accordingly.

10. Insurance

- 10.1. The Seller shall indemnify the Buyer against all claims in respect of loss or damage to persons and property (including consequential loss) incurred by the Buyer or third parties arising out of or in consequence of the supply of the Goods or performance of the Services and shall, at its own cost, take out and maintain adequate insurance including Employer's Liability, Product and Public Liability, and third party and professional indemnity insurance, and shall supply details of such insurance when requested to do so by the Buyer. If the Seller fails to take out and maintain insurance as above, the Buyer may effect the same and deduct the cost of so doing from the monies which would otherwise be due to the Seller.

11. Modern Slavery Act

- 11.1. The Seller understands that the Buyer prohibits the Seller and any of its directors, officers, employees, or any other persons associated with it or anyone for whose acts or defaults they may be vicariously liable or anyone acting on behalf of any of them (including but not limited to any sub-contractors) from engaging in any Modern Slavery Practices (which includes but is not limited to servitude, slavery, forced and compulsory labour and human trafficking) within their businesses or their supply chains in connection with the Contract.
- 11.2. In performing its obligations under the Contract, the Seller shall and shall procure that its directors, officers, employees, or any other persons associated with it or anyone for whose acts or defaults they may be vicariously liable or anyone acting on behalf of any of them (including but not limited to any sub-contractors) shall:

- 11.2.1. comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- 11.2.2. have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance; and
- 11.2.3. not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom.
- 11.3. The Seller represents and warrants that neither it nor any of its directors, officers, employees, or other persons associated with it or anyone for whose acts or defaults they may be vicariously liable or anyone acting on behalf of any of them (including but not limited to any sub-contractors):
 - 11.3.1. has been convicted of any offence involving any Modern Slavery Practices; and
 - 11.3.2. having made reasonable enquiries, to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with any Modern Slavery Practices.
- 11.4. The Seller agrees to implement due diligence procedures for its subcontractors, and suppliers, to ensure that there is no Modern Slavery Practices in its supply chains.
- 11.5. The Seller shall notify the Customer as soon as it becomes aware of any actual or suspected Modern Slavery Practices in a supply chain which has a connection with the Contract.
- 11.6. The Seller shall:
 - 11.6.1. maintain a complete set of records to trace the supply chain of all Goods and/or Services provided to the Buyer in connection with the Contract; and
 - 11.6.2. permit the Buyer and its third party representatives, on reasonable notice during normal business hour, but without notice in case of any reasonably suspected breach of this clause 11, to have access to and take copies of the Seller's records and any other information and to meet with the Seller's personnel to audit the Seller's compliance with its obligations this clause; and
 - 11.6.3. take appropriate remedial action, at its own cost, to remove any Modern Slavery Practices found within its supply chain.
- 11.7. The Seller represents, warrants and undertakes that it conducts its business in a manner that is consistent and in compliance with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.
- 11.8. The Buyer may terminate the Contract with immediate effect by giving written notice to the Seller if the Seller commits a breach of this clause 11.

12. Data Protection

- 12.1 The Seller agrees that it will at all times, comply with all applicable requirements of the Data Protection Legislation and confirms that this clause 12.1 is in addition to, and does not relieve, remove or replace, the Seller's obligations under the Data Protection Legislation.
- 12.2 Without prejudice to the generality of Clause 12.1, the Seller shall, in relation to any Personal Data of the Buyer that it is required to hold and/or process in connection with the Contract:
- (a) process that Personal Data as a Controller in accordance with all applicable requirements of the Data Protection Legislation; and
 - (b) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of that Personal Data and against accidental loss or destruction of, or damage to, that Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting that Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to that Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it); and
 - (c) ensure that all its personnel (including but not limited to directors, officers and employees) who have access to and/or process that Personal Data are obliged to keep that Personal Data confidential; and
 - (d) not appoint any third party processor to hold and/or process that Personal Data under the Contract; and
 - (e) not transfer any of that Personal Data outside of the European Economic Area unless the prior written consent of the Buyer has been obtained; and
 - (f) assist the Buyer, at the Buyer's cost, in responding to any request from a Data Subject (as defined in the Data Protection Legislation) and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators; and
 - (g) notify the Buyer without undue delay and in any event within 48 hours of becoming aware of a Personal Data breach; and
 - (h) at the written direction of the Buyer, delete or return that Personal Data and copies thereof to the Buyer on termination of the Contract unless required to keep copies by Data Protection Legislation; and
 - (i) maintain complete and accurate records and information to demonstrate its compliance with this clause 12 and allow for audits by the Buyer or the Buyer's designated auditor.
- 12.3 The Buyer may terminate the Contract with immediate effect by giving written notice to the Seller if the Seller commits a breach of this clause 12.

13. Terms to survive termination of the Contract

- 13.1. Termination of the Contract shall not affect any term which is expressly or by implication to operate after the termination.
- 13.2. Clauses 3.3, 8.4, 10.1 and 12 of the Contract shall survive any termination of the Contract.

14. General

- 14.1. The rights and remedies of the parties in terms of or arising out of the Contract are cumulative and are without prejudice and in addition to any rights or remedies a party may have at law or in equity. Accordingly, the exercise by a party of any one right or remedy in terms of or arising out of the Contract, or at law or in equity, shall not prevent it from exercising any other such right or remedy.
- 14.2. The Buyer may perform any of its obligations in terms of the Contract by itself or through any holding or subsidiary company.
- 14.3. The Order is personal to the Seller and the Seller shall not assign or transfer or purport to assign or transfer to any other person any of its rights or sub-contract any of its obligations under the Contract.
- 14.4. A person who is not a party to the Contract has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of the Contract, but, this does not affect any right or remedy of a third party which exists or is available apart from under that Act.
- 14.5. A notice required or permitted to be given by either party to the other under these Purchase Terms shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.
- 14.6. No waiver by the Buyer of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 14.7. If any provision of these Purchase Terms is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Purchase Terms and the remainder of the provision in question shall not be affected.
- 14.8. The Contract shall be governed by the laws of England, and the Seller agrees to submit to the non-exclusive jurisdiction of the English courts.