

MIDLAND BEARINGS

CONDITIONS OF SALE OF GOODS AND SERVICES

1. **INTERPRETATION**
- 1.1 In these conditions these words and expressions shall, unless the text specifically states otherwise, have the following meanings:-
 - 1.1.1 **"Authorised Representative"** means a director of the Company or an employee of the Company duly authorised by a director of the Company to deal with the Customer in the ordinary course of business;
 - 1.1.2 **"Company"** means Midlands Bearings (Company number 02839330) whose registered office is at Unit 33, Pensnett Trading Estate, Kingswinford, West Midlands DY6 7PP;
 - 1.1.3 **"Contract"** means any contract between the Company and the Customer for the sale and purchase of goods and Services as set out in these terms and conditions;
 - 1.1.4 **"Customer"** means the company, firm, body or person purchasing the Goods;
 - 1.1.5 **"Event of Force Majeure"** means any cause beyond the reasonable control of the Company including but not limited to fire, act of God, lightning, explosion, flood, civil disorder, criminal damage, war or military operations, national or local emergency a ny acts or omissions or requirements or regulations of any Government or any other civil or military authority or any regulatory body, labour disputes of any kind (whether at the Company's premises or elsewhere), or late delivery or performance or non-delivery or non-performance by a supplier or subcontractor, or any other cause whatsoever beyond the Company's control or of an unexpected or exceptional nature;
 - 1.1.6 **"Goods"** means all or any of the goods, materials, items, products or commodities supplied by the Company;
 - 1.1.7 **"Order"** means the written or verbal order received by the Company from the Customer in respect of the Goods or the Services;
 - 1.1.8 **"Price"** means the price payable by the Customer to the Company under the Contract;
 - 1.1.9 **"Services"** means work and/or services or any of them performed by the Company for the Customer pursuant to an Order.
- 1.2 The Contract will come into being upon acceptance by the Company of the Order and these conditions shall apply to and be deemed to be incorporated into the Contract to the exclusion of any other terms and conditions referred to in the Order or as otherwise stated by the Customer.
- 1.3 Any subsequent variation to or modification of these conditions must be expressly agreed to in writing by an Authorised Representative.
- 1.4 The headings in these conditions are inserted for convenience only and shall not affect the construction or interpretation of these conditions in any way.
2. **PRICE AND QUANTITY**
- 2.1 The price payable for the Goods or the Services shall be the price quoted by the Company to the Customer at the date of the Order.
- 2.2 The Company shall be entitled to adjust the Price except where the Company has agreed in writing with the Customer to guarantee the Price quoted at the date of the Order.
- 2.3 Where the Price for the Goods or the Services is varied in accordance with condition 2.2 above, the Price as varied shall be binding on both parties and shall not give either party any option of cancellation.
- 2.4 All Prices quoted to the Customer for the supply of Goods or the Services are exclusive of any value added tax and all other local taxes or duties relating to the manufacture, transportation, export, import, sale or delivery of the Goods or the performance of the Services (whether or not payable by the Customer).
- 2.5 A minimum order charge will be levied on all Orders. The amount of the minimum order charge in force at any time will be supplied by the Company upon request.
- 2.6 Quotations in a currency other than £ sterling are based on the rate of exchange at the time of quoting and unless otherwise stated the Price may be subject to revision up or down of any different rate of exchange is ruling at the date of invoice.
3. **TERMS OF PAYMENT**
- 3.1 The Company's invoice shall be paid by the Customer to the Company in cleared funds within thirty (30) days of the date of the Company's invoice (the invoice value added tax and without any set-off or other deduction). The Company reserves the right to invoice the Customer on any fixed periodic basis or stage completed basis.
- 3.2 When the Contract provides for the delivery or supply of Goods by instalments or spread over a period of time, each instalment will be invoiced as despatched separately and each invoice will be treated as a separate account and be payable accordingly.
- 3.3 Failure to pay any invoice in accordance with the foregoing provisions of this condition or any other terms specified in the Contract shall entitle the Company to suspend further deliveries on the same Order or on any other order from the Customer without prejudice to any other right the Company may have. If the Customer fails to pay the full amount of any sum payable when due, the Company shall reserve the right to:
 - 3.3.1 without prejudice to any other remedy, charge to the Customer interest at five (5%) above Barclays Bank plc base rate on the amount of any invoice which is not paid by the due date on a day by day basis from the due date to the date of payment of such invoice subject to all applicable UK law, rules and regulations in force from time to time; and
 - 3.3.2 where genuine doubts arise as to a Customer's financial position or in the case of failure to pay for the Goods or the Services or any delivery or instalment or performance as aforesaid, to suspend delivery or performance of any Order or any part or instalment without liability until payment or satisfactory security for payment has been provided.
4. **DELIVERY AND COMPLETION DATES**
- 4.1 Where Goods are from stock, such supply is subject to availability of stock at the date of delivery.
- 4.2 The dates or forecast for delivery of the Goods or the dates for the carrying out of the Services are approximate only and unless where otherwise expressly stated time shall not be the essence for delivery.
- 4.3 The Company will not be liable in any circumstances or the consequences of any delay in delivery, or failure to deliver if the duration of the delay is not consequential and if the delay or failure is due to an Event of Force Majeure.
- 4.4 No delay or defect in any one or more instalments shall entitle the Customer to reject any delivery or or any further instalment or part of the Order or any order from the Customer remaining deliverable or to repudiate the Contract or the Order.
- 4.5 All goods are sold as they are and the Customer, at the Customer's request the Company arranges or undertakes the carriage, insurance and any other transport costs beyond the point of delivery such costs shall be for the Customer's account and shall not affect the provisions of the Contract as to the passing of risk in the Goods. Where the Contract provides for carriage and unloading of the Goods at a named address in the United Kingdom delivery shall be deemed to take place on completion of unloading.
5. **PACKING AND CARRIAGE**
- 5.1 In the event that packing cases and packing materials are charged as an additional cost to the Customer and stated to be returnable such packing cases and packing materials will be credited in full on return to the Company's works carriage paid in good condition within one (1) month of receipt by the Customer. Where not returnable, the Customer will dispose of all packing in accordance with all applicable UK laws, rules and regulations relating to the disposal of waste packaging and the protection of the environment.
- 5.2 The price shall exclude the cost of packing and carriage.
- 5.3 The method of packing the Goods shall be at the Company's discretion and no claim will be accepted by the Company for breakage of or damage to Goods in transit on the ground alleged to arise from unsuitable packing materials.
6. **LOSS OR DAMAGE IN TRANSIT**
- 6.1 Unless the Contract otherwise stipulates, the risk in the Goods passes to the Customer when the Goods are despatched from the Company's works and the company accepts no responsibility for any damage or loss in transit. Claims (or damage or loss in transit should be made on the freight carrier and any conditions imposed by the freight carrier in relation to claims for damage or loss in transit should be complied with.
- 6.2 Where the Contract provides for delivery elsewhere than at the Company's works, risk of damage to or loss of the Goods shall pass to the Customer upon delivery to the Customer in accordance with the Order and the Company will entertain a claim by the Customer in respect of loss or damage in transit only if the Customer:
 - 6.2.1 gives written notice to the Company of such non-delivery within five (5) days of receipt by the Customer of the Company's invoice;
 - 6.2.2 returns any defective or non-conforming Goods within ten (10) days of date of delivery of such Goods; and where the goods are transported by an independent freight carrier, complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.
- 6.3 If for any reason the Customer is unable to accept delivery of the Goods when the Goods are due and ready for delivery the Company may arrange storage of the Goods at the Customer's risk and the Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other right which the Company may have in respect of the Customer's failure to take delivery of the Goods or pay for them in accordance with the contract.
7. **TITLE TO THE GOODS**
- 7.1 The delivery of Goods by the Company to the Customer shall not constitute any change of ownership Risk of damage to or loss of the Goods shall pass to the Customer upon delivery to the Customer in accordance with the Order.
- 7.2 Title to the Goods shall pass to the Customer upon payment for the Goods to the Company for those Goods or any other Goods supplied by the Company or as otherwise agreed between the parties without prejudice to any right or rejection or other right which may accrue or have accrued to the Company under these conditions or otherwise.
- 7.3 Until payment in full of all sums (however arising) owing from the Customer to the Company, legal and beneficial ownership in any goods delivered to the Customer shall remain with the Company and the Customer shall hold the Goods on a fiduciary basis as bailee of the Company in such a way that all such Goods are separate and identifiable. If any of the events referred to in condition 10 occur in relation to the Customer, the Company shall be entitled forthwith without notice to repossess all or any part of the Goods or to require the Customer to deliver all or any part of them to the Company.
- 7.4 Until title to the Goods passes to the Customer under condition 7.2, the Customer shall from the moment of delivery:-
 - 7.4.1 keep the Goods separately and readily identifiable as the property of the Company;
 - 7.4.2 keep the Goods insured to their full value from the moment of delivery; and
 - 7.4.3 not attach the Goods to real property without the Company's consent.
- 7.5 Any resale by the Customer of Goods in which property has not passed to the Customer shall (as between the Company and the Customer only) be made by the Customer as agent for the Company.
- 7.6 At any time before title to the Goods passes to the Customer (whether or not any payment to the Company is then overdue or the Customer is otherwise in breach of any obligation to the Company), the Company may (without prejudice to any other of its rights) appropriate sums received from the Customer as it thinks fit notwithstanding any purported appropriation by the Customer.
- 7.7 Each condition and sub-condition of this condition 7 is separate, severable and distinct and, accordingly, in the event of any of them being for any reason whatever unenforceable according to its terms, the others shall remain in full force and effect.
8. **WARRANTY**
- 8.1 The Company warrants that if any material or workmanship in any of the Goods shall be found to be defective it will (at the Company's choice) either repair or replace the Goods in question at the original place of delivery and in the condition originally specified or (if the Company's opinion rectification or replacement shall be impracticable) credit the Customer with the proportion of the Price attributable to those Goods provided that these are returned to the Company's works or to such other delivery address as notified to the Customer by the Company and the claim is made in writing and admitted within twelve (12) months from the date of invoice (the "warranty period") except where such defect or fault is attributable to defective materials supplied by third parties where the Customer's only remedy will be against that third party.
- 8.2 Save and subject as mentioned in these conditions or elsewhere in the Contract, the Company warrants that:-
 - 8.2.1 the Goods accord with the specification and/or drawings set out or contained in the Order; or
 - 8.2.2 if there is no such specification and/or drawings that the Goods are of satisfactory quality; and
 - 8.2.3 that the Goods are reasonably fit and suitable for the purpose of the Customer of which the Company shall have received from the Customer written notice prior to the making of the Contract and which shall be stated in the Contract otherwise the Company makes and gives no representation, promise, guarantee or warranty either express or implied as to the quality, performance or description of the Goods or as to their fitness for any particular use or purpose.
- 8.3 The Company's liability under conditions 8.1 and 8.2 shall be subject to and conditional on:
 - 8.3.1 performance in full of the Customer's obligations under the Contract particularly (but without limitation) as to payment of the Price and any additional amount that may become due;
 - 8.3.2 The Customer immediately on discovering any defect, having given written notice to the Company to enable the complaint to be investigated (the Customer supplying all power and labour as the Company shall require for the purpose) before the Goods are further used or returned;
 - 8.3.3 the defects not being due to fair wear and tear or the use of injurious substances;
 - 8.3.4 full compliance by the Customer with the Company's instructions and for recommendations for the use and the maintenance of the Goods; and
 - 8.3.5 no alteration or repairs having been carried out or attempted by or for the Customer without the Company's agreement.
- 8.4 Any Goods replaced by the Company or for which the Company shall have given credit under the foregoing provisions shall become the Company's property.
- 8.5 In respect of the Services, if the Company accepts within the warranty period that it has failed to execute the services in accordance with the Contract, the Company may at its option perform again such of the Services as have not been earned out in accordance with the Contract or repay the Customer the charge for such of the Services as have not been so performed (provided such charge shall have been paid to the Company by the Customer).
- 8.6 The Customer's remedies in respect of any claim under the foregoing provisions or any condition or warranty implied by law or any other claim in respect of the Goods or the services or any workmanship in relation to them (whether or not involving negligence on the part of the Company) shall in all cases be limited to repair, replacement, reperformance or refund of the purchase price as aforesaid and any condition or warranty implied by law shall cease to apply after the expiry of the warranty period.
- 8.7 A claim in respect of any defect or failure to comply with any specification, delivery or instalment of any Order or any part of it shall not entitle the Customer to cancel or refuse delivery of or payment for any other Order, delivery or instalment or any part of the same Order, customer or instalment.
- 8.8 Where the Company supplies in connection with the Contract any Goods or Services supplied by a third party, the Company does not give the Customer any warranty, guarantee or other term as to their quality, fitness, of purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the person supplying the Goods or providing the Services to the Company.
9. **LIMIT OF LIABILITY**
- 9.1 Except in respect of death or personal injury caused by the Company's negligence or as expressly provided in these conditions, the Company shall not be liable to the Customer in respect of any breach of its obligations arising under the Contract by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law or under the Contract for any loss or profit, revenue or goodwill if the Customer however caused or any loss, damages, costs, expenses or other claims (whether caused by the negligence of the Company, its servants or agents or otherwise) which arise out of or in connection with the supply of the Goods or the performance of the Services, by the Company under the Contract.
- 9.2 The Company shall have no liability to the Customer for any:-
 - 9.2.1 loss, damages, costs, expenses or other claims for compensation arising from any designs, drawings, specifications, materials or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer; or
 - 9.2.2 defective materials or products supplied by the Customer to the Company and incorporated by the Company in the Goods; or
 - 9.2.3 the improper incorporation, assembly, use, processing, storage or handling of Goods by the Customer; or
 - 9.2.4 the competence, proper execution and performance of any work of any third party or consultant employed by the Customer including without limitation any third party or consultant introduced to the Customer by the Company; or
 - 9.2.5 any breach of warranties, conditions, terms and representations relating to goods, materials or services supplied by any third party or consultant pursuant to the Contract.
- 9.3 The company shall not be liable for loss or damage to any property of the Customer in which the Goods may be incorporated, or with which they are mixed or in which they may be used.
- 9.4 The Company disclaims any liability for and the Customer shall indemnify the Company against all actions, losses, damages, costs, expenses or other claims in respect of any infringement (actual or alleged) of any patent, copyright, design, logo or other industrial or intellectual property rights resulting from compliance with the Customer's instructions or requirements expressed or implied.
10. **TERMINATION**
- 10.1 Either party shall have the right at anytime, by giving notice in writing to the other party to terminate the Contract forthwith upon the opening of one or more of the following events:-
 - 10.1.1 that other party commits any material or persistent breach of the Contract and in the case of a breach capable of remedy, fails to remedy the same within fourteen (14) days of receipt of the written notice giving full particulars of the breach and requiring it to be remedied;
 - 10.1.2 an encumbrance takes possession of or a receiver is appointed over any of the property of assets of that other party;
 - 10.1.3 that other party makes any voluntary arrangement with its creditors or becomes subject to an administration order;
 - 10.1.4 that other party goes into liquidation (except for the purposes of a solvent amalgamation or reconstruction and in such a manner that the Company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on the other party under the contract);
 - 10.1.5 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to that party; and
 - 10.1.6 that other party ceases, or threatens to cease, to carry on business.
- 10.2 The termination of the Contract shall not prejudice the Company's rights to payment of all sums due or becoming due and does not limit any right or remedy of either party that may have accrued at the date of termination.
11. **LIEN**
- 11.1 The Company shall have a general lien on all property of the Customer in the Company's possession (whether or not paid for) for any sums owed to The Company by the Customer.
- 11.2 The Company reserves the right to set-off any contra balances due to either the Customer or any organisation to whom the Customers book debts may have been assigned.
12. **TOLERANCES AND TESTS**
- 12.1 Gauges, weights, chemical composition and analysis, quantities and sizes of goods will so far as possible be adhered to but reasonable excesses and deficiencies thereof shall be accepted by the Customer, who shall not be entitled to reject any Goods or to require replacement of any Goods on the ground that they are not precisely as specified.
- 12.2 Unless otherwise specifically agreed all test and inspections which are requested by the Customer will be charged by the Company to the Customer as an additional cost. All tests and inspections (whether or not being tests of chemical composition) shall take place under the Company's standard testing arrangements and each such test and or inspection shall be final. All tests are subject to analytical tolerances.
13. **INTELLECTUAL PROPERTY**
- 13.1 The customer warrants that all goods or materials supplied by or on behalf of the customer to the Company will be original, will not infringe any third party's patent, copyright, design or any other industrial or intellectual property rights, nor will it be defamatory; and that the Customer will have obtained at its own expense for the Company all relevant rights and consents to use all such goods or materials in relation to supplying the Goods and other related commercial purposes.
14. **NON-STANDARD ORDERS**
- 14.1 Where the Customer orders Goods of a type, size or quality not formally produced or supplied by the Company or Services not normally performed by the Company, the Company will use all reasonable endeavours to execute the Order, but if it proves impossible, impractical or uneconomical to carry out or complete the Order, the Company reserves the right to cancel the Contract or the uncompleted balance of it, in which event the Customer will only be liable to pay for the part of it actually delivered or performed.
15. **RETURNED GOODS**
- 15.1 The Company shall at its sole discretion accept returns of Goods from a Customer within 90 days from the date of despatch of such Goods, subject to the Customer bearing the costs of carriage and delivery of such returned Goods to the Company's works or to such other delivery address as specified by the Company All Goods returned to the Company by a Customer shall unless otherwise agreed in writing by an Authorised Representative be subject to a minimum 20% handling and administration charge, calculated by reference to the Price for such goods;
 - 15.1.1 20% for Goods returned within 30 days of the date of despatch;
 - 15.1.2 30% for Goods returned within 60 days of the date of despatch; and
 - 15.1.3 50% for Goods returned within 90 days of the date of despatch.
- 15.2 The relevant handling and administration charge shall be payable to The Company by the Customer in cleared funds within thirty (30) days of the date of delivery to the returned Goods to the address specified by the Company.
- 15.3 The Company shall not be under any obligation whatsoever to accept a return of any Goods supplied to a Customer pursuant to condition 14.1.
16. **PATTERNS, DIES, TOOLS, DRAWINGS AND EQUIPMENT**
- 16.1 Where the Customer supplies patterns, dies, tools, drawings or equipment, the Company shall be entitled to assume that the same are in good condition, true to drawing and entirely suitable to the Company's methods of production, and (or the production of the Goods in the quantities required.
- 16.2 While the Company uses all reasonable endeavours to verify patterns, dies, tools, drawings and equipment supplied by the Customer no responsibility is accepted by the Company for their accuracy.
- 16.3 All replacements, alterations and repairs to the Customer's patterns, dies, tools, drawings and equipment shall be paid for by the customer.
- 16.4 Where the patterns, dies, tools, drawings and equipment are not supplied by the Customer only those which are specially made by the Company and separately charged to the Customer in full, shall, when paid for by the customer, become the property of the Customer.
- 16.5 Carriage on patterns, dies, tools and equipment supplied by the Customer will be paid by the Customer in one direction only.
- 16.6 The Company will take all reasonable care of the Customer's patterns, dies, tools, drawings and equipment while in the Company's possession but does not accept liability for loss or damage thereto, however arising, except where neglect on the part of the Company or its agents was the direct cause of loss or damage and in those circumstances the Company's liability shall be limited to the actual cost of replacement or repair to the exclusion of all other expenses, consequential losses, loss of profits and other expenses, liabilities and losses however arising.
- 16.7 The Company reserves the right to destroy or otherwise dispose of patterns, dies, tools, drawings and equipment in its possession or custody (whether or not the property of the Customer) from which the Customer has not required Goods to be made for a period of twelve (12) months or more in the case of patterns, and three (3) years or more in all other cases.
17. **ASSIGNMENT AND SUBCONTRACTING**
- 17.1 None of the rights or obligations of the Customer under the Contract may be assigned or transferred in whole or in part without the prior written consent of the Company.
- 17.2 The Company may sub contract to any third party as it sees fit, all or any part of its obligations to the Customer under the contract.
- 17.3 In the event that the Customer obtains any supply of materials or services directly from any third party supplier in relation to the Contract, the Customer shall be solely responsible for ensuring the satisfactory quality and fitness for purpose of such supply of materials or services.
18. **HEALTH AND SAFETY**
- 18.1 The Customer agrees to pay due regard to any information or any revised information whenever supplied by the Company (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are being dismantled or disposed of, and the Customer undertakes to take such steps as may be specified by the above information to ensure that as far as reasonably practicable the Goods will be safe and without risk to health at all times as mentioned above. For these purposes the Customer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.
19. **NOTICES**
- 19.1 Any written notice or other communication to be given under these conditions must be in writing and may be delivered either by hand, or sent by pre-paid first class letter post or by facsimile transmission.
- 19.2 Any written notice or other communication shall be deemed served, if delivered by hand at the time of delivery; if posted forty eight (48) hours after posting; and if sent by facsimile transmission at the time of transmission.
- 19.3 Service of any legal proceedings concerning or arising out of the Contract or these terms and conditions shall be effected by posting a copy to the Secretary of the party to be served, and in the case of the Company at the Company's principal place of business, Unit 33, Pensnett Trading Estate, Kingswinford, West Midlands DY6 7PP, or in the case of the Customer at its principal place of business as set out on the Order, or to such other address as may from time to time be notified in writing by the party concerned.
20. **INVALIDITY**
- 20.1 The invalidity, illegality or unenforceability of any provision of these conditions should not affect the other conditions.
21. **LAW AND JURISDICTION**
- 21.1 The construction and performance of these conditions, the Contract or any other contract of agreement of the Company (and any proceedings whereby one party might be entitled to join the other as a third party) shall be governed by and construed and interpreted in all respects in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the High Courts of Justice in England and Wales in relation to any claims dispute and difference arising out of or in connection with any contract made on these conditions.
22. **LATE PAYMENT OF COMMERCIAL DEBTS REGULATIONS 2002**
- 22.1 We understand and will exercise our statutory right to claim interest and compensation for debt recovery costs under the late payment legislation if we are not paid according to agreed credit terms.