

# TWI Terms and Conditions of Purchase

## 1. General Provisions

### 1.1. Definitions

“**Business Day**” means Monday to Friday (inclusive), except public holidays in England;

“**Conditions**” means these terms and conditions of purchase;

“**Contract**” means the agreement formed between the Parties which incorporates these Conditions, the Purchase Order and any Special Conditions;

“**Data Protection Legislation**” means all applicable data protection and privacy legislation in force from time to time in the United Kingdom including, but not limited to, the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;

“**Party**” means TWI or the Supplier individually and “**Parties**” means TWI and the Supplier collectively;

“**Purchase Order**” means the formal written agreement for purchase between the Parties as issued by TWI;

“**Special Conditions**” means the provisions specifically negotiated in the Purchase Order in addition to these Conditions;

“**Supplier**” means the person, firm, or other legal entity accepting the Purchase Order and named as such in the Purchase Order;

“**TWI**” means The Welding Institute group of companies and their respective personnel; and

“**Work**” means the goods and/or services identified as a formal deliverable in the Purchase Order which the Supplier is required to provide under the Contract.

1.2. The headings in these Conditions are for convenience only and will not affect their interpretation.

1.3. In these Conditions, unless otherwise expressly provided or unless the context otherwise requires.

1.4. References to the singular include the plural and vice versa.

1.5. References to words denoting any gender shall include all genders.

1.6. References to persons include companies, partnerships, government departments and agencies and all other forms of body corporate or unincorporated wherever and however incorporated or established.

## 2. Applicability

2.1. Save as expressly provided in the Purchase Order, these Conditions are the only Conditions upon which TWI is prepared to deal with the Supplier and they shall govern the Contract to the entire exclusion of all other terms or conditions.

2.2. The Contract shall be deemed to be accepted on the earlier of the Supplier confirming acceptance in writing or the Supplier commencing any part of the Work to TWI.

### **3. Order of Precedence**

3.1. In the event of any conflict or inconsistency between any of the provisions in these Conditions and the Special Conditions, the Special Conditions shall take precedence.

### **4. Quality**

4.1. The Work shall be supplied in accordance with the provisions of the Purchase Order, they shall be of satisfactory quality, material and workmanship, be without fault, be fit for the intended purpose and conform in all respects to the Purchase Order and specifications supplied or advised by TWI.

4.2. Without prejudice to any other right or remedy which TWI may have, if any Work are not supplied in accordance with any of the terms of the Purchase Order TWI shall be entitled (whether or not any part of the Work have been accepted by TWI) to rescind the Purchase Order or to reject the Work (in whole or part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Work returned shall be paid forthwith by the Supplier.

### **5. Inspection and Testing**

5.1. TWI shall at all reasonable times be granted access to any premises (including those of the Supplier's subcontractors), and be allowed to inspect and test the Work at any time prior to acceptance or delivery, whichever shall be the later. If delivery is made at TWI premises, then the Supplier shall allow such time as is necessary and appropriate for representatives of TWI to duly inspect and test the Work, prior to acceptance.

5.2. If the results of such inspection or testing cause TWI to be of the opinion that the Work or any part thereof does not conform or is unlikely to conform with the Purchase Order or to any other specifications supplied or advised by TWI to the Supplier, TWI shall inform the Supplier and the Supplier shall immediately take all necessary action at no cost to TWI to ensure conformity with the Contract and, in addition, TWI shall have the right to require and witness further testing and inspection and rework.

5.3. Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Work and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Contract.

5.4. TWI may, within twelve (12) months from the completion of the Contract, give notice in writing to the Supplier that:-

- i. the Work, or any part thereof, has not been performed in accordance with or fails to meet the requirements of the Purchase Order; and/or
- ii. damage has occurred to the property of TWI which is:-  
the subject of the Work; and
- iii. is damaged as a result of the acts and/or omissions of the Supplier or Supplier's group of companies.

5.5. In consideration of the payments specified in the Contract, the Supplier shall forthwith upon receipt of such notice, and at its own cost, re-perform, repair or replace the same. If the Supplier re-performs, repairs or replaces any portion of the Work, the provisions of this Clause shall apply.

## **6. Completion and delivery**

6.1. The Work shall be completed by the date specified in the Purchase Order or as varied by any Purchase Order amendments. Further, the Supplier shall work to any programme TWI may issue from time to time or to any revision thereof.

6.2. Time of performance, completion and delivery shall be of the essence.

6.3. The Supplier shall immediately report any delay or anticipated delay whatsoever and its cause and shall keep TWI fully informed with dates of anticipated actual delivery and shall use its best endeavours (without reduction in any event in its contractual liability and damages or otherwise) to eliminate such cause or causes of delay.

6.4. If the Supplier fails to commence performance of the Work on the starting date or if TWI considers that the Supplier may not be able to complete the Work by any due date or in fact the Supplier shall fail to do so, then, in either event TWI may terminate the Contract or any part thereof and the provision of Clause 17 shall particularly apply.

6.5. Any part of the Work ready for delivery before TWI requires delivery shall be stored by the Supplier at their own risk and expense, unless otherwise agreed in writing by TWI.

6.6. Delivery of the Work shall be affected in the manner and at the time or times specified by TWI and if the Work is not delivered accordingly then the Supplier shall be fully responsible for any additional expense arising therefrom. In any event, unless otherwise provided the Supplier shall be responsible for delivery, DDP to the site designated by TWI.

6.7. All items shall be carefully packed and protected to protect against damage in transit in such a way as to facilitate rational off-loading and all costs of packing, lagging, marking etc. are at the expense of the Supplier and no packaging is returnable unless otherwise agreed by TWI in writing, prior to the date of the Purchase Order.

6.8. To the extent that they do not conflict with any special terms and conditions of the Purchase Order, DDP (Incoterms 2020) shall apply to these Conditions.

## **7. Title and risk**

7.1. Title in the Work shall pass from the Supplier to TWI on the creation of the relevant goods or allocation from stock or acquisition by the Supplier. Notwithstanding the passing of title the risk in such goods shall remain with the Supplier until delivery or until acceptance of the Work by TWI in accordance with the provisions of the Contract, whichever shall be later. All materials or equipment forming part of the Work in which the title passed shall be clearly marked by the Supplier as TWI's property and shall be stored separately from the Supplier's property.

## **8. Price**

8.1. The price of the Work shall be stated in the Purchase Order and unless otherwise agreed in writing by TWI shall be exclusive of value added tax but inclusive of all other charges for packaging, packing, shipping, carriage, insurance, delivery of the Work DDP to the delivery

address (Incoterms 2020) and any other taxes, imports, levies or duties in relation to the Supplier's obligations under the Contract, at law or otherwise.

- 8.2. Save as otherwise agreed in writing by TWI, no variation in the price nor will extra charges be accepted by TWI.

## **9. Payment**

- 9.1. In consideration of the satisfactory performance of the Work, TWI shall pay the Supplier the price in the manner hereinafter provided, but it shall be a pre-condition to any entitlement to payment that the Supplier shall send TWI a detailed priced invoice (or invoices as instructed on the Purchase Order) clearly stating in each case on its face the Purchase Order number, any appropriate item numbers together with all other information which may reasonably be required by TWI from time to time and such invoice shall be presented as a VAT statement. In addition, a monthly statement of account should be presented. Failure to follow this procedure may result in delays to payment.
- 9.2. Unless otherwise specified in the Purchase Order any payments for which TWI is liable shall fall due to be paid after deduction of any retention monies within sixty (60) days of the Supplier's true and correct invoice being duly received by TWI, or fall due within such a date as is agreed in the normal course of trading, and following receipt and acceptance of the respective goods or service. For the avoidance of doubt payment shall not operate as a waiver of any rights of TWI under the Purchase Order or otherwise.
- 9.3. Unless otherwise stated in the Purchase Order all payments hereunder shall be made in Pound Sterling (GBP).
- 9.4. Unless otherwise agreed in writing by TWI Ltd, the rates and prices stated in the Purchase Order are deemed to be sufficient to cover all the Supplier's obligations whether express or implied. Without prejudice to the locations of where the Work or any part thereof is to be performed, otherwise than at the Supplier's premises the Supplier shall be deemed to have satisfied itself contractually as to all local conditions, requirements, difficulties or any other factors which may in any way affect the performance of the Work.
- 9.5. TWI shall have the right to set-off against any sum due to the Supplier howsoever arising at any time, any claim, damage, loss, expense or other liability or cost which it may have or sustain under this or any other contract between TWI and the Supplier or any associated company to the Supplier and shall likewise be entitled to deduct any such sum in respect of any claim, damage, loss, expense or other liability or cost sustained by any subsidiary or associated company of TWI against the Supplier or any subsidiary or associated company of the Supplier.

## **10. Liability**

- 10.1. The Supplier shall at all times during and after performance of the Contract indemnify TWI against:
- i. all loss of or damage to property or acts of default under the Contract, and all claims and expenses in connection with these caused by the acts or omissions of the Supplier, its sub-contractors, employees and agents up to a maximum of £5,000,000 (GBP) per act or event giving rise to a claim; and
  - ii. liability for death and personal injury and all claims and expenses in connection therewith caused by the Supplier, its sub-contractors, employees and agents.

- 10.2. Nothing in these Conditions will exclude or limit the liability of either Party to the other Party for death or personal injury caused to that Party or its employees by the negligence of that Party or its employees, agents or subcontractors, for fraud or fraudulent misrepresentation or any other liability that cannot be excluded or limited by applicable law.

## **11. Confidentiality**

- 11.1. The Supplier shall keep the existence and terms of the Contract, and any information which it learns about TWI, in strict confidence and will not disclose the same to any third party without the prior written consent of TWI. This Clause shall remain binding on the Supplier notwithstanding completion or termination of the Contract and the Parties agree that damages alone would not be an adequate remedy in the event of a breach by either Party of the provisions of this Clause 11.
- 11.2. The Supplier must keep confidential information confidential, and only use or allow it to be used for the purposes of these Conditions.
- 11.3. Confidential information must not be copied, or disclosed to any person or party other than permitted under the Contract.

## **12. Data Protection**

- 12.1. The Parties shall comply with all the requirements and will duly observe all their obligations under the applicable Data Protection Legislation, which arise in connection with the Contract.

## **13. Information Security**

- 13.1. The Supplier shall at all times implement and maintain appropriate levels of security to protect TWI information. As a minimum, Suppliers are expected to comply with TWI information Security requirements set out in policies and procedures, adhere to good industry practice and comply with all applicable laws and regulations. Copies can be made available by request.
- 13.1.1. The Supplier shall ensure that access to TWI information is restricted to Supplier personnel and approved third parties only, who have a “need to know” for the information. Prior approval of the use of third parties must be sought from TWI.
- 13.1.2. Where the Contract involves access to, or the generation of UK classified information, the Supplier may be subject to additional controls and assurance arrangements specified by UK Government Policy.
- 13.1.3. TWI will inform the Supplier of the classification of any information and assets and any additional controls and assurance arrangements applied to the Work.
- 13.1.4. A Security Aspects Letter (SAL) will be issued by TWI for any Work being carried out on the supplier premises classified at OFFICIAL-SENSITIVE or higher. The SAL will define any security aspects and specify any additional security conditions that must be adhered to.
- 13.2. Suppliers should ensure that sufficient physical security controls are in place to protect TWI's information and assets from unauthorised access.
- 13.3. The Supplier shall comply with TWI policies and procedures with regards to IT systems and shall not access or use any of TWI's IT systems without prior approval from TWI. Copies can be made available by request.

13.3.1. Suppliers requiring access to TWI's IT systems are required as a minimum to be certified to Cyber Essentials Plus or equivalent.

13.3.2. Suppliers IT systems used to process information classified at OFFICIAL-SENSITIVE and above will be required to have MoD accreditation in place.

13.4. Suppliers must notify TWI at the earliest opportunity and in any event becoming aware of, any actual or suspected security incidents that affects or has the potential to affect TWI information or assets. The Supplier shall provide TWI with the details of the incident, including likely impact, description of measures taken or proposed to be taken to address the incident and relevant contact details from whom more information can be obtained.

13.4.1. The Supplier shall promptly take all reasonable steps to remedy the incident and mitigate the impact and prevent occurrence.

13.4.2. The Supplier is required to cooperate with TWI to assist with any security investigation.

## **14. Security**

14.1. Individuals visiting TWI's sites may only do so with a prior invitation from TWI.

14.2. Where the Supplier requires access to restricted areas, this is at the sole discretion of TWI and subject to satisfactory security checks. The supplier shall provide TWI with all necessary information to carry out the security checks.

14.3. Supplier's personnel with access to sensitive or classified information or systems will be required as a minimum to undergo pre-employment checks cleared to the Baseline Personnel Security Standard (BPSS) or equivalent. The supplier shall provide TWI with all necessary information to carry out these checks.

14.4. Dependant on the information being accessed, Supplier personnel may be required to undergo a national security vetting.

14.5. Vetting checks and clearances must be in place prior to any work being carried out.

14.6. Suppliers shall ensure their personnel take personal responsibility for the dissemination of TWI security policy and procedures where relevant within their organisation.

## **15. Publicity**

15.1. The text of any press release or other communication to be published by or in the media or interviews concerning the subject matter of the Contract shall require the prior written approval of TWI, which will not be unreasonably withheld or delayed.

## **16. Patents and Intellectual Property**

16.1. The Supplier shall indemnify TWI and its clients against, any and all claims and liabilities, whether from third parties or otherwise, in connection with the infringement or alleged infringement of any patent or other intellectual property rights in respect of the Work supplied under this Contract.

16.2. Any intellectual property, data or know-how created in the performance of this Contract shall be the exclusive property of TWI, and the Supplier shall do all reasonable things requested by TWI to transfer the ownership and any present and future rights in any resultant patents,

copyright, trade marks, designs and any other rights resulting from intellectual activities in the industrial, scientific, literary and artistic fields recognised in law anywhere in the world whether registered or unregistered.

## **17. Termination**

- 17.1. TWI shall be entitled to cancel the entire Purchase Order, or any part of the Work, by giving written notice to the Supplier, in which event the sole liability of TWI shall be required to pay the Supplier the part of the price for any Work performed in accordance with the Purchase Order to the effective date of the notice, less the net saving of cost to the Supplier arising from cancellation.
- 17.2. TWI shall be entitled to cancel the entire Purchase Order, or any part of the goods or services, without liability to the Supplier, by giving written notice to the Supplier at any time if the Supplier fails to carry out his obligations in accordance with the Contract.
- 17.3. TWI shall not be liable to pay the Supplier any further monies in respect of the Purchase Order and the Supplier shall be liable for and shall pay TWI any costs, expenses or damages incurred by TWI as a result of termination under Clause 4.2 including the additional cost of having the Work provided by others, if applicable.
- 17.4. In the event of termination, title to any goods or materials or equipment intended to form part of the Work or either procured for the Purchase Order or allocated to the Purchase Order by the Supplier and any specifications and other documents prepared by the Supplier in connection with the Purchase Order, prior to and including the date of termination, shall vest in TWI if not already so vested and TWI shall be entitled to take and/or retain possession of such goods, materials or equipment, specifications and other documents and shall be entitled to enter the Supplier's premises or any place where the goods, materials, equipment and specifications are situated and take possession of the whole or any part of the same. TWI shall ensure that a provision to this effect shall be contained, *mutatis mutandis*, in all subcontracts relating to performance of any part of the Purchase Order.

## **18. Insurance**

- 18.1. During the term of the Contract the Supplier will, at its own cost, effect and maintain with a reputable insurer adequate insurance policies in respect of its liabilities under or in connection with the Contract, including: (i) employer's liability insurance; (ii) public liability insurance (with product liability cover where the Supplier is supplying goods); and (iii) professional indemnity insurance (where the Supplier is supplying services) and any other insurances as required by law, in each case with the level of cover agreed in writing with TWI or, in the absence of such agreement, with a level of cover appropriate for the goods and services to be supplied under the Contract.
- 18.2. The Supplier shall produce to TWI upon request evidence of such insurances referred to in this clause 18. Such evidence shall include, but not be limited to, insurance certificates, policy documents, and any other relevant documentation demonstrating the required insurance coverage referred to herein. The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising out of or in connection with the Contract.
- 18.3. This Clause 18 shall survive termination or expiry of the Contract howsoever caused.

## **19. Supplier Code of Conduct**

- 19.1. The Supplier shall adhere to TWI's Global Supplier Code of Conduct (**TWI's Supplier Code**) at all times which can be found here: <https://www.twi-global.com/who-we-are/corporate-governance/procurement>. The Supplier warrants that it has not participated, and will not participate in any conduct that is in violation of TWI's Supplier Code. The Supplier shall inform TWI if at any time the Supplier becomes aware of any suspected or violation of TWI's Supplier Code. If TWI finds the Supplier to be in breach of TWI's Supplier Code, TWI may terminate the business relationship and pursue corrective action to address the violation in relation to the supplier contracts.

## **20. Health, Safety Environment and Quality Assurance**

- 20.1. The Supplier shall at all times ensure that the Work is carried out in a safe and secure manner and in accordance with the requirements of law. Where applicable, the Supplier shall demonstrate that it has a safety and quality management system that ensures compliance with all applicable statutory obligations and the requirements of the Contract.
- 20.2. The Supplier shall adhere to TWI's HS&E and ICT policies at all times when on TWI premises. Copies can be made available by request.
- 20.3. The Supplier shall notify TWI without delay of any accidents which occur in connection with the carrying out of the Work. The Supplier shall also notify TWI of any other incidents which occur which might affect the carrying out of the Work or the Contract.
- 20.4. The Supplier shall ensure none of the Deliverables under the Contract were manufactured or assembled by a work force made up, in whole or in part, of slave, child or any other form of forced or involuntary labour.
- 20.5. The Supplier shall adopt environmentally friendly processes, supply environmentally friendly goods/services and submit offers for environmentally friendly alternatives wherever possible and practicable.

## **21. Hazardous Goods**

- 21.1. If any of the goods to be supplied under the Contract contain any hazardous substances or require any special precautions to be taken to ensure safety in handling, transport, storage or use, the Supplier shall in good time prior to their delivery furnish to TWI written details of the nature of those substances and the precautions to be taken and shall ensure that before despatch appropriate instructions and warnings are clearly and prominently marked on the goods or securely attached to them and on any containers into which they are packed.
- 21.2. In particular (but without limitation) the Supplier shall provide to TWI in writing all such data, instructions and warnings as are required to comply with applicable legislation relating to health and safety and shall indemnify TWI against any and all liabilities, claims and expenses which may arise as a result of the Supplier's failure to do so.
- 21.3. The Supplier shall be responsible for supplying such hazardous items or those requiring special precautions in containers or packaging appropriate for the hazard and its handling requirements.

## **22. Liens**

- 22.1. The Supplier agrees to waive any right to exercise a lien upon the Work or upon any materials, component parts, work in progress, relevant drawings including as built drawings, operating instructions, maintenance manuals, mill certificates, fabrication reports, test certificates and



the like and acknowledge that its sole remedy in the event of any breach by TWI of its obligations under the Contract is to seek financial relief through the courts. As and when required by TWI, the Supplier shall give a certificate of waiver of lien, and of any other rights over the Work or to any injunctive or performance remedies to TWI or to any third party nominated by TWI.

### **23. Anti-Bribery and corruption**

23.1. The Supplier shall:

- i. comply with all applicable laws, statutes, directives and/or regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010;
- ii. not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010;
- iii. Any breach of this clause shall be deemed a material breach and entitle TWI to terminate the Contract immediately.

### **24. Export Control**

24.1. The Contract shall at all times be subject to and conditioned upon compliance with all applicable export control laws and regulations and any amendments thereto. The obligations of the Parties to comply with all applicable export control laws and regulations shall survive any termination or discharge of any other obligations.

### **25. Force Majeure**

25.1. Neither Party shall be in breach of the Contract, nor liable for any failure or delay in performance hereunder where such failure or delay results from any cause that is beyond the reasonable control of that Party. In the event of a force majeure occurrence, the affected Party shall notify the other Party without undue delay of the particulars of the situation and the estimated duration. Either Party shall be entitled to terminate the Contract with immediate effect should the force majeure occurrence endure for more than thirty (30) days.

### **26. Assignment and sub-contracting**

26.1. The Supplier shall not assign the Contract (nor subcontract any major part of the Work) without TWI's prior written consent. No assignment or subcontract (even with TWI's consent) shall relieve the Supplier of any of its obligations under the Contract. TWI may assign the Contract at any time without the consent of the Supplier.

### **27. Entire Agreement**

27.1. The Contract constitutes the entire agreement and understanding between the Parties and supersedes any prior agreement or arrangement in respect of their respective subject matter. Each Party acknowledges that they have not entered into any contract in reliance upon, and will have no remedy in respect of, any misrepresentation, representation or statement, which is not expressly set out in these Conditions or the applicable Purchase Order.

### **28. Statutes and Byelaws**

28.1. The Parties must at all times comply with all applicable laws, statutes, regulations and codes including those relating to anti-tax evasion, slavery and human trafficking, prevention of fraud and counter-terrorism. Neither Party accepts responsibility for compliance with any statutory

regulations, or local byelaws, or the fulfilment of any special requirement binding on the other Party.

## **29. Amendments**

- 29.1. No amendment, modification, instruction, variation, waiver or change shall have effect unless expressed in writing and agreed by a duly authorised representative, on behalf of TWI.

## **30. Waiver**

- 30.1. The failure of any Party at any time to enforce any of these Conditions or to exercise any right hereunder shall not constitute a waiver of the same nor shall it affect such Party's right thereafter to enforce the same.

## **31. Third Party Rights**

- 31.1. Nothing herein shall confer or purport to confer on any third party any benefit or any right to enforce any term of the Contract, pursuant to the Contracts (Rights of Third Parties) Act 1999.

## **32. Notices**

- 32.1. Any notices to be given under the Contract shall be in writing, in English, dated, and shall be served by leaving it at, or by sending it by first class post or email to the address of the Party set forth in the Purchase Order as applicable. Where a notice is sent by (i) post, it shall be deemed to be received two (2) Business Days after the date of postage; (ii) email is deemed to be received at the time of the transmission unless outside the normal business hours of the recipient in which case receipt is deemed to be at 9.00am on the following Business Day.
- 32.2. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

## **33. Partnership**

- 33.1. Nothing herein shall be construed as establishing any partnership or as creating any joint obligation between the Parties except as may be specifically set out herein.

## **34. Survival**

- 34.1. The rights and obligations set forth relating to Clauses 1 (General Provisions), 10 (Liability), 11 (Confidentiality), 12 Data Protection, 16 (Patents and Intellectual Property Rights), 17 (Termination), 27 (Entire Agreement), 28 (Statutes and Byelaws), 31 (Third Party Rights), 33 (Partnership), 34 (Survival), 35 (Dispute Resolution), 36 (Law and Jurisdiction) together with any other provisions of the Contract which expressly or impliedly survive termination or expiry of the Contract, shall remain in full force and effect after termination.

## **35. Dispute Resolution**

- 35.1. The Parties shall use their reasonable efforts to negotiate in good faith and settle amicably any dispute. If any such dispute cannot be settled amicably through ordinary negotiations by appropriate representatives, the dispute shall be referred to the Chief Executive Officer, a Director or Senior Manager of the Parties who shall meet in order to attempt to resolve the dispute within fifteen (15) days from a written request from one Party to another. If any such meeting fails to result in a settlement and in any event if no settlement has been agreed within ninety (90) days from the date of the meeting the matter may be referred to the courts for settlement as appropriate.

### **36. Law and Jurisdiction**

- 36.1. These Conditions and any obligations arising out of or in connection with it (both contractual or non-contractual) shall be governed by and construed in accordance with English law. All disputes arising out of or affecting these Conditions shall be subject to the exclusive jurisdiction of the English courts.