

**TERMS AND CONDITIONS OF SALE****1. DEFINITIONS:**

- (a) "Buyer: shall mean the company that purchases Product/Services pursuant to this Order.
- (b) "Delivery Point" shall mean the location of delivery of Product stated in the Order.
- (c) "Order" shall mean the agreement between COMPANY and the Buyer (individually "Party" and collectively "the Parties") for the sale and purchase of the Product/Services, that incorporates by reference these Terms and Conditions of Sale.
- (d) "Product" means all components, spare parts, goods, product, or materials of any kind, which are supplied by COMPANY under this Order.
- (e) "COMPANY shall mean the Smiths Group plc company to which Buyer has submitted an Order.

**2. OFFER AND GOVERNING PROVISIONS:**

Each quotation and Order acknowledgement issued by COMPANY (i) is an offer by COMPANY to sell the goods and/or services described in it in accordance with these Terms and Conditions of Sale; (ii) is not an acceptance of any offer made by the Buyer; (iii) is expressly conditioned upon the Buyer's assent to these Terms and Conditions of Sale. COMPANY rejects any additional or different terms contained in any purchase order or other communication previously or hereafter provided by Buyer to COMPANY including any acknowledgement, shipping documents, terms and conditions or otherwise. No such additional or different terms or conditions will be of any force or effect. The terms of the Order will be the entire agreement between Buyer and COMPANY. These Terms and Conditions of Sale may be modified only by a written document signed by duly authorized representatives of COMPANY and Buyer.

**3. ACCEPTANCE:**

All orders are subject to acceptance by the COMPANY. All orders must be at least one thousand dollars (\$1000.00). This minimum will be applied as \$500.00 per line item with the order total to equal \$1000.00. Minimum Order Quantities are applicable to all products and line items and will be applied appropriately.

**4. PRICE AND PAYMENT:**

- (a) All orders shall be priced in accordance with COMPANY'S' price quotation and confirmed by COMPANY'S' Order Acknowledgement. All prices are valid for the quantity quoted and unless otherwise indicated on the quotation, assume a single shipment for the same quantity quoted. Orders received requesting multiple shipments against a single quoted quantity will either be re-quoted at the requested ship quantities or be charged a split shipment fee of \$260.00 per effected line (whichever is greater) after the initial shipment. All prices are subject to adjustment should the change in the gold price vary more than \$50.00 per ounce from the price on the date of quotation. Such increases or decreases will be invoiced automatically without notice. COMPANY reserves the right to renegotiate prices on that portion of an order scheduled for shipment more than six months from the order entry dates, unless COMPANY agrees to fixed prices beyond six months. Unless otherwise stated herein, all tools required to produce the goods sold will remain the property of the COMPANY.
- (b) Payment in full of the invoice price shall be made in U.S. dollars within 30 days of the date of invoice, unless otherwise agreed by the parties in writing.
- (c) If full payment is not made by Buyer when due, COMPANY may cease supply of further Product/Services or terminate the Order. Buyer shall pay COMPANY immediately all sums due and outstanding with respect to Product/Services supplied or ordered in partial execution of the Order, together with all attorney fees and costs of legal suite and other costs incurred by COMPANY as a result of such termination.
- (d) If Buyer is in default of any payment obligation, COMPANY is entitled to charge interest at a rate the lesser of: (i) one and one half percent (1.5%) per month; or (ii) the maximum rate allowed by law, until paid in full, beginning with any due date of payment. If at any time in COMPANY'S' opinion, the financial responsibility of Buyer becomes impaired or unsatisfactory to COMPANY, or inadequate to meet the obligations hereunder, the terms of payment may, at COMPANY'S'

option, be revised or withdrawn, and COMPANY may require cash or other security before making further shipments to Buyer.

**5. CHANGES:**

No changes can be made in the goods ordered hereby without the written consent of COMPANY. Buyer shall be allowed one shipment reschedule of up to four (4) weeks beyond the originally confirmed ship date, without penalty. Subsequent shipment reschedule requests and/or requests for shipment rescheduling within five (5) to twelve (12) weeks from the originally confirmed ship date are subject to an administrative fee of \$260.00 per effected product line item. Shipment reschedule requests greater than twelve (12) weeks from the originally confirmed ship date will be treated as a Cancellation as defined in the section Cancellation. Buyers requesting an expedited delivery date within the Standard Lead Time will be charged a \$260.00 expedite delivery fee if COMPANY is able to meet the newly requested delivery date. COMPANY reserves the right to adjust the price, change the delivery schedule or make any other revisions in this order with respect to any such approved changes. COMPANY reserves the right to make changes in design at any time and without incurring any obligation to provide changes on the units previously purchased, or to continue to supply obsolete items or earlier versions of changed items.

**6. EXCLUSIVE REMEDY OF BUYER:**

COMPANY'S' liability and Buyer's EXCLUSIVE REMEDY is expressly limited, at COMPANY'S' option, to either the repair of defective goods or the replacement thereof with conforming goods at the shipping point, or credit for the net unit billing price, but such repair, replacement or credit shall be made only if:

- Claims for shortage are made within fifteen (15) days after the receipt of goods.
- Claims for defective goods are made by the Buyer within (6) six months after the receipt of goods.
- Buyer must, after obtaining RMA authorization from COMPANY, return such goods freight prepaid for inspection and/or repair (Material returned without specific authorization from the COMPANY will not be received or credited), and
- COMPANY'S' inspection determines that the goods were at the time of shipment defective within the terms of this warranty. COMPANY shall not be liable for any material converted to forms other than originally shipped by the COMPANY. Returned material which is damaged due to improper Buyer handling or packaging will not be accepted and will be deemed property of Buyer.

**7. TITLE; RISK OF LOSS:**

Title and risk of loss of the goods shall pass to the Buyer upon delivery of goods to carrier at shipping point. COMPANY is under no obligation to insure shipments unless specifically requested by Buyer and then only at Buyer's expense and valuation.

**8. QUANTITY:**

COMPANY may deliver, and Buyer will accept delivery of, a greater or lesser quantity not to exceed five percent (5%) of the original order quantity. COMPANY will not accept and Buyer shall not make any invoice modification based on a deviation of five percent (5%) or less of the quantity delivered and the original order quantity.

**9. DELIVERY:**

Shipment dates are estimates only, are subject to production limitations and factory schedules, and hence are not guaranteed. In no event shall COMPANY have any liability, consequential or otherwise, as a result of COMPANY'S' delay or failure to deliver product for any reason. All sales are EX Works, shipping point. Lacking shipment directions for logistics from Buyer, COMPANY will use its discretion in choice of carrier and will prepay freight and bill the cost to Buyer. COMPANY reserves the right to make partial shipments unless advised by Buyer and to be paid on the terms hereof for such deliveries. COMPANY reserves the right to allocate inventories and production. Each order shall constitute an independent transaction and payment therefore shall be due accordingly. If Buyer is in default at any time under any order with COMPANY or

## TERMS AND CONDITIONS OF SALE

COMPANY is dissatisfied with Buyer's financial condition. COMPANY shall have the right, without prejudice to any other of its rights, of suspending deliveries until such default or condition is remedied.

### 10. LIMITED WARRANTY:

- (a) COMPANY warrants that any Product manufactured by COMPANY conforms to COMPANY specifications.
- (b) COMPANY warrants that it shall use reasonable efforts to provide the Services ordered under the Order. The express warranty set forth in the first sentence of this paragraph shall be the only warranty given by COMPANY with respect to the Services provided.
- (c) For Products that are not manufactured by COMPANY, COMPANY's only responsibility is to assign to its Buyer any manufacturer's warranty that allows for such assignment.
- (d) Product and parts that are consumed in normal operation are not covered by this Warranty.
- (e) The above remedies are the exclusive remedies of Buyer, and the sole responsibility of COMPANY, for breach of this warranty as to repaired or replaced Product.
- (f) The Warranties cease to be effective if Buyer fails to operate and use the Product sold hereunder in a safe and reasonable manner in accordance with COMPANY's written instructions.
- (g) Buyer shall not be entitled to any remedy under the Warranties with respect to:
- (i) Product/Services that has been subjected to any alteration, disassembly, tampering, modification, or repair without prior authorization by COMPANY;
  - (ii) Product/Services subjected to experimental running or any type of operation or use other than that for which the Product/Services is designed;
  - (iii) Product/Services from which COMPANY and/or vendor's trademark or serial number has been altered, removed, or obliterated without COMPANY's written permission, excluding any alteration, removal, or obliteration directly caused by accident or mishap;
  - (iv) Product/Services that has been in storage or immobilized for six (6) months after delivery to the Delivery Point.
- (h) COMPANY MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE OR OF NON-INFRINGEMENT; AND THE EXPRESS WARRANTY SET FORTH IN THIS ARTICLE IS IN LIEU OF ANY SUCH WARRANTIES AND ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF COMPANY.
- (i) The Warranties are non-transferable and are applicable only to the original Buyer.

### 11. LIMITATIONS OF LIABILITY AND INDEMNITY:

- (a) COMPANY'S LIABILITY FOR BREACH OF ANY WARRANTY SHALL BE LIMITED TO THE REMEDIES PROVIDED IN SECTION 6. WITH RESPECT TO OTHER BREACHES OF CONTRACT, COMPANY SHALL HAVE NO LIABILITY IN EXCESS OF THE AMOUNT OF THE APPLICABLE ORDER UNDER WHICH THE PRODUCTS WERE PURCHASED. IN NO EVENT SHALL COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR OTHER DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM COST OF SUBSTITUTE PROCUREMENT, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF REVENUES, LOSS OF BUSINESS, OR FAILURE OR DELAY IN PERFORMANCE, WHETHER BASED ON BREACH OF WARRANTY OR OTHER CONTRACT BREACH, NEGLIGENCE OR OTHER TORT OR ON ANY STRICT LIABILITY THEORY, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGES.
- (b) COMPANY shall not be liable for failure to deliver, for delay in delivery, or for any losses or damage to Buyer, or to the Product/Services due to: (i) any cause beyond COMPANY reasonable control or the control of COMPANY's suppliers or subcontractors; (ii) an act of God, act or omission of Buyer, act of civil or military authority, fire, terrorism, strike or other labor difficulty, riot or other civil disturbance, insolvency or other inability to perform by the manufacturer, delay in

transportation; or (iii) any other commercial impracticability including any changes in laws and regulations.

### 12. TAXES:

All prices are quoted exclusive of any tax, fee, duty, assessment or charge, unless specifically stated and if paid by COMPANY, shall be added to the price or prices set forth herein. Any taxes, where applicable, will be billed as separate items unless Buyer provides Company with properly executed tax exemption certificate.

### 13. CANCELLATION:

In addition to any other rights at law or equity, COMPANY shall have the right, in its sole discretion, to terminate this Order if Buyer: (i) is unable to pay its debts when they become due; (ii) is the subject of a legal process declaring it bankrupt or insolvent; (iii) ceases or threatens to cease carrying on its business; or (iv) commits a substantial breach of this Order which is incapable of remedy. If this clause applies then, without prejudice to any other right or remedy available to COMPANY, COMPANY shall be entitled to cancel the Order or suspend any further deliveries under the Order without any liability to the Buyer, and if the Products/Services have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary. Buyer may only cancel an order for product that has a confirmed ship date outside of COMPANY's Standard Lead Time and upon prior written notice and upon payment to COMPANY for reasonable and proper cancellation costs which shall not be less than twenty percent ( 20%) of the line value for items canceled. Requests for cancellation within COMPANY's Standard Lead Time will not be accepted. Buyer will be responsible to pay for and accept delivery of all orders scheduled to ship within COMPANY's Standard Lead Time or that have been shipped.

### 14. MERGER AND SEVERABILITY:

This Order contains the total agreement of the Parties, and all agreements entered into prior to or contemporaneously with the execution of this agreement are excluded whether oral or in writing, except that a contemporaneous writing, signed by both Parties, and firmly attached to this Order, shall be considered part hereof. If any provision of this Order shall be determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not effect the remaining provisions of this Order, all of which shall remain in full force and effect.

### 15. EXPORT AND IMPORT CONTROLS:

This order may involve articles, technical data or software that is subject to export control and Buyer must comply with all applicable U.S. Export Laws and Regulations, including the Arms Export Control Act (22 U.S.C. 2778), International Traffic in Arms Regulations (22 C.F.R. 120-130), and Export Administration Regulations (15 CFR 730-774). Buyer acknowledges and agrees that the ultimate destination of the Product/Services is in the United States and that it is a US Person as defined by the ITAR, unless otherwise agreed to in writing. Buyer shall not authorize or permit its employees, distributors, Buyers, brokers, freight forwarders, and/or agents to export or re-export any of the Product/Services to any foreign person without complying with applicable export and import laws and regulations of Buyer's country and of the United States, including the International Traffic in Arms Regulations (ITAR) and the Export Administration Regulations (EAR). Buyer agrees to obtain and properly utilize U.S. Government export authorization prior to exporting or re-exporting the Product/Services, either in their original form or after being incorporated into other end-items. Buyer agrees to defend, indemnify and hold harmless COMPANY from and against any claim, loss, liability, expense or damage (including liens or legal fees) incurred by COMPANY with respect to any of Buyer's export or re-export activities contrary to the Export & Import Controls provisions stated herein. Buyer agrees to notify COMPANY immediately if Buyer is listed in any Denied Persons List, Entity List, or Specially Designated Nationals List, or if Buyer's export privileges are otherwise denied, suspended or revoked in whole or in part by any U.S. Government entity or agency.

**TERMS AND CONDITIONS OF SALE****16. PATENT INFRINGEMENT:**

COMPANY reserves the right to discontinue deliveries of any material, the manufacture, sale or use of which in COMPANY'S opinion would involve patent infringement. Buyer shall indemnify and hold harmless the COMPANY, its successors and assigns and affiliates against and from any and all damages, claims, and judgments for damages and costs arising out of any suit alleging infringement of any U.S. or foreign patent or trademark by the goods supplied by COMPANY under this order made in accordance with any design and/or specification furnished by Buyer to COMPANY; and Buyer shall, if COMPANY desires, defend COMPANY, at Buyer's expense in any such suits for alleged infringement.

**17. ASSIGNMENT AND APPLICABLE LAW:**

Except to a successor-in-interest, neither party shall assign this Order without the prior written consent of the other party. This contract shall be governed by, and construed in accordance with, the laws of the State of Massachusetts without the application of conflict of laws principles. COMPANY shall have the right to collect from Buyer its reasonable expenses, including attorneys' fees, incurred in enforcing this Order. The rights and obligations herein shall survive completion of the final payment under this Order.

**18. CONFIDENTIALITY:**

All obligations of confidentiality owed to the COMPANY or its affiliates by Buyer with respect to any materials or information furnished to Buyer subject to such obligations shall remain in full force and effect and nothing herein shall affect such obligations.

**19. RELATIONSHIP:**

Nothing in this Order shall be construed to place the Parties in the relationship of partners or joint ventures, and the Parties shall have no power to obligate or bind the other in any manner whatsoever.

**20. WAIVER:**

No waiver by COMPANY of any breach of this Order by the Buyer shall be considered as a waiver of the subsequent breach of the same or any other provision.

**21. ERRORS SUBJECT TO CORRECTION:**

All typographical, stenographic and arithmetical errors are subject to correction.