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Document Approvals

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TriMark Europe Limited

Unit 3 Sence Court, Bardon Hill, Coalville, Leics. LE67 1GZ, United Kingdom

Terms and Conditions of Purchase

1.0 OBJECT/GENERAL TERMS

- 1.1 The following Terms and Conditions of Purchase ("**Conditions**") shall apply to all contracts between TriMark Europe Ltd ("the Buyer") and the Supplier and, unless agreed in writing by both the Buyer and the Supplier, shall override any terms and conditions stipulated, incorporated or referred to by the Supplier whether in a sales Order or in any negotiations and these Conditions shall be binding upon the Buyer and the Supplier
- 1.2 Orders shall not be assigned, transferred or sub-contracted either wholly or in part without the Buyer's prior consent in writing and any purported assignment without such consent shall be void.
- 1.3 No variation of these Conditions shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 1.4 The Supplier agrees to comply with and be bound by the terms, conditions and policies contained in the TriMark Europe, Supplier Requirements Manual version SOP-SUP-301-TME Supplier Requirements Manual ("**SRM**") provided by the Buyer to the Supplier as may be amended from time to time. Any amendments to the SRM shall be provided to the Supplier within a reasonable time of such amended version coming into existence. The latest version of the SRM is available on request from the Buyer. In the event of any conflict or inconsistency between the SRM and these Conditions, these Conditions shall take priority over the SRM.

2.0 DEFINITIONS

- 2.1 "*Certificate of Conformance*" means a document of compliance to the Specification which is certified by a competent authority.
- 2.2 "the *Buyer*" means TriMark Europe Limited (Company number: 03403771) whose registered office is at Unit 3 Sence Court, Bardon Hill, Coalville, Leics. LE67 1GZ.
- 2.3 "*Confidential Information*" means certain knowledge and information proprietary information or trade secrets including but not limited to the principals and/or identity of a project, product know how, research, products, services, customers, markets, software, developments, inventions, processes, designs, drawings, engineering, marketing or finances.
- 2.4 "*Contract*" means the contract between the Buyer and the Supplier for the sale and purchase of Goods pursuant to an Order in accordance with these Conditions.
- 2.5 "*Counterfeit Parts*" means any material, product, component, module, subassembly, assembly or the like that is sold or delivered to the Buyer that is unlawful or is an unauthorised reproduction, submission or alteration that has knowingly been mismarked.
- 2.6 "*Credit Note*" means the document issued by the Supplier in response to any Debit Note confirming the amount to be paid or credited to the Buyer pursuant to the relevant Debit Note;
- 2.7 "*Debit Note*" means the document confirming any deductions the Buyer has made from any invoice in accordance with these Conditions.
- 2.8 "*Force Majeure Event*" means any circumstance not within a party's reasonable control including, without limitation acts of God, flood, drought, earthquake or other natural disaster; epidemic or pandemic; terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; nuclear, chemical or biological contamination or sonic boom; any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; collapse of buildings, fire, explosion or accident.
- 2.9 "*Goods*" means the articles ordered under an Order and 'delivery order' means any order, call off note or other request made by or on behalf of the Buyer for delivery of all or part of the Goods.
- 2.10 "*Order*" means an order for the purchase of Goods as set out in the Buyer's official purchase order form and bearing an authorised signature, or in the Buyer's written acceptance of the Supplier's Quote, as the case may be.
- 2.11 "*Quote*" means a quotation or tender from the Supplier as incorporated into an Order for Goods.
- 2.12 "*Supplier*" means the person or firm from whom the Buyer purchases the Goods.
- 2.13 "*Specification*" means any specifications and requirements for the Goods, including any related plans, engineering standards, drawings and legal requirements, that are made known to the Supplier by the Buyer.

3.0 CONFORMITY TO THE BUYER'S REQUIREMENTS

- 3.1 The Supplier guarantees that:
 - 3.1.1 the Goods and all materials used in their manufacture will correspond with their description including any specification of the Supplier and further will comply in all respects with any Specification;
 - 3.1.2 the Goods shall be of satisfactory quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Buyer, expressly or by implication, and in this respect the Buyer relies on the Supplier's skill and judgement;
 - 3.1.3 the Goods will comply in all respects with all applicable statutory and regulatory requirements in the country and on the date, delivery occurs.
 - 3.1.4 the Goods will not infringe any intellectual property right of any third party.
 - 3.1.5 the Goods will not contain any impurities or additives unless use of such impurity or additive has been expressly permitted by the Buyer in writing.
- 3.2 These Conditions shall also apply to any Goods which are replaced, repaired or substituted by the Supplier.
- 3.3 Any replacement Goods supplied under condition 3.3 shall be supplied the same Order however the Supplier shall ensure such Goods are supplied with a new packing slip and a new invoice.
- 3.4 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under this Contract.

- 3.5 The Supplier represents and warrants that only new and authentic parts and materials are to be used and/or incorporated into any Goods and shall not contain any Counterfeit Parts. The Buyer requires the Supplier to only supply Goods which are originate from genuine manufacturers of those Goods or their authorised distributor. The Supplier shall only supply new and authentic Goods, and which only incorporate new and authentic parts or materials unless an authorised representative of the Buyer has approved an alternative supply in advance in writing. Upon request, the Supplier shall promptly provide documentation to the Buyer's reasonable satisfaction which evidences authenticity of the Goods including their chain of custody as required under this condition 3.5.

4.0 BASIS OF THE CONTRACT

- 4.1 The Order constitutes an offer by the Buyer to purchase Goods from the Supplier in accordance with these Conditions.
- 4.2 Subject to condition 4.3, the Order shall be deemed to be accepted when the Supplier provides unqualified written acceptance of the Order, at which point the Contract shall come into existence.
- 4.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing unless the parties agree to vary these Conditions by written agreement.

5.0 DELIVERY

- 5.1 Delivery shall be made by the Supplier at the address and routing and on the delivery date specified in the Order.
- 5.2 Time shall be of the essence for any specified delivery dates under condition 5.1. If the Supplier is unable to meet any delivery dates, it shall immediately notify the Buyer of this and specify the next earliest possible date for delivery. The Buyer shall in its absolute discretion choose to accept any substitute delivery date or cancel the Order in whole or in part. The Supplier shall bear all costs and expenses it may incur in connection with meeting any revised delivery date which shall include the Supplier taking all reasonable steps to meet the agreed delivery date which may include delivery by special or priority transport.
- 5.3 Notwithstanding condition 5.2, if a substitute delivery date has been agreed by the Buyer in writing, the Supplier's failure to deliver on the date or dates specified shall entitle the Buyer to cancel the whole or part of the relevant Order without liability to the Supplier. The Buyer shall have the right to issue a Debit Note against the relevant invoice for the Order and to purchase substitute items from a third party. The Supplier shall be accountable for all reasonable losses and/or costs incurred by the Buyer as a result of the Supplier's default under this condition 5.3.

6.0 CARRIAGE AND PACKING

- 6.1 Unless agreed in writing with the Buyer, the Supplier shall not charge for (without limitation) delivery, pallets, packing cases, casks, drums, carboys, wrappers or packing materials of any description. If any of these items are clearly marked as being the property of the Supplier and the Supplier states on the invoice that they should be returned and to what address they should be returned, the Buyer shall return them at the expense of the Supplier. In the absence of such instructions for their return the Buyer may, without notice to the Supplier, dispose of them as the Buyer deems appropriate and without incurring any liability or duty to account in any way to the Supplier.

7.0 PASSING OF RISK AND INSPECTION

- 7.1 Title and risk in the Goods shall pass to the Buyer on completion of delivery.
- 7.2 The Buyer reserves the right to reject any Goods which on inspection whether before, on or after delivery are not in accordance with the Order, these Conditions or any Specification. Goods rejected by the Buyer will be held by it for a reasonable period at the sole risk and expense of the Supplier or at the Buyer's option returned to the Supplier at the risk and expense of the Supplier, and the Buyer shall issue a Debit Note in respect of such rejected Goods.

8.0 REJECTION

- 8.1 All Goods shall be received by the Buyer subject to inspection and approval by the Buyer. If the Goods do not conform to the Order or Specification, the Buyer may at any time within a reasonable period after delivery, by notice in writing to the Supplier:
- 8.1.1 require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within a reasonable time of being requested to do so; or
- 8.1.2 issue a Debit Note and require the Supplier to repay the price of the rejected Goods in full (whether or not the Buyer has previously required the Supplier to repair or replace the rejected Goods); and
- 8.1.3 claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that are not in conformity with the terms of the Contract.
- 8.2 Subject to condition 8.1, where an Order comprises equal quantities of Goods which are produced by a family tool, the Buyer shall only be required to accept the proportion of Goods which are equal to the lowest number of constituent parts of that Order and the Buyer shall be entitled to reject any Goods which exceed the lowest number of the constituent parts and the Supplier shall issue a Credit Note in respect of such excess Goods.

9.0 TERMS AND CONDITIONS OF PAYMENT.

- 9.1 All Goods are to be invoiced at the price set out in the Order unless:
- 9.1.1 the Supplier has provided the Buyer with not less than 60 days written notice (90 days for those parts requiring manufacturing tooling) setting out any price variation to the Quote together with clear reasons for such price variation; and
- 9.1.2 following receipt of such notice by the Buyer, the Buyer provides written consent to such price variation.
- 9.2 The Buyer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 9.3 Upon receipt of a valid invoice from the Supplier, the Buyer shall pay such invoice amount, less any amounts set out in any Debit Note in respect of such invoice, within 30 days of the end of the month of invoice received at the Buyer's premises by either BAC transfer or by cheque, where the Supplier is not registered for BACS transfer.

- 9.4 It is the Supplier's responsibility to ensure that the quantities of Goods received by the Buyer match the quantities set out in the Order. Where the Buyer confirms that the quantities of Goods received pursuant to an Order do not match the quantities set out in the relevant invoice, the Buyer shall investigate any discrepancy and may, at its option:
- 9.4.1 pay the Supplier for the Goods actually received and issue a Debit Note confirming the shortfall, and the reduction in payment made accordingly; or
- 9.4.2 reject any excess Goods.
- The Supplier shall provide the Buyer with all reasonable assistance required to investigate any discrepancy under this condition 9.4 .
- 9.5 Where the Supplier receives a Debit Note from the Buyer, or is otherwise required to repay the Buyer any monies under these Conditions, the Supplier shall issue a Credit Note and pay to the Buyer all monies owed to it pursuant to any Debit Note without deduction or set off.
- 9.6 Where the Supplier wishes to dispute any Debit Note, the Supplier shall contact the Buyer (Accounts Payable Department). Nothing in this condition shall entitle the Supplier to make any deduction from monies due and payable to the Buyer under any Debit Note, such sums shall be paid in full.
- 9.7 If the Buyer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Supplier shall notify the Buyer in writing of any overdue sums.
- 9.8 Where either party fails to make any payment due to the other party under the Contract, that party shall pay interest on the overdue amount at the rate of 2% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The party in default shall pay the interest together with the overdue amount. This condition shall not apply to amounts disputed by the Buyer disputes in good faith.

10.0 THE BUYER'S PROPERTY

- 10.1 All working drawings, labels, specifications, manufacturing data, plans, designs, patents, descriptions, information, dyes, tools and components supplied by the Buyer in connection with any Contract together with any copies made by or for the Supplier:
- 10.1.1 shall remain the Buyer's property;
- 10.1.2 shall not be disclosed to any third party without the Buyer's consent;
- 10.1.3 shall be used only for the purpose of this Contract;
- 10.1.4 shall be returned to the Buyer immediately upon demand.
- 10.2 Responsibility for the safe custody and maintenance in good condition (fair wear and tear accepted), of any property of the Buyer rests with the Supplier. The Supplier shall indemnify the Buyer in full and on demand against all loss or damage howsoever arising in respect of such property whilst in the possession of the Supplier.
- 10.3 Tooling owned by the Buyer has the following special requirements: -
- 10.3.1 Proprietary tooling may not be reworked or destroyed without prior written consent from the Buyer. Out of service tooling may still be required to provide service parts.
- 10.3.2 All tools, manufacturing, test or inspection equipment belonging to the Buyer shall be used exclusively for the Buyer's benefit unless the Buyer has agreed otherwise in writing. The Buyer retains sole discretion to grant or withhold such authorisation.
- 10.3.3 Supplier shall notify the Buyer in writing of supplied tooling or gauges that are lost, damaged or are otherwise unsuitable for use. The Buyer supplied tooling and gauges shall not be disposed of without written authorisation from the Buyer.
- 10.3.4 Supplier will further be responsible for complying with any bailment agreement entered between the parties

11.0 ACCESS TO SUPPLIERS PREMISES

- 11.1 The Supplier shall give authorised representatives of the Buyer access at all reasonable times to the premises of the Supplier and allow such representatives to inspect and examine the Goods both during and after manufacture and the materials being used in their manufacture.

12.0 BREACH AND TERMINATION

- 12.1 The Buyer shall be entitled at its option and without prejudice to its other rights terminate or suspend the Contract or any unperformed part thereof by notice in the event that either: -
- 12.1.1 the Supplier commits any breach of its obligations under the Contract and fails to remedy such breach within 14 days of receipt of notice from the Buyer requiring the remedy thereof, or
- 12.1.2 the Supplier makes any arrangements or composition with his creditors or becomes bankrupt or if a receiving order is made against him or, being a Buyer, an order is made or a resolution is passed to the winding-up of the Supplier (other than solely for the purpose of amalgamation or reconstruction) or has a receiver appointed of the whole or any part of its assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver or manager which entitle a Court to make a winding-up order if the Supplier takes or suffers any similar or analogous action in consequence of debt.
- 12.2 Where the Buyer has so terminated or suspended a Contract then the Supplier will have no claim or action against the Buyer in respect of an Order or part of an Order so terminated or suspended and regard to any unperformed part of an Order a right only to receive that proportion of the price which the completed part of an Order bears to the unperformed part.
- 12.3 Where the Supplier is in breach of contract or the Buyer has terminated or suspended a contract with the Supplier pursuant to this Condition 12.0 , the Buyer is entitled to recover from the Supplier all damages allowed by law, including, but not limited to, lost profits, attorney fees, and costs incurred as a result of the Supplier's breach or termination.

13.0 CONFIDENTIALITY

- 13.1 The Supplier agrees that Confidential Information, whether verbal or written, shall be used only for the understanding and contemplated purpose of supply on to the Buyer, and shall not be used for any other purpose. The Supplier further agrees not to circumvent the Buyer and disclose to any third party said information or products for any other purpose or reason, including making copies or replicas of such proprietary information and the Buyers products. The only exceptions are described in 13.2.
- 13.2 Each party may disclose the other party's Confidential Information:

- 13.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with a Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this condition 13; and
- 13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with a Contract.
- 13.4 This condition 13 shall survive termination of the Contract.

14.0 FORCE MAJEURE

- 14.1 Provided it has complied with condition 14.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Contract by a Force Majeure Event ("**Affected Party**"), the Affected Party shall not be in breach of these Conditions or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 14.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 14.3 The Affected Party shall:
 - 14.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than 7 days from its start, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and
 - 14.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- 14.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than 4 weeks, the party not affected by the Force Majeure Event may terminate the Contract by giving 4 weeks' written notice to the Affected Party. For the avoidance of doubt the party not affected by the Force Majeure Event may not serve notice to terminate the Contract prior to the expiry of the initial 4-week period during which the Force Majeure Event continues.

15.0 SET-OFF

- 15.1 The Buyer may apply any money due to the Supplier under an Order in or towards payment of any sum owing by the Supplier to the Buyer in relation to any matters whatsoever. For this purpose, references to "the Buyer" and "the Supplier" include any holding Buyer or a subsidiary meaning a holding Buyer or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

16.0 INDEMNITY

- 16.1 The Supplier shall indemnify the Buyer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Buyer arising out of or in connection with:
 - 16.1.1 any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods;
 - 16.1.2 any claim made against the Buyer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;
 - 16.1.3 any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and
 - 16.1.4 any breach by the Supplier of any condition of this Contract.
- 16.2 If any third party makes a claim, or notifies an intention to make a claim, against the Buyer which may reasonably be considered likely to give rise to a liability under this indemnity (**Claim**), the Buyer shall:
 - 16.2.1 as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;
 - 16.2.2 not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed), provided that the Buyer may settle the Claim (after giving prior written notice of the terms of settlement (to the extent legally possible) to the Supplier, but without obtaining the Supplier's consent) if Buyer reasonably believes that failure to settle the Claim would be prejudicial to it in any material respect;
 - 16.2.3 give the Supplier access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the Buyer, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and
 - 16.2.4 subject to Supplier providing security to the Buyer to the Buyer's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.
- 16.3 If a payment due from the Supplier under this condition is subject to tax (whether by way of direct assessment or withholding at its source), the Buyer shall be entitled to receive from the Supplier such amounts as shall ensure that the net receipt, after tax, to the Buyer in respect of the payment is the same as it would have been were the payment not subject to tax.
- 16.4 Nothing in this condition shall restrict or limit the Buyer's general obligation at law to mitigate a loss which it may suffer or incur as a result of a matter that may give rise to a claim under this indemnity.
- 16.5 The Supplier agrees to maintain, at its cost and expense, the following insurance cover while performing any work for the Buyer: Employer's liability insurance with no less than £1 million of cover, public liability insurance with no less than £1 million of cover, for each occurrence and insurance which covers the total value (on a new for old policy) of any property of the Buyer held by the Supplier pursuant to condition 10. The Supplier will provide a certificate of insurance to the Buyer on request.
- 16.6 The Supplier shall observe and ensure that its employees and agents observe, any reasonable requirements of the Buyer relating to the premises in question.
- 16.7 The Buyer shall not limit its liability in respect of those liabilities which may not be limited by law. The Buyer's liability for all other losses whether arising in contract, tort (including negligence), misrepresentation, restitution or otherwise shall not exceed the total amount of charges paid or payable under an Order.

17.0 HEALTH AND SAFETY

- 17.1 The Supplier hereby warrants and undertakes that all Goods supplied by it under any Order are and will be safe and without risk to health when properly used and that the Supplier has taken all such steps that are necessary to comply with any applicable health and safety legislation, regulations and policies from time to time.
- 17.2 Specifically, the Supplier shall provide the Buyer with full information about the use for which the Goods are designed and have been tested and any conditions necessary to ensure that when put into that use they will be safe and without risk to health.
- 17.3 If the Supplier has been given written notice of the use for which the Buyer is purchasing the Goods prior to the date upon which the Order is accepted by the Supplier such use shall be deemed to be a use for which the Goods were designed and have been tested.
- 17.4 The Buyer shall be entitled to assume that the information provided by the Supplier under this condition 17 is correct and the Buyer may give such information to any third party in connection with the use of the Goods.

18.0 CERTIFICATE OF CONFORMANCE

- 18.1 The Supplier shall supply a Certificate of Conformance with every delivery.
- 18.2 The Buyer may also request additional material certification which would form part of the Specification

19.0 LAW AND JURISDICTION

- 19.1 The Contract shall be governed by and construed in all respects in accordance with English Law and the Buyer and the Supplier submit themselves to the exclusive jurisdiction of the English Courts.

20.0 HEADINGS

- 20.1 The headings to these Conditions are inserted for ease of reference and shall not affect their construction.

21.0 SEVERABILITY

- 21.1 Any waiver of breach or default under these Conditions shall not be a waiver of any other subsequent default. Failure or delay by the Buyer to enforce any term or condition of the Contract shall not constitute a waiver of such term or condition. To the extent that any provision of these Conditions is found to be invalid or unenforceable, that provision notwithstanding, the remaining Conditions shall remain in full force and effect and such invalid or unenforceable provision shall be deleted.

22.0 NOTICES

- 22.1 Any notice authorised or required to be given pursuant to these Conditions to either party shall be sent to it at its registered office, by e-mail or such other address notified by one party to the other party in writing from time to time. To prove service in the case of a notice given by post it shall be sufficient to show that the notice was despatched by first class recorded delivery service in a correctly addressed and adequately stamped envelope. Service shall be deemed to have been effected 24 hours after despatch by post. Service of a notice by email shall be deemed to have been received at 9.00am on the next working day after transmission.