

T&A Precision Grinding Co Limited Terms and Conditions (October 2010 Version)

These are the terms and conditions of T&A Precision Grinding Co Limited and apply to all orders placed with us. Please read these terms and conditions carefully. **Your attention is particularly drawn to the provisions of clause 11.**

1. INTERPRETATION

1.1 Definitions

In these Conditions, the following definitions apply:

"**Commencement Date**" has the meaning set out in clause 2.1.

"**Conditions**" these terms and conditions as amended from time to time in accordance with clause 14.8.

"**Contract**" the contract between the Supplier and the Customer for the supply of Goods and/or Hirework in accordance with these Conditions.

"**Customer**" the person or firm who purchases the Goods and/or Hirework from the Supplier.

"**Customer Materials**" materials belonging to the Customer in respect of which Hirework is provided.

"**Force Majeure Event**" means an event beyond the reasonable control of the Supplier including but not limited to industrial disputes (whether involving the workforce of the party or any other party), failure of a utility service or transport network, act of God, war, malicious damage, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors.

"**Goods**" the silver steel goods (or any part of them) set out in the Order.

"**Intellectual Property Rights**" all patents, rights to inventions, copyright and related rights, trade marks, domain names, rights in goodwill or to sue for passing off, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and all similar or equivalent rights or forms of protection in any part of the world.

"**Order**" the Customer's order for the supply of Goods and/or Hirework.

"**Hirework**" the silver steel grinding and processing services to be provided in respect of the Customer Materials by the Supplier in accordance with the requirements of the Customer which shall be as more fully detailed in the Specification.

"**Specification**" any specification for the Goods or the Hirework (including any relevant plans or drawings) that is provided by the Customer to the Supplier.

"**Supplier**" T&A Precision Grinding Co Limited (Company Number 01918382) whose registered office is at 101 Carlisle Street, East, Sheffield S4 7QN.

1.2 In these Conditions to a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

2. BASIS OF CONTRACT

2.1 The Order constitutes an offer by the Customer to purchase Goods and/or Hirework from the Supplier in accordance with these Conditions. The Order shall be accepted when the Supplier either commences work to provide the Goods and/or Hirework to the Customer or the Supplier confirms acceptance of the Order (either verbally or in writing) whichever is earlier. On that date the Contract shall come into existence ("**Commencement Date**").

2.2 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any samples, drawings, descriptive matter or advertising issued by the Supplier are issued for the sole purpose of giving an approximate idea of the Hirework and/or Goods described in them. They shall not form part of the Contract or any other contract between the Supplier and the Customer for the supply of the Goods and/or Hirework.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 Any quotation given by the Supplier shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.

2.5 These Conditions shall apply to the supply of both Goods and Hirework except where application to one or the other is specified.

3. DELIVERY

3.1 The Customer shall be fully responsible (at the Customer's expense) for arranging delivery of the Customer Materials, in respect of which Hirework is to be provided, to the Supplier's premises (as notified by the Supplier to the Customer) at such time and on such date as the parties agree. The Supplier does not accept any liability to the Customer for any failure by the Customer to deliver the correct Customer Materials to the Supplier. The Supplier may notify the Customer if it believes the Customer Materials delivered to it are not the correct Customer Materials for the Hirework but it shall not be under any obligation to check such Customer Materials are correct. The Customer shall be liable to pay for any Hirework carried out by the Supplier even if such Hirework is supplied in respect of the wrong Customer Materials. Upon completion of the Hirework the Supplier will notify the Customer that the Customer Materials are ready for collection. The Customer shall, at its own expense, promptly arrange for the Customer Materials to be collected from the Supplier's premises at a date and time agreed by the parties.

3.2 The Supplier shall, at the Customer's expense, arrange for delivery of the Goods to the location set out in the Order or such other location as the parties may agree at any time after the Supplier notifies the Customer that the Goods are ready for delivery.

3.3 Delivery of the Goods shall be completed on arrival of the Goods at the location agreed with the Customer. Delivery of the Customer Materials shall take place on completion of loading of the Customer Materials onto the carrier arranged by the Customer.

3.4 Any dates quoted for delivery of the Goods and/or Customer Materials are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods and/or Customer Materials that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and/or Hirework.

3.5 If, 60 days after the Supplier has notified the Customer that the Customer Materials are ready for collection, the Customer has not collected them, the Supplier may dispose of the Customer Materials. The Customer will remain liable to pay for the Hirework in respect of such Customer Materials.

4. QUALITY OF GOODS

4.1 The Supplier warrants that on delivery the Goods shall:

- 4.1.1 conform in all material respects with their description;
- 4.1.2 be free from material defects in design, material and workmanship;
- 4.1.3 conform in all material respects with British Standard 1407; and
- 4.1.4 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);

4.2 Subject to clause 4.3, if:

- 4.2.1 the Customer gives notice in writing within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 4.1;

4.2.2 the Supplier is given a reasonable opportunity of examining such Goods; and
4.2.3 the Customer (upon request) returns such Goods to the Supplier's place of business at the Customer's cost,

the Supplier shall, at its option, rework or replace the defective Goods, or refund the price of the defective Goods in full. If the Supplier agrees that any fault or defect in the Goods has arisen due to the Supplier's negligent acts or omissions, then the Supplier will refund to the Customer the cost of returning the Goods to the Supplier.

4.3 The Supplier shall not be liable for the Goods' failure to comply with the warranty in clause 4.1 if:

4.3.1 the Customer makes any further use of such Goods after giving a notice in accordance with clause 4.2;

4.3.2 the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer;

4.3.3 the Customer alters the Goods without the written consent of the Supplier; or

4.3.4 the defect arises as a result of wilful damage, negligence, or abnormal working conditions when in the possession of the Customer.

4.4 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.

4.5 The terms of these Conditions shall apply to any reworked or replacement Goods supplied by the Supplier under clause 4.2.

5. TITLE AND RISK

5.1 The risk in the Goods shall pass to the Customer on completion of delivery.

5.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due.

5.3 Until title to the Goods has passed to the Customer, the Customer shall:

5.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;

5.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on the Supplier's behalf from the date of delivery;

5.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4; and

5.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.

5.4 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 12.1.2 to clause 12.1.4 (inclusive), or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. HIREWORK

6.1 The Supplier shall use all reasonable endeavours to provide Hirework to the Customer in accordance with the Specification in all material respects.

6.2 The Supplier shall use all reasonable endeavours to meet any performance dates for the Hirework specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Hirework.

6.3 The Supplier shall have the right to make any changes to the Hirework which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Hirework, and the Supplier shall notify the Customer in any such event.

6.4 The Supplier will only return any scrap or waste Customer Materials after undertaking the Hirework if requested by the Customer when forwarding the Customer Materials to the Supplier.

6.5 The Customer will be responsible for insuring and will maintain at all times insurance for the Customer Materials whilst in the possession of the Supplier.

6.6 Unless otherwise agreed in writing, the Supplier shall not be obliged to check or test Customer Materials delivered by the Customer for Hirework and the Supplier reserves the right to make a charge for such checking or testing, if required.

6.7 The Customer warrants that the Customer Materials delivered will:

6.7.1 be prepared and ready for the Hirework;

6.7.2 be suitable to be treated as Customer Materials for the purposes of the Hirework; and

6.7.3 not be in a defective or dangerous state;

The Supplier shall be entitled to charge for extra work required as a result of this breach of warranty including the cost of re-treating if necessary.

6.8 In all cases additional charges shall be at the rate of charge made by the Supplier at the relevant time.

6.9 If, on delivery the Customer believes the Hirework supplied in respect of the Customer Materials does not conform with the Specification, then, subject to clause 6.6, if:

6.9.1 the Customer gives notice in writing within a reasonable time of discovery that the Hirework has not been provided in accordance with the Specification.

6.9.2 the Supplier is given a reasonable opportunity of examining the Customer Materials;

6.9.3 the Customer (upon request) returns the Customer Materials to the Supplier's place of business (at the Customer's cost);

the Supplier shall rework the Customer's Materials to meet the Specification. If the Supplier agrees that the failure of the Customer Materials to meet the Specification has arisen due to the negligent acts or omissions of the Supplier then the Supplier will refund the cost of returning the Customer Materials to the Supplier.

6.10 The Supplier shall not be liable for the Customer Materials' failure to meet the Specification if:

6.10.1 the Customer makes any further use of the Customer Materials after giving notice in accordance with clause 6.9;

6.10.2 the Customer alters the Customer Materials without the written consent of the Supplier;

6.10.3 the defect arises as a result of unlawful damage, negligence or abnormal working conditions when in the possession of the Customer;

6.10.4 the Customer failed to comply with its obligations in clauses 3.1 and 7.

6.11 Except as provided in this clause 6, the Supplier shall have no liability to the Customer in respect of a failure of the Hirework to meet the Specification.

6.12 The terms of these Conditions shall apply to any reworked Customer Materials.

7. CUSTOMER'S OBLIGATIONS

- 7.1 The Customer shall:
- 7.1.1 ensure that the terms of the Order and the information it provides in the Specification are complete and accurate;
 - 7.1.2 co-operate with the Supplier in all matters relating to the Hirework;
 - 7.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to provide the Hirework;
 - 7.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require to supply the , and ensure that such information is accurate in all material respects;
 - 7.1.5 ensure that any Customer Materials in respect of which the Hirework is to be provided are suitable and capable of being subject to the processes involved during provision of the Hirework. If the Customer is uncertain of the requirements for the Customer Materials the Customer shall seek the guidance of the Supplier prior to delivery of the Customer Materials to the Supplier; and
 - 7.1.6 comply with its obligations contained in clause 3.1.
- 7.2 If the Supplier's performance of any of its obligations in respect of the Hirework is prevented or delayed by any act or omission of the Customer or failure by the Customer to perform any relevant obligation ("**Customer Default**"):
- 7.2.1 the Supplier shall, without limiting its other rights or remedies, have the right to suspend performance of the Hirework until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations;
 - 7.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 7.2; and
 - 7.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default.

8. CHARGES AND PAYMENT

- 8.1 The price for Goods shall be the price set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of delivery. The price of the Goods is exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be paid by the Customer in addition to the Goods.
- 8.2 The charges for the Hirework shall be calculated on a time and materials basis and shall be specified in the quotation provided by the Supplier to the Customer in respect of the relevant Hirework..
- 8.3 The Supplier reserves the right to increase the price of the Goods, as set out in its published price list from time to time. The price applicable to the Goods shall (if not specified in the Order) be the price specified in the published price list at the date of delivery. The Supplier may also increase the price of the Goods and Hirework by giving notice to the Customer at any time before delivery, to reflect any increase in the cost of the Goods and/or Hirework to the Supplier that is due to:
- 8.3.1 any factor beyond the control of the Supplier (including increases in materials and manufacturing costs);
 - 8.3.2 any request by the Customer to change the delivery date(s), quantities or types of Goods and/or Hirework ordered, or the Specification in respect of the Goods and/or Hirework; or
 - 8.3.3 any delay caused by any instructions of the Customer in respect of the Goods and/or Hirework or failure of the Customer to give the Supplier adequate or accurate information or instructions in respect of the Goods and/or Hirework.
- 8.4 The Supplier shall invoice the Customer on or at any time after the Goods and/or Customer Materials are ready for delivery to or collection by the Customer.
- 8.5 The Customer shall pay each invoice submitted by the Supplier in full and cleared funds within 60 days of the date of the invoice. Time for payment shall be of the essence of the Contract.
- 8.6 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("**VAT**") which shall be payable in addition to the price.
- 8.7 Without limiting any other right or remedy of the Supplier, if the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment ("**Due Date**"), the Supplier shall have the right to charge interest on the overdue amount at the rate of 4 per cent per annum above the base lending rate of National Westminster Bank plc accruing on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment, and compounding quarterly.
- 8.8 The Customer shall pay all amounts due under the Contract in full without any deduction, set off or withholding.

9. INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights in or arising out of or in connection with the Hirework shall be owned by the Supplier.

10. CONFIDENTIALITY

A party ("**Receiving Party**") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause 10 shall survive termination of the Contract.

11. LIMITATION OF LIABILITY: THE CUSTOMER'S ATTENTION IS PARTICULARLY DRAWN TO THIS CLAUSE

- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
 - 11.1.2 fraud or fraudulent misrepresentation.
- 11.2 Subject to clause 11.1:
- 11.2.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or for any indirect or consequential loss arising under or in connection with the Contract; and
 - 11.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be the value of the Goods and/or Hirework supplied under the Contract.
- 11.3 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 11.4 This clause 11 shall survive termination of the Contract.

12. TERMINATION

- 12.1 Without limiting its other rights or remedies, each party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 12.1.1 the other party commits a material breach of its obligations under this Contract and (if capable of remedy) fails to remedy that breach within 28 days of receiving notice in writing so to do.
 - 12.1.2 the other party is unable to pay its debts as they fall due or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; the other party enters into any compromise or arrangement with its creditors; a notice is given, or an order is made, for or in connection with the winding up of the other party; the other party (being an individual) is the subject of a bankruptcy petition or order; a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets; an application is made to court for the appointment of an administrator or if an administrator is appointed over the other party; a floating charge holder over the assets of the other party (being a company) has become entitled to appoint or has appointed an administrative receiver; a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party; or any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 12.1.2.
 - 12.1.3 the other party suspends, threatens to suspend, ceases or threatens to cease to carry on, all or substantially the whole of its business; or
 - 12.1.4 the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 12.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract:
- 12.2.1 by giving the Customer one months' written notice; or
 - 12.2.2 with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 12.3 Without limiting its other rights or remedies, the Supplier shall have the right to suspend the supply of Hirework or all further deliveries of Goods under the Contract or any other contract between the Customer and the Supplier if:
- 12.3.1 the Customer fails to make pay any amount due under this Contract on the due date for payment; or
 - 12.3.2 the Customer becomes subject to any of the events listed in clause 12.1.2 or the Supplier reasonably believes that the Customer is about to become subject to any of them.

13. CONSEQUENCES OF TERMINATION

On termination of the Contract for any reason:

- 13.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Hirework supplied but for which no invoice has yet been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 13.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry; and
- 13.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

14. GENERAL

- 14.1 The Supplier shall not be liable to the Customer as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event. If the Force Majeure Event prevents the Supplier from providing any of the Hirework and/or Goods for more than 12 weeks, the Supplier shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the Customer.
- 14.2 The Supplier may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party.
- 14.3 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 14.4 Notices:
- 14.4.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number.
 - 14.4.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such addressor, if sent by prepaid first-class post, at 11.00 am on the second working day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next working day after transmission.
- 14.5 No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. Unless specifically provided otherwise, rights arising under the Contract are cumulative and to not exclude rights provided by law.
- 14.6 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 14.7 A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 14.8 Any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Supplier.
- 14.9 This Contract, and any dispute or claim arising out of or in connection with it, shall be governed by, and construed in accordance with English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts in England and Wales.

END OF TERMS AND CONDITIONS