

Terms and conditions of purchase

I. TERMS AND CONDITIONS

- (a) These terms and conditions ("Terms") dated March 2022 apply to all quotes, orders, invoices and any purchase of goods or services by Markes International Ltd., its subsidiaries, branches, affiliates or other group companies (together "Markes"), to the exclusion of any other terms that any potential or actual supplier (including its subcontractors, independent contractors and all other classes of persons performing any type of work for Markes for or on behalf of the supplier) ("Supplier") may present or seek to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. The Supplier accepts these Terms by providing goods and/or services to Markes, or by otherwise being notified that such transactions are subject to these Terms. The Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with, or contained in any documents of the Supplier that is inconsistent with these Terms.

II. THE GOODS AND/OR SERVICES

- (a) The term "goods" and "services" shall refer to the goods, products, materials, supplies, items, equipment, work and/or services provided to Markes.
- (b) The Supplier warrants that for a period of 1 year from the date of Markes' acceptance of any goods and/or services, the goods and/or services shall: (i) correspond with their description and any applicable specification as set out by Markes and agreed with the Supplier ("Specification"); (ii) be of satisfactory quality and fit for any purpose held out by the Supplier or made known to Markes by the Supplier expressly or by implication, and in this respect Markes relies on the Supplier's skill and judgement; (iii) where they are manufactured products, be free from defects in design, material and workmanship; and (iv) comply with all applicable legal, statutory and regulatory requirements.
- (c) The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents, proof of origin documentation and permits that it needs to carry out its obligations and should be able to provide copies to Markes on request.
- (d) Markes may at its own cost, inspect and test any goods at any time before delivery. The Supplier shall remain fully responsible for any goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations.
- (e) If following such inspection or testing Markes considers that the goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 2(b) Markes shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. Markes may conduct further inspections and tests after the Supplier has carried out its remedial actions.

III. DELIVERY

- (a) The Supplier shall ensure that: (i) any goods are properly packed and secured in such manner as to enable them to reach their destination in undamaged condition and in accordance with standard commercial practice for domestic or export shipment as applicable; (ii) each delivery of goods is accompanied by a delivery note which shows the date of the order, the type and quantity of the goods, special storage instructions (if any), any information reasonably required by Markes for legal or regulatory purposes and, if the goods are being delivered by instalments, the outstanding balance of goods remaining to be delivered; and (iii) if the Supplier requires Markes to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- (b) The Supplier shall deliver any goods on the delivery date at the time and location specified by Markes. Unless otherwise expressly specified by Markes in writing, the price to be paid for the goods and/or services includes the cost of delivery. The Supplier shall incur all costs related to unauthorised early delivery or any late delivery.
- (c) The Supplier shall not deliver any goods in instalments without Markes' prior written consent. Where it is agreed that the goods are to be delivered by instalments, they may be invoiced and paid for separately.
- (d) If the goods and/or services are not delivered on the specified delivery date, or if they do not comply with the undertakings set out in clause 2(b) then, without limiting any of its other rights or remedies, and whether or not it has accepted the goods and/or services, Markes may exercise any one or more of the following rights and remedies: (i) terminate the order; (ii) reject the goods and/or services (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense; (iii) require the Supplier to repair or replace the rejected goods and/or services, or to provide a full refund of the price of the rejected goods and/or services (if paid); (iv) refuse to accept any subsequent delivery of the goods which the Supplier attempts to make; (v) recover from the Supplier any costs incurred by Markes in obtaining substitute goods from a third party; and (vi) claim damages for any other costs, loss or expenses incurred by Markes which are in any way attributable to the Supplier's failure to carry out its obligations.

- (e) Title and risk in the goods shall pass to Markes on completion of delivery.
- (f) Upon acceptance of delivery by Markes, good and marketable title to all goods free and clear of any liens or encumbrances of any kind shall pass to Markes.

IV. PRICE AND PAYMENT

- (a) The Supplier warrants that the prices for the goods and/or services are not less favourable than those currently extended to any other customer for the same or similar goods in similar quantities. In the event the Supplier reduces its price for such goods and/or services, the Supplier agrees to reduce the prices for the goods and/or services correspondingly. The Supplier warrants that the price quoted shall be complete, and no additional charges of any type shall be added without Markes' express written consent.
- (b) The price of the goods and/or services excludes amounts in respect of value added tax, federal, state, municipal or other governmental taxes, duties, excise taxes or tariffs (which Markes will additionally be liable for at the prevailing rate, subject to the receipt of a valid invoice), and includes the costs and charges of packaging, insurance, and transport of the goods and/or services. No extra charges shall be effective unless agreed in writing with Markes.
- (c) Markes shall pay correctly rendered invoices within 90 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Markes may at any time, without notice to the Supplier, set off any liability of the Supplier to Markes against any liability of Markes to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under these Terms. Any exercise by Markes of its rights under this clause shall not limit or affect any other rights or remedies available to it under these Terms or otherwise.

V. FREE ISSUE GOODS AND COMPANY PROPERTY

- (a) "Free Issue Goods" are Goods supplied by Markes without charge to the Supplier for the purpose of modification or other incorporation into the goods and/or services provided by the Supplier. The Supplier is responsible for the safekeeping of Free Issue Goods whilst in possession of them and shall take all appropriate steps to ensure the Free Issue Goods are kept safe and secure. Free Issue Goods should be clearly labelled as Markes' property, both physically whilst in storage and electronically on any register of assets provided to external auditors or receivers appointed to act for the Supplier at any time. Seller shall cover at its cost insurance against risk, damage, and theft. Free Issue Goods are only to be used to satisfy Markes' Orders and title shall remain with Markes at all times.
- (b) All tangible and intangible property, including to but not limited to Goods, tools, materials, drawings, plans, software, data, models, or prototypes furnished to the Seller by Markes or specifically paid for by Markes shall be and remains Markes company property. The Seller shall be allowed to use these items for the completion of this Order, and none of these items may be duplicated, copied or shared with a third party without the express written permission of Markes.

VI. LICENCE

- (a) If Goods include software, the Supplier grants Markes a non-exclusive, royalty free, worldwide licence to use, import, reproduce and distribute the software in object code for internal use directly or integrated in Markes Products. Supplier also grants Markes a non-exclusive, royalty free, worldwide licence to use, import, distribute and offer for sale any copies of the software purchased that remain in the original shrink-wrapped packaging. If Goods include documentation Supplier grants Markes a non-exclusive, royalty free, worldwide licence to use, import, distribute and prepare derivative works in Markes name all documentation furnished by the Seller. Markes may reproduce such documentation without Seller's logo or other identification of source subject to affixing copyright notices to all copies of documentation and Seller hereby waives and shall cause to be waived all applicable moral rights in respect to such documentation. These rights with respect to software and documentation shall extend to (i) third parties to use and reproduce the Goods for Markes internal use; and (ii) third party channels of distribution.

VII. INDEMNIFICATION, INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

- (a) Intellectual Property in Results of Service
 - (i) "Intellectual Property" ("IP") shall mean all inventions, patents (including without limitation applications divisions, reissues, re-examinations, terms extensions, continuations and any foreign counterparts), works of authorship, copyrights (including without limitation registrations, applications and derivatives), trademarks (including without limitation service marks, trade dress and other marks identifying a party or its products), designs, processes mask words, trade secrets, domain names, proprietary technical information and other similar proprietary information tangible and intangible, whether registered or in the process of being registered.
 - (ii) "Pre-existing IP" means IP conceived or developed prior to, or independent of performance of this Order. Supplier will retain full right, title, and interest in and to any pre-existing IP. Supplier will not use any pre-existing IP in connection with this Order without first obtaining from the owner any rights necessary to enable the Supplier to fully comply with the terms of this Order.
 - (iii) Supplier hereby agrees to and does irrecoverably assign and transfer to Markes all of its worldwide IP in and to all results of Services. At Markes expense, Supplier shall execute any documents and take all additional steps as reasonably requested by Markes to perfect, record and register such an agreement.
 - (iv) Supplier hereby grants to Markes a non-exclusive, worldwide, royalty free, irrecoverable, perpetual, transferable licence with right to sub licence any pre-existing IP to the extent of Markes full enjoyment and commercial exploitation of the results of the services as reasonably contemplated by the Order.

- (b) Without limiting the above remedy, if Markes' use of any Goods or receipt of any Service is enjoined because of any actual or claimed infringement of patent, trademark, copyright, trade secret or other intellectual property right of a third party (collectively "Infringing Product"), Supplier shall at its expense use its best efforts to procure the right for Markes to continue using or receiving the Infringing Product. If Supplier is unable to do so, Supplier shall at its expense (i) replace the Infringing Product with non-infringing goods or service (as applicable) without loss of functionality; (ii) modify the Infringing Product to be non-infringing; or (iii) if unable to replace or modify the Infringing Product, refund in full all costs paid by Markes for the Infringing Product and reimburse Markes on demand, for all additional costs incurred by Markes in purchasing replacement goods or services.
- (c) Unless otherwise specified or approved by Markes, Supplier shall remove Markes name and any of Markes' trademarks, trade names, insignia, part numbers, symbols or decorative designs from all Goods rejected or returned by Markes or not sold or shipped to Markes.
- (d) Except as where required to supply Goods or Services pursuant to this Order or as otherwise instructed by Markes, Supplier shall not disclose any confidential information of Markes. Confidential information includes, without limitation, all information designated by Markes as confidential and all information or data concerning Markes' Goods (including the discovery, invention, research, improvement, design and development, manufacture, or sale thereof) or general business operations (including costs, forecasts, profits, pricing methods and processes).
- (e) The Supplier agrees to defend, indemnify and hold harmless Markes and its affiliates, subsidiaries, assigns, subcontractors and customers from and against all claims, losses, demands, fees, damages, liabilities, costs, expenses (including without limitation legal fees), obligations, causes of actions, suits or injuries of any kind or nature arising from, in connection with or related in any way to breach or alleged breach of any warranties made by Supplier or any act or omission of Supplier in the performance of this Order.

VIII. TERMINATION

- (a) Markes may terminate any order in whole or in part at any time before delivery of any goods or the provision of any services, with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on that order. Markes shall pay the Supplier fair and reasonable compensation for any work in progress on any goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- (b) Without limiting its other rights or remedies, Markes may terminate any order with immediate effect, by giving written notice to the Supplier if the Supplier (or if Markes reasonably believes that the Supplier will): (a) commits a material breach of any term of the Terms and (if such a breach is remediable) fails to remedy that breach within 15 days of the Supplier being notified in writing to do so; (b) becomes the subject of any proceeding under state, provincial or federal law for the relief of debtors or otherwise becomes insolvent, bankrupt or makes an assignment for the benefit of creditors, or upon the appointment of a receiver for the Supplier or the reorganisation of the Supplier for the benefit of creditors; (c) suspends, threatens to suspend, ceases or threatens to cease, or Markes reasonably expects that Supplier may suspend or cease, to carry on all or a substantial part of its business; or (d) financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the order is in jeopardy.
- (c) Termination, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, or expiry, including the right to claim damages in respect of any breach of these Terms which existed at or before the date of termination, or expiry.
- (d) Any provision of these Terms that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the order will remain in full force and effect.

IX. FORCE MAJEURE

- (a) The Supplier shall: (i) use its best endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations and prioritise supply to Markes; and (ii) as soon as reasonably practicable after the start of the Force Majeure Event notify Markes 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.
- (b) Provided it has complied with clause 9(a), the Supplier will not be in breach of these Terms nor liable for delay in performing, or failure to perform, any of its obligations under these Terms if such delay or failure result from an event, circumstance or cause beyond its reasonable control ("Force Majeure Event").
- (c) Should Markes receive notice in accordance with clause 9(a)(ii) above, Markes may (i) purchase any goods and/or services from another provider until the Supplier is able to do so again; (ii) suspend any order until Supplier can carry out its obligations in accordance with these Terms; and/or (iii) if the period of delay or non-performance continues for 6 weeks, terminate any order by giving 7 days' written notice.
- (d) Once Supplier is able to continue supplying the goods and/or services, it shall use its best endeavours to expedite delivery and prioritise supply to Markes.

X. COMPLIANCE WITH LAWS AND REGULATIONS

- (a) Compliance with Local Law.
 - (i) The Supplier when going about their business, must fully comply with all laws and regulations in the local jurisdiction, including, but not limited to, all laws and regulations relating to local employment, health & safety and environmental regulations, and compliance with government procurement and tendering procedures if applicable.
 - (ii) The Supplier further represents and warrants to Markes that none of this Agreement, the relationship created hereby, or the performance hereof is contrary to any local laws, or regulations within the jurisdiction ("Local Law"). Depending on the territory, Supplier acknowledges that Markes may not be fully familiar with Local Law and that the Markes has entered into this Agreement in reliance upon the foregoing representation and warranty.

- (b) Compliance with Anti-Corruption Legislation.
- (i) Markes is bound by the laws of the UK including the Bribery Act 2010 regarding our conduct both home and abroad, and Group Subsidiaries & Branches are bound by the appropriate laws rules & regulations in each country including but not limited to the Foreign Corrupt Practices Act 1977 (USA), PRC Criminal Law (PRC) and the OECD Anti-Bribery Convention.
 - (ii) In connection with the performance of this Agreement, the Supplier covenants and agrees that neither it nor its affiliates, officers, directors, employees, owners, agents, representatives, consultants, sub-distributors, sub-contractors, or their immediate family members (collectively "Affiliates") will take any action that is in contravention of the UK Bribery Act 2010 <https://www.gov.uk/government/publications/bribery-act-2010-guidance>
 - (iii) Furthermore, Supplier will engage with Markes' audit and risk mitigation due diligence processes where applicable in order that Markes can discharge their responsibilities under UK Law. A copy of the relevant Markes policy is available on request.
- (c) Compliance with Suppliers Corporate Social Responsibility Policies
- (i) MARKES is bound by law and convention in the UK to corporate and social responsibility regulations and policies (including but not limited to those covering Anti-trust, Anti-Money laundering, Modern Slavery). Suppliers are required to engage with Markes' audit processes as required for these policies in order that Markes can discharge their corporate and social responsibilities. Copies of the relevant Policies are available on request.
- (d) Compliance with Anti-Terrorism / Blocked persons / Sanctions Regulations
- (i) The Supplier covenants and agrees that in performing this Agreement it will not engage in transactions with any party or become a party listed as a Specially Designated Terrorist, Specially Designated National, and/or Blocked Person or party which otherwise appears on any of the following Restricted Parties lists: (i) U.K. Sanctions List (ii) Office of Financial Sanctions Implementation (OFSI) Consolidated List (iii) European Union Consolidated Financial Sanctions List (iv) U.S. Specially Designated Nationals and Blocked Persons List (v) U.S. Entity List.
- (e) Compliance with Export and Import Control Regulations
- (i) Supplier will notify MARKES if any of the goods and/or services are controlled or classified under any applicable laws and shall obtain any licences, permits and approvals required by any government, regulatory body or other competent authority in order to provide the goods and /or services. Supplier shall comply with all applicable laws, rules, policies and procedures of them, including, without limitation, the United States Export Administration Regulations, the Export Control Act 2002 and the guidance provided by the UK Export Control Joint Unit. The Supplier will indemnify and hold MARKES harmless for any violation or alleged violation by Supplier of such laws, rules, policies or procedures
 - (ii) Suppliers will ensure that any iron and steel products imported into the UK have not been interfered with or transformed in any way in a third country. Also that the item does not incorporate any iron and steel products of Russian origin as well as any products listed in Schedule 3B of the Russian Sanctions Regulations
- (f) Any breach by the Distributor of the Compliance with Laws and Regulations set forth in this section may constitute Good Cause for termination under section 8 hereof.

XI. GENERAL

- (a) **Written Permission.** Where referred to in this Agreement 'written permission' may include electronic communication via email from a registered email account at markes.com but will not include permission given on "chat" type applications including but not limited to Skype, WhatsApp, TEAMS chat, etc.
- (b) **Publicity.** The Supplier shall obtain Markes written permission before disclosing by way of press release or otherwise to any third party anything which relates to any goods and/or the services provided to Markes. Should permission be granted, Markes retains the right to review and edit any such press release prior to publication.
- (c) **Assignment and other dealings.** Supplier may not assign or transfer any right or obligations hereunder without the prior written consent of Markes, such consent to not be unreasonably withheld or delayed. Markes may assign its rights and delegate its obligations. The Supplier may not subcontract any or all its rights or obligations under these Terms without the prior written consent of Markes. If Markes consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.
- (d) **Confidentiality.** Each party will not disclose to any person any Confidential Information concerning the other party. Each party may disclose the other party's Confidential Information: (i) to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such Confidential Information for the purposes of exercising the party's rights or carrying out its obligations under these Terms; and (ii) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority. Neither party will use the other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the order. 'Confidential Information' means, in relation to each party, all information of commercial value, in whatever form relating to the business of that party including price sensitive information, trade secrets, business plans, know how, financial data, specifications, technical information, device results, drawings, agreements, techniques, technology, operations and products.
- (e) **Entire agreement.** These Terms express the entire understanding and agreement between the parties with respect to the goods and/or services specified in any order and supersede any and all previous agreements with reference to such subject matter, save for: (i) any previously signed non-disclosure or confidentiality agreement which cover the goods and/or services; and (ii) any other written agreement between the parties that specifically covers the same goods or services ("Separate Agreement"), where the terms of the Separate Agreement shall prevail over these Terms.

- (f) **Variation.** No variation of these Terms will be effective unless it is in writing and signed by the parties (or their authorised representatives).
- (g) **Waiver.** No failure or delay by a party to exercise any right or remedy provided under these Terms or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.
- (h) **Severance.** If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but that will not affect the validity and enforceability of the rest of these Terms.
- (i) **Notices.** Any notice required to be sent pursuant to these Terms will be in writing and will be deemed to be validly given by the delivery to its recipient, either personally, by registered mail, prepaid mail or prepaid courier. Notices to Markes must be sent either by registered mail or via email to purchasing@markes.com, marked for the attention of the Supply Chain Manager, unless otherwise notified in writing.
- (j) **Third party rights.** A person who is not a party to these Terms shall have no rights to enforce any of the provisions of these Terms pursuant to any enactment or other rule of law, except that a Markes affiliate who has proprietary rights in any Confidential Information disclosed in connection with these Terms may enforce these Terms as if it were a party hereto.
- (k) **Governing law and Jurisdiction.** These Terms, and any dispute or claim (including, without limitation, non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, will be governed by and construed in accordance with the law of England and Wales and each party irrevocably agrees that the courts of London, England will have exclusive jurisdiction to settle any dispute or claim.