

FLEXITALLIC LLC

CONDITIONS OF SALE

- INTERPRETATION**

In these Conditions:

 - "Acknowledgement of Order" means the written acknowledgement given by the Seller to the Buyer whether before or after delivery of the Goods;
 - "Buyer" means the person, firm or company with whom the Contract is made;
 - "Conditions" means these conditions and the Special Conditions together;
 - "Contract" means the agreement between the Seller and the Buyer for the sale of Goods or supply of Services;
 - "Goods" means the goods and/or Services to be supplied by the Seller pursuant to the Contract;
 - "Quotation" means the written, oral or on-line quotation given by the Seller to the Buyer.
 - "Seller" means Flexitallic, LLC;
 - "Services" means the services provided by the Seller whether with or without the Goods;
 - "Special Conditions" means any terms set out in the Contract.
 - Words and phrases defined for the purposes of or in connection with any statutory provision shall where the context so requires be construed as having the same meaning in these Conditions. Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended re-enacted or extended at the relevant time.
 - Unless the context otherwise requires reference to a Condition shall be construed as a reference to a Condition of these Conditions and reference to a clause shall be construed as reference to a clause of a Condition.
- STATUS OF CONDITIONS**

Unless otherwise agreed in writing by the Seller, these Conditions shall override any terms or conditions proposed by the Buyer at any time and accordingly shall be incorporated in every Contract.
- FORMATION OF CONTRACT**
 - All Quotations and Acknowledgements of Order given by the Seller shall be deemed to include these Conditions except (subject to the provisions of clause 3.7) insofar as they are inconsistent with any special terms or conditions contained in the Quotation or the Acknowledgement of Order (as the case may be).
 - The Quotation shall remain valid for 30 days and does not form an offer capable of acceptance by the Buyer but merely an invitation to the Buyer to make an offer in accordance with its terms. The Contract shall not come into effect until the Seller has despatched the Acknowledgement of Order to the Buyer.
 - Any terms or conditions contained in the Buyer's order which are inconsistent with these Conditions shall not form part of the Contract unless (subject to the provisions of clause 3.7) accepted by the Seller in writing in the Acknowledgement of Order.
 - Cancellation of the Contract by the Buyer will be a breach of contract entitling the Seller to compensation and the Buyer shall indemnify the Seller in full against all losses (including loss of profit) costs (including the cost of all labour and materials used) damages charges and expenses paid inured or sustained by the Seller as a result of the cancellation.
 - These Conditions are incorporated in all subsequent Contracts between the Seller and Buyer relating to the supply of any Goods and Services by Seller, oral or written, unless they are specifically excluded in a written Contract signed by an authorized officer of Seller.
 - Insofar as these Conditions are in any circumstances regarded as or held to constitute the terms of a counter offer, the Buyer shall be taken to have accepted such counter offer by accepting physical delivery of any of the Goods or completion of the Services from the Seller.
 - No variation to these Conditions shall be effective unless made in writing and signed by an authorised officer of the Seller.
 - The employees of the Seller are not authorised to make oral representations as to the description quality or fitness for any particular purpose of any Goods or as to the skill and care which will be used by the Seller in the provision of the Services. If a representation is made or an opinion expressed orally which materially affects the Buyer's decision to place an order for the Goods or Services the Buyer must ensure that such details are confirmed in writing by a duly authorised officer of the Seller so as to form part of the Contract otherwise no liability can be accepted by the Seller.
 - All specifications drawings and technical descriptions contained in correspondence submitted with or in connection with any Quotation or Acknowledgement of Order are the Seller's copyright, approximate only and not guaranteed unless a specific written undertaking is included in the Quotation or Acknowledgement of Order. All such copyright material and all information and "know-how" whenever supplied shall at all times be treated by the Buyer as confidential and shall not without the written consent of the Seller be used by the Buyer except for the purpose of the Contract and the operation of the Goods or provision of the Services supplied thereunder nor shall they without the written consent of the Seller be communicated to third parties save insofar as may be necessary for the purposes stated above.
 - The Seller reserves the right to make any changes in the specification or component parts of the Goods which are required to conform with any applicable safety or other statutory requirements or which do not materially affect their quality or performance.
 - Where the Seller supplies Goods to the Buyer as agent for a named principal these Conditions shall also apply to any Services rendered, advice given or representations made by the Seller with regard to such Goods and are binding on Buyer's named principal.
- DELIVERY**
 - Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
 - Any dates quoted for delivery of the Goods or provision of the Services are approximate and are given for information only and under no circumstances shall time be of the essence. A delay in delivery including delivering later than the date or dates provided in the Contract shall not constitute a breach of contract and shall not entitle the Buyer to avoid the Contract or to any other remedy unless (subject to the provisions of clause 3.7) the Seller has guaranteed the date of delivery in a written warranty which expressly modifies the provisions of this Condition.
 - Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
 - If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery then without prejudice to any other right or remedy available to the Seller, the Seller may:
 - store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Buyer for any shortfall below the price under the Contract.
 - Subject to the provisions of clause 4.4 the Seller shall have a general lien on all Goods and property belonging to the Buyer in possession of the Seller and such lien shall be exercisable in respect of all sums which in the reasonable opinion of the Seller are lawfully due from the Buyer to the Seller. The Seller shall be entitled on the expiration of fourteen days' notice to dispose of such Goods or property in such manner and at such price as Seller thinks fit and to apply the proceeds towards such debt.
 - The delivery of a greater or lesser quantity of the Goods than the quantity ordered or of Goods only some of which are defective, shall not entitle the Buyer to reject goods that do not exceed or fall short of the quantity ordered by more than 5% and are not defective. To the extent that on account of the Seller's delivery of a greater or lesser quantity of the Goods than the quantity ordered the Buyer enjoys a right to reject or in the event of non-delivery of the whole consignment the Buyer shall notify the Seller (and the Buyer's right to reject shall be subject to so doing) within 7 days of receipt of the covering despatch note or (for non-delivery of the whole) of the day on which the consignment would have been delivered in the normal course of transit. If such notification is not given the Seller shall not be obliged to make good the shortfall or non-delivery.
- GOODS IN TRANSIT**

Unless express provision to the contrary is made in the Special Conditions, where the Seller agrees to arrange the carriage for the Goods the method of transport shall be at the sole discretion of the Seller. Where the Seller agrees to be responsible for risks of loss or damage to the Goods during transit no claim for loss of or damage to the Goods while in transit will be entertained by the Seller (and the Buyer shall have no right to reject the Goods concerned) unless the claim is made in writing to both the Seller and any relevant carrier within 7 days of the date of the Buyer's receipt of the relevant despatch note. Where such a claim is made within that time and accepted by the Seller its liability shall not exceed the price of those goods available (in the cheapest market) to the Buyer to replace the Goods lost or damaged.
- PROPERTY AND RISK**
 - Risk of damage or loss to the Goods shall pass to the Buyer to deliver unless the sale is to an overseas Buyer in which event the risk shall be determined by the relevant Incoterm specified in the Special Conditions.
 - Until the Seller has been paid in full for the Goods, the Goods shall remain the Seller's property, regardless of any other contract between the Seller and Buyer.
 - Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored protected, insured and identified as the Seller's property. Until that time, the Buyer shall be entitled to use or (subject to the provisions clause 6.4) sell the Goods in the ordinary course of its business, but Buyer shall account to the Seller for the proceeds of sale or other disposition of the Goods whether tangible or intangible including any and all insurance proceeds and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds properly stored protected insured and identified as the Seller's property.
 - Until the Seller has received in cash or cleared funds payment in full of the price of the Goods the Buyer shall not be entitled to dispose of any property interest in the Goods (by sale or otherwise) to the holding company of the Buyer or to any subsidiary of the Buyer or of any such holding company.
 - Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold in the manner provided by clause 6.3) the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and if the Buyer fails to do so forthwith Seller shall be entitled to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- PRICES AND VAT**

Unless the Special Conditions provide the price shall remain firm for a specified period, the price may be adjusted to reflect:

 - Any increase in the Seller's costs in respect of materials, labour, services or transport between the date of the Contract and the date of the relevant despatch note;
 - Any variations to the Contract requested by the Buyer and accepted by the Seller;
 - Any delay caused by the Buyer's failure to provide instructions, information or any item to enable manufacture of the Goods or provision of the Services to proceed;
 - Any change in the rate of exchange of the currency in which the price is denominated for AED/USD occurring between the date of Contract and the date of the relevant despatch notes; and
 - The cost of packing the Goods.
 - All prices quoted are exclusive of value added tax and any other duties or taxes levied on the Seller in the Buyer's country for which the Buyer shall be additionally liable.
- PAYMENT**
 - Payment for the Goods shall be made in AED/USD to the Seller no later than the last day of the month following that in which the relevant invoice was despatched unless the Special Conditions provide otherwise and notwithstanding that the Buyer may have neither title to nor possession of the Goods.
 - Method of payment shall be at the Buyer's discretion other than in the case of an overseas Buyer when all payments shall be made by irrevocable letter of credit confirmed by a United Kingdom clearing bank or such other method as the Seller may stipulate in the Special Conditions.
 - Time of payment shall be of the essence. If the Buyer fails to make any payment on the due date then, in addition to its other rights the Seller may suspend any further deliveries to the Buyer under the Contract or any other contract between them appropriate any payment made by the Buyer to such of the Goods or Services (or the goods or services supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of 8% per annum and exercise a lien over any property of the Buyer then in Seller's possession, until payment in full is made. Otherwise, payments shall be applied to invoices in the order in which they are issued and to Goods and Services in the order in which they are listed on invoices.
 - The Buyer shall not be entitled to any deduction or withhold any sum from the payment from time to time due from it to Seller whether by way of set-off, counterclaim or otherwise.
- WARRANTIES**
 - On account of its policy of continuous product improvement, the Seller reserves the right to vary the formulation of any Goods without notice.
 - In substitution for all rights which the Buyer would or might have but for these Conditions the Seller undertakes in the case of the Goods manufactured by the Seller that if within one year of delivery of any item of the Goods a defect in materials or workmanship appears therein being a defect which would not be obvious on reasonable inspection thereof (whether such an inspection was carried out or not) Seller will at its own discretion either credit to the Buyer the full price paid by the Buyer to the Seller for such item or repair it or supply a replacement thereof free of charge at the place of delivery specified by the Buyer for the original Goods.
 - The Buyer's rights under clause 9.2 shall be conditional on:
 - The Seller not being under any liability relative to defects in the Goods attributable to any drawing, design, specification, tooling, mould or other item supplied by the Buyer or deviations from the Contract's requirements which have been the subject of a concession disclosed to and accepted by the Buyer;
 - The Buyer notifying the Seller of the alleged defect or non-compliance within 10 days of the same coming to the Buyer's attention and allowing the Seller a reasonable opportunity of verification and where the Seller chooses to take that opportunity at its own premises the Buyer returning the Goods in question to those premises in accordance with the instructions and at the risk and cost of the Seller;
 - 3.3 The Goods which are allegedly defective or non-compliant having been paid for in full (where the due date for their payment has passed) and having been at all times stored, handled, used and applied in accordance with the Seller's instructions or in the absence of such instructions in a proper manner and under normal working conditions;

- The Buyer having demonstrated that the alleged defect or non-compliance was not due to the failure or improper installation of some goods, equipment, system or other item interacting with the Goods; and
 - 9.3.5 The Buyer having procured that no further use or application of the Goods was made after the alleged defect or non-compliance came to its attention.
 - The Seller further undertakes that insofar as the Goods are not of its own manufacture it will convey upon the Buyer the benefit of any guarantees or indemnities given to it in respect of those Goods by its own suppliers.
 - Save as set forth above, all express or implied conditions or warranties statutory or otherwise as to the state, quality, fitness, description or performance of the Goods or as to the quality of the provision of any Services involving the Goods are expressly excluded and the Buyer acknowledges that it will satisfy itself of the suitability of the Goods for the purpose for which they are purchased. Further the Seller shall not be liable in any manner whatsoever whether in contract, tort, negligence, strict liability, under statute or otherwise for any loss damage or injury suffered by the Buyer and whether consequential or otherwise and which relates to or arises out of the supply of or the giving of advice in relation to the Goods or Services or which is attributable directly or indirectly to the acts, defaults, strict liability or negligence of the Seller or any of the Seller's servants or agents other than death or personal injury caused by the Seller's negligence or in respect of liability under, unless the Special Conditions provide otherwise, the Safety Regulations.
 - The Seller shall not be liable for any costs, claims, damages or expenses of Buyer or any third-party arising out of any tortious act or omission or any breach of contract or statutory duty calculated by reference to profits, income, production or accruals or loss of such profits, income, production or accruals or by reference to accrual of such costs, claims, damages or expenses on a time basis.
 - The aggregate liability of the Seller (whether in contract, strict liability, negligence, breach of statutory duty or any other legal or equitable basis) to the Buyer for any loss or damage of whatsoever nature and however caused shall be limited to and in no circumstances shall exceed the price of the Goods and/or Services referred to in the Contract.
- SAFETY INFORMATION AND TECHNICAL ADVICE**
 - Safety information issued by the Seller on its first despatch of the Goods reflects its current knowledge and describes the Goods in terms only of safety requirements. The Buyer acknowledges that:
 - this information does not constitute an assurance as to the quality, fitness for purpose or specific chemical properties of the Goods; and
 - it is responsible for the storage, handling and use of the Goods in accordance with good industrial hygiene practices and applicable law including providing appropriate safety information to those who may be affected by the Buyer's activities relative to the Goods.
 - The Buyer acknowledges that the Contract price of the Goods does not reflect the provision by the Seller of any technical or operational advice (distinct from the safety information mentioned in clause 10.1) relative to the Goods. The Seller's liability in respect of such advice is limited by clause 9.
 - INTELLECTUAL PROPERTY RIGHTS**

The Goods do not to the Seller's knowledge infringe any UK or foreign patent or other industrial property right but the Seller makes no contractual or other representations in that regard and shall not be liable to the Buyer in any circumstances whatsoever for any actual or alleged infringement of such rights. The Seller shall have ownership of any invention, design or process made or evolved in the course of it carrying out the Contract.
 - INDEMNITY**
 - Without prejudice to the Seller's express obligations under these Conditions the Buyer shall indemnify and keep the Seller fully indemnified from and against any liability of any kind to any third party whatsoever arising (whether in contract, tort, strict liability or otherwise and including, but not limited to, liability arising from the negligence or strict liability of the Seller or from the negligence or strict liability of any person for whom the Seller is vicariously liable) in respect of or in connection with:
 - any defect in the Goods or Services; and/or
 - any loss or injury of any kind, whether direct, indirect or otherwise and including but not limited to any loss of profit and/or any incidental consequential or special loss or damage (of any description) arising out of or in respect of or in connection with the supply of Services or the sale of the Goods and/or their use or resale.
 - If the Goods are to be manufactured or assembled or any process is to be applied to the Goods by the Seller in accordance with a design drawing or specification submitted by the Buyer or using goods supplied by the Buyer, the Buyer shall indemnify the Seller against all losses damages costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent copyright design trade-mark or other industrial, proprietary or intellectual property rights of any other person which results from the Seller's use of the Buyer's design drawing specification or goods.
 - DIES, TOOLING, MOULDS ETC**
 - The Buyer agrees that any article (including dies, tooling, test equipment, samples, moulds) provided by the Buyer to the Seller for the purposes of any Contract shall be free from defects in material and workmanship and fit for its purpose, be and remain the property of the Buyer and be clearly marked by the Buyer as such, and be remain at the Buyer's risk other than in the event of the Seller's negligence and be accompanied by comprehensive instruction manuals as to its operation and maintenance (such manuals to be kept up-to-date by the Buyer), but shall only be returned to the Buyer if the Buyer so requests in writing.
 - Dies, patterns, tooling or like items made by the Seller for the purpose of the Contract shall remain the property of the Seller other than where they are the subject of specific invoicing to the Buyer when property in them (legal and beneficial) shall be governed by clause 6 as if they were the Goods.
 - CONSIGNMENT STOCK**

Where the Goods are to be supplied on a consignment stock basis the Buyer and the Seller will follow the specific contract details agreed in the consignment stock contract.
 - DESIGN DRAWINGS AND SPECIFICATIONS**
 - Where the Seller prepares designs drawings or specifications in accordance with the Buyer's requirements it shall be the Buyer's responsibility to ensure that the Goods will function correctly if they are supplied in accordance with such designs drawings or specifications.
 - Where Goods are manufactured assembled or sold:
 - to designs drawings or specifications submitted by the Buyer; or
 - to designs drawings or specifications prepared by the Seller which shall have been approved by the Buyer; or
 - with the use of goods supplied by the Buyer then and in any such case the Buyer shall indemnify the Seller against any liability arising directly or indirectly from an inadequacy of design or function or any inadequacy or defect of the goods supplied by the Buyer including (without prejudice to the generality of the foregoing) any liability costs, damages and expenses arising from any claim for negligence or strict liability against the Seller or for the breach by the Seller of any condition, warranty, representation or undertaking contained in the Contract or any other contract between the Seller and the Buyer or implied by law or the breach by the Seller of any statutory duty.
 - Where the Buyer requires any alteration to be made to a design drawing or specification, the Buyer shall pay for any additional work necessary.
 - Where the Goods are to be manufactured or supplied to design drawings or specifications to be supplied by the Buyer these shall be supplied in reasonable time to enable the Seller to complete delivery within the period indicated.
 - FORCE MAJEURE**
 - If either party is affected by any circumstances beyond its reasonable control ("force majeure event") including but not limited to:
 - acts of God explosion lightning flood pestemp fire or accident;
 - war or threat of war sabotage insurrection civil disturbance or requisition;
 - acts restrictive regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
 - import or export regulations or embargoes;
 - strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - difficulties in obtaining raw materials labour fuel parts or machinery;
 - power failure or breakdown in machinery.it shall notify the other party of the nature and extent of the circumstances in question.
 - Notwithstanding any other provision of these Conditions neither party shall be deemed to be in breach of the Contract or otherwise liable to the other for any delay in performance or non-performance of any of its obligations under the Contract to the extent that the delay or non-performance is due to any force majeure event and the time for performance of that obligation shall be extended by that number of days for which the force majeure exists or prevails.
 - If either party is relieved under clause 16.2 above from performing any of its obligations for a continuous period in excess of 90 days or for an aggregate period of any of its property or assets or its relevant business, then the other party may notwithstanding any other provision of these Conditions terminate the Contract by giving to the party which has claimed force majeure not less than 21 days written notice.
 - In the event of termination by either party under clause 16.3 above the Seller shall be entitled to invoice the Buyer for all costs, paid or incurred, (including the cost of all labour and materials used) and expenses incurred up to the date of termination.
 - TERMINATION**
 - This Condition applies if:
 - The Buyer is in breach of any of its obligations under the Contract or any other contract between the Buyer and the Seller; or
 - unforeseen events including (without prejudice to the generality thereof) those referred to in clause 16 materially affect the commercial effect of the Contract;
 - The Buyer becomes bankrupt enters into a voluntary arrangement goes into liquidation has a receiver administrative receiver or administrator appointed over any of its property or assets or its relevant business; or
 - The Buyer ceases or threatens to cease to carry on business; or
 - The Seller reasonably apprehends that any of the events mentioned in clauses 17.1.3 and 17.1.4 is about to occur in relation to the Buyer and notifies the Buyer accordingly; or
 - The Seller receives notice of any claim alleging that the Goods or any part thereof or any process applied to the Goods infringe any patent copyright design right trade mark or other industrial, proprietary or intellectual property rights of any other person.
 - If this Condition applies then without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to terminate the Contract or suspend any further deliveries under the Contract without any liability to the Seller and if the Goods have been delivered but not paid for the price for the delivered Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
 - In the event that the Goods are altered or modified in any way by;
 - the Seller at the request of the Buyer; or
 - the Buyer or a third party and the Contract is subsequently terminated then the Buyer shall pay the full price of the Goods and the full cost incurred by the Seller for altering or modifying the Goods.
 - EXHIBITIONS**

The Buyer shall not exhibit the Goods at any trade show or similar promotion without the Seller's prior written consent.
 - GENERAL**
 - The Buyer shall not be entitled to assign the benefit of the Contract or sub-contract any of its rights under the Contract without the prior written consent of the Seller. The Seller shall be entitled to assign or sub-contract all or any of its rights under the Contract without the Buyer's consent.
 - Any termination of the Contract shall not prejudice the accrued rights of the Seller and the Buyer at the date of termination.
 - Any waiver by either party of a breach of any provision of the Contract shall not be considered as a waiver of any subsequent breach of the same or any other provision of the Contract.
 - Any failure to or delay in enforcing any provision of the Contract by either party shall not be construed as a waiver by that party of the right afforded to it by that provision.
 - The headings used in these Conditions are for convenience only and shall not affect the construction or interpretation of these Conditions in any way.
 - These Conditions shall constitute the entire agreement between the Seller and the Buyer relative to the purchase of the Goods or Services but the liability of each party for fraudulent misrepresentation shall remain unaffected.
 - Any Special Conditions shall prevail in the event of a conflict with these Conditions.
 - Should any term of the Contract (including these Conditions) be found to be unenforceable or void then that term shall be severed from the remainder of the Contract which shall continue in full force and effect.
 - Any notice required by these Conditions shall be properly given if delivered to the registered office of the recipient, being a company or otherwise to its address set out on the relevant order and delivery of such notice shall be deemed to occur at the time of delivery if effected by hand, 24 hours after being posted properly addressed first class postage pre-paid if effected by post and on receipt on the sender's machine of a report confirming effective transmission if effected by facsimile.
 - This contract shall be governed by the laws of England and Wales. The provisions of The United Nations' Convention on the International Sale of Goods shall not apply to this Agreement and are specifically excluded. All disputes arising out of the formation, performance, interpretation, modification, or termination of this contract or related to any products or services supplied by Seller under this contract shall be resolved by arbitration conducted in accordance with the DIAC Arbitration Rules ("the Rules"). Said arbitration shall be conducted by a single arbitrator at the Dubai International Financial Centre in England.
 - Nothing in this Contract or these Conditions shall create any rights for third parties. No variation to this Contract or these Conditions shall create any such rights unless expressly so stated in such variation by the Seller and the Buyer.
 - To the extent that any data and/or information received by Seller in connection with an Order constitutes personal data subject to the Data Protection Act 1998, the General Data Protection Regulation or any similar or related laws or regulations (the "Privacy Acts"), Seller agrees to process such data in accordance with the Privacy Acts. Please see Seller's Privacy Policy for further details regarding its handling of personal data.
 - WARNING:**

A Buyer may incur criminal liability should it mislead the Seller as to the use to which the Goods are to be put or the intended destination of the Goods or any other material particular relative to the Goods and thereby obtain a price for the Goods which is lower than it would have been had the Buyer not misled the Seller.