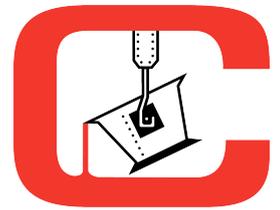


# CAPITAL REFRACTORIES GROUP



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## GENERAL CONDITIONS OF PURCHASE

Rev 5

In these conditions:

- "Buyer"** means Capital Refractories Limited (a company registered in England and Wales with company number 1101489) whose registered office is at Station Road, Clowne, Chesterfield, Derbyshire S43 4AB or such other company within the same group of companies as Capital Refractories Limited and which has issued the Purchase Order to the Supplier.
- "Contract"** means the Purchase Order, any specification or terms agreed in writing between the Buyer and Supplier relating to the purchase of the Goods and/or Services and these conditions.
- "Contract Requirements"** means the requirements of purchase as set out in the Contract.
- "Goods"** means the goods (if any) which are the subject of the Purchase Order issued by the Buyer to the Supplier.
- "Purchase Order"** means the order or orders of purchase placed by the Buyer for the supply of Goods and/or Services.
- "Services"** means the services (if any) which are the subject of the Purchase Order issued by the Buyer to the Supplier.
- "Supplier"** means the person, firm or company to whom the Purchase Order is issued.

## 1 SCOPE OF THE CONTRACT REQUIREMENTS

The Supplier warrants to the Buyer that all services, equipment and materials necessary to deliver the Goods and/or perform the Services in accordance with the Contract Requirements are included in the Supplier's scope of work. The Buyer shall not be liable to pay any extra amount because the Supplier has failed to consider factors that affect the price of the Contract or the time for completion of the Contract.

## 2 APPLICATION OF THESE CONDITIONS

2.1 These conditions shall apply to the Contract between the Buyer and the Supplier to the exclusion of all other terms including those which the Supplier may purport to apply to the transaction.

2.2 In the event of any conflict between any of the documents forming the Contract:-

2.2.1 the Purchase Order shall prevail over (i) any specification or terms agreed in writing with the Buyer and (ii) these conditions; and

2.2.2 any specification or terms agreed in writing with the Buyer shall prevail over these conditions.

## 3 ORDERING PROCEDURE

The Purchase Order shall only be valid if signed by an authorised employee of the Buyer and containing a valid purchase order number.

## 4 DELIVERY

4.1 The Supplier shall deliver the Goods carriage paid (unless otherwise stated in the Purchase Order) to the point of delivery specified on the Purchase Order.

4.2 The Supplier shall deliver the Goods and/or perform the Services on the date specified on the Purchase Order and the time of such delivery or performance shall be of the essence of the Contract.

4.3 The Supplier shall not deliver the Goods or perform the Services before the date specified in the Purchase Order without the prior written consent of the Buyer.

4.4 The Supplier shall deliver the full quantity of the Goods specified in the Purchase Order at one time or in accordance with the rate specified therein. The Buyer may refuse delivery of part only. The Buyer shall be entitled to return, at the Supplier's expense, any quantity of Goods delivered in excess of the quantity ordered by the Buyer.

- 4.5 The Supplier shall ensure that accurate information is provided to the Buyer as to the country of origin of the Goods and shall be liable to the Buyer for any additional costs or losses, duties or taxes which the Buyer may incur or suffer should the country of origin prove to be different from that advised by the Supplier.
- 4.6 The Goods shall be at the risk of the Supplier until delivered to and accepted by an authorised representative of the Buyer.

## 5 PACKAGING MATERIALS

- 5.1 Unless otherwise agreed in writing, packing cases, boxes, drums, pallets and/or packing materials will not be paid for by the Buyer. It is the responsibility of the Supplier to collect any packing cases, boxes, drums, pallets and/or packing materials within a reasonable time after delivery.
- 5.2 The Supplier shall so pack the Goods that they shall be safe and secure in transit by rail, road, air or ship. The Supplier shall promptly reimburse to the Buyer all additional costs reasonably incurred by the Buyer as a result of any inadequate packaging of the Goods.
- 5.3 The Supplier shall ensure that any package or crate containing the Goods shows clearly, on the outside thereof, the Buyer's order number.

## 6 ADVICE NOTES/RELEASE NOTE

- 6.1 The Supplier shall ensure that every advice note or release note shall bear the Buyer's Purchase Order number and item numbers. The Supplier shall either send advice notes to the address specified in the headings of the Purchase Order by separate post on the date the Goods are despatched or Services performed (and) or a packing note shall accompany the delivery of any Goods.
- 6.2 Where the Goods are to be delivered, or Services performed, at a delivery point other than the address of the Buyer, the Supplier shall send an additional advice note to the recipient of the Goods or Services at the address of the delivery point or as directed by the Buyer.

## 7 PRICE AND PAYMENT

- 7.1 All prices are inclusive of the cost of carriage, insurance, import duties and taxes, VAT (if applicable) and any other applicable duties and taxes and are not subject to escalation.
- 7.2 The Buyer shall pay the Supplier's invoice within 60 days of the end of the month in which it was received by the Buyer.
- 7.3 The Buyer shall pay for the Goods and/or Services in the currency stated on the Purchase Order.
- 7.4 The Buyer shall have the right to set off from any monies due or to become due to the Supplier any monies due to the Buyer from the Supplier.

- 7.5 Where the Supplier is required to deliver the Goods by instalments or perform the Services in stages, the Supplier shall render a separate invoice for each such instalment or stage and every invoice shall bear the Buyer's Purchase Order number and item number and be fully detailed. The Supplier shall submit monthly statements of accounts in such form and in such manner as the Supplier may reasonably require.

## 8 DRAWINGS

- 8.1 Any drawings issued to the Supplier by the Buyer are on loan only and shall remain the exclusive property of the Buyer.
- 8.2 The Supplier shall prepare, at its own expense, and submit to the Buyer, such drawings as the Contract may require. The Supplier shall supply reproducible copies of each drawing on its own paper and at its own expense when they are required by the Contract.
- 8.3 All drawings shall be subject to approval by the Buyer but such approval shall not relieve the Supplier of any of its obligations under the Contract. The Supplier shall not deviate from the drawings without the Buyer's written permission.

## 9 ORDER OF EXECUTION OF WORK

The Supplier shall complete the Contract by the time stated. The Buyer may, by written notice, require the Supplier to execute the Contract in such order as the Buyer may decide or to suspend or postpone it or any part thereof. If the Contract or part thereof is so suspended or postponed the date for its completion shall be extended to such later date as the Buyer shall reasonably decide. The Supplier shall submit detailed work programmes and progress reports monthly or as the Buyer may from time to time require .

## 10 INSPECTION, TESTING AND QUALITY

10.1 The Supplier grants to the Buyer, its customers, all applicable regulatory authorities and representatives of any of the foregoing the right to enter onto its premises at all reasonable times, to inspect and test the Goods or any materials or equipment on which the Services are being performed at any time until they are accepted by the Buyer. Where non-destructive testing is required under the Contract, the Supplier shall ensure that the operators and procedure used have been approved by the relevant recognised body and, if requested by the Buyer, shall promptly provide to the Buyer such evidence as the Buyer may reasonably require of such approval.

10.2 Goods shall be of first class quality, new and shall be supplied strictly in accordance with the qualities, drawings, specifications, standards and stipulations contained in the Contract and, unless otherwise agreed in writing, shall conform to all relevant standards, legislation, specifications and conditions and all work and Services performed by the Supplier shall be in accordance with best practice.

- 10.3 The Buyer shall have full power to reject all or any part of the Goods and/or Services that it considers defective or inferior in quality of material workmanship or design. If requested by the Buyer the Supplier shall, at its own expense and at the Buyer's option, immediately replace or rectify any Goods, or re-perform any Services, which have been so rejected unless instructed otherwise by the Buyer in writing.
- 10.4 No inspection, test or acceptance shall relieve the Supplier from his responsibility for the quality of materials and workmanship. The Supplier shall supply, free of charge such certificates of analysis, test, inspection or origin as may be requested by the Buyer or required by any relevant regulations.

## 11 **MARKING**

The Supplier shall ensure that each separate part of the Goods shall be tagged or indelibly marked with the Buyer's Purchase Order number, and any other identity number specified in the Purchase Order. The Supplier shall also ensure that such numbers shall also be shown on all other documents referring to the Contract. The Supplier shall affix these numbers to the Goods and no other identification except that required by it for its internal controls and use.

## 12 **TRANSFER OF PROPERTY**

- 12.1 The Goods shall become the property of the Buyer upon delivery to the Buyer.
- 12.2 If, under the Contract, any part of the price is payable before delivery, the ownership of all material allocated to the Goods shall vest in the Buyer when it is so allocated and the supplier shall mark the material accordingly but it shall be at the Supplier's risk until delivered.
- 12.3 If an incoterm (e.g. "Ex Works", "FOB", "CIF", "DDP" or others) is specified in the Purchase Order, such incoterm shall be interpreted in accordance with "Incoterms 2000", or subsequent issue, published by the International Chamber of Commerce.

## 13 **ASSIGNMENT AND SUB-LETTING**

The Supplier shall not assign or transfer the Contract. The Supplier shall not assign absolutely or by way of charge, any money becoming due to it under the Contract without prior written consent from the Buyer. The Supplier may not sub-contract any part of the Contract without prior written consent from the Buyer. The Supplier shall supply such details of any sub-contract as the Buyer may require but such consent to sub-contract shall not relieve the Supplier from its obligations under the Contract. The country of origin of the sub-contract works shall be declared by the Supplier to the Buyer.

**14 FREE ISSUE MATERIAL**

- 14.1 Where the Buyer issues materials to the Supplier for use in connection with the Contract such materials shall be and remain the property of the Buyer or the Buyer's customer as the case may be. The Supplier shall, as far as practicable, keep such materials separate and identifiable as the property of the Buyer or the Buyer's customer (as the case may be).
- 14.2 The Supplier shall be liable for any losses, damages, costs, expenses or liability incurred or suffered by the Buyer as a result of any defects that arise due to the work carried out by the Supplier in relation to the free issue materials.
- 14.3 The Supplier shall maintain such materials in good order and condition and shall use them only in connection with the Contract. Risk in such material shall pass to the Supplier on delivery to it and the Supplier shall ensure such materials are insured in accordance with clause 21.2. All material which is lost or becomes damaged for any reason or has not been used in a manner consistent with first class engineering practice or usage shall be charged to the Supplier.
- 14.4 The Supplier shall at any time forthwith upon the Buyer's request deliver up to the Buyer (or, if requested by the Buyer, to its customer) all materials issued by the Buyer.

**15 BUYER'S PROPERTY INCLUDING TOOLS**

- 15.1 All patterns, drawings, designs, specifications, dies, tools and jigs supplied or paid for, in whole or in part, by the Buyer in connection with the Contract shall at all times be the Buyer's property, and shall be delivered up to the Buyer forthwith on request.
- 15.2 Such articles shall be marked Property of Capital Refractories Limited and shall not be used in the production, manufacture or design of any goods or materials other than those contracted for in the Contract nor for larger quantities than those specified.
- 15.3 For the purpose of taking possession of such patterns, drawings, designs, specifications, dies, tools and jigs, the Buyer shall be entitled to enter any premises of the Supplier at any time during business hours where the patterns, drawings, designs, specifications, dies, tools and jigs may be located.
- 15.4 The Supplier shall at all times maintain all dies, tools and jigs in good working order and condition (fair wear and tear excluded) and, if requested by the Buyer, shall promptly deliver up such property to the Buyer.
- 15.5 The Supplier shall be liable for any damage to, or loss of, the patterns, drawings, designs, specifications, dies, tools, jigs or other property of the Buyer until they have been delivered to the Buyer. The Supplier shall insure all such property to its full replacement value with an insurer of good repute

## 16 LIEN

In addition to any lien to which the Buyer may, by statute or otherwise be entitled, the Buyer shall be entitled to a general lien on all goods of the Supplier then in the Buyer's possession or in transit.

## 17 INTELLECTUAL PROPERTY RIGHTS

17.1 All designs, inventions, patents, know-how, new technology, improvements and all similar matters made, designed or developed by the Supplier in connection with the Contract shall be the sole property of the Buyer and the Supplier shall procure at no charge to the Buyer the execution of any and all papers necessary to perfect ownership by the Buyer.

17.2 All material, drawings, patterns, gauges, samples, specifications and other technical data prepared by the Buyer in connection with the Contract shall be and shall at all times remain the property of the Buyer which shall be entitled to reproduce and use all such data at any time for any purpose whatsoever. The Supplier shall not use any such data except in connection with the Contract.

## 18 DEFECTS LIABILITY

18.1 Should any part of the Goods be found either during or after processing by the Buyer or after the part has been sold to the Buyer's customer to be defective or not in full conformance with the Contract Requirements, the Supplier shall promptly reimburse to the Buyer any costs incurred by the Buyer as a result (including, without limitation, any costs incurred by the Buyer in respect of remedial work on the Goods).

18.2 The Supplier shall guarantee the Goods and the provision of the Services against defects in design, workmanship and materials for a period of 24 months from (in the case of Goods) the date when the Goods are put into commercial operation by the Buyer's customer, (in the case of the Services) the date when the Services were completed or (in both cases) such longer period as the Buyer and Supplier may have agreed in writing. If a defect arises in the Goods or Services through faulty design, workmanship or materials during the guarantee period, the Supplier shall (at its own expense and at the Buyer's option) make good the defective Goods or faulty workmanship including full replacement where necessary.

18.3 The Supplier shall guarantee any replacement Goods and/or rectification work carried out under clause 18.2 for a period of 24 months from the date on which such replacement Goods were delivered or rectification works carried out. Such guarantee shall be on the terms contained in clause 18.2.

18.4 Where a defect arises during the guarantee period but does not become apparent until after the guarantee period has expired, the Supplier's liability shall not cease merely because the Buyer has been unable to give notice of the defect to the Supplier within the said guarantee period.

18.5 If any defects which the Supplier is obligated to remedy under this clause 18 are not remedied within a reasonable time, the Buyer may exercise its rights under clause 19 but without prejudice to any other right of the Buyer arising from such defects and in any event at the sole cost of the Supplier.

18.6 If the Buyer specifies a required level of performance in the Contract, the Supplier shall be deemed to have warranted that the Goods or Services shall attain such level of performance, notwithstanding that the Buyer has specified in the Contract details of the manner in which or the materials out of which the Goods are to be constructed. The Buyer is at all times relying on the skill and knowledge of the Supplier. Failure to attain the required level of performance at any time within the period set out in clause 18.2 and 18.3 shall be deemed to be a defect within the meaning of those clauses.

18.7 The Supplier warrants that all software contained in the Goods shall be reasonably free of bugs and viruses. The Supplier shall remedy any bug or virus which occurs within the period of 24 months from the date of supply of the Goods (or such longer period as the Buyer and the Supplier may have agreed in writing).

## 19 SUPPLIER'S DEFAULT

19.1 Should it appear to the Buyer that the Supplier is either:-

19.1.1 not executing the Contract in accordance with the Contract Requirements; or

19.1.2 refusing to carry out the reasonable instructions of the Buyer for the execution of the Contract; or

19.1.3 has committed any breach of Contract,

then the Buyer may give the Supplier seven days' written notice to make good the said default.

19.2 If the Supplier fails to comply with any notice given by the Buyer under clause 19.1, the Buyer may, at the expense of the Supplier and without prejudice to any other rights it may have:-

19.2.1 terminate the Contract on giving immediate notice in writing to the Supplier and (at its option) either:-

(a) complete the uncompleted portion of the Contract;- or

(b) appoint a third party to provide the Goods or Services; or

19.2.3 make such modifications, substitutions or additions to the Contract Requirements as it considers necessary to ensure the satisfactory execution thereof and the Supplier shall then be required to perform its obligations under the Contract in accordance with such modifications, substitutions or additions.

19.3 The Buyer shall not be liable for any loss, damage and/or liability suffered or incurred by the Supplier as a result of the Buyer's action under clause 19.2.

19.4 The Buyer shall be entitled, on reasonable notice, to enter the premises of the Supplier for the purposes of taking possession of such Goods as may have already been produced and/or recovering any property of the Buyer located on such premises.

19.5 If the Buyer terminates the Contract under clause 19.2, it may (at its discretion) pay to the Supplier such proportion of the price of the Goods and/or Services as it considers to be fair and reasonable having regard to the value of the work done, the Goods previously delivered and the Services performed.

## 20 DEATH, BANKRUPTCY OR LIQUIDATION

20.1 The Buyer may exercise the rights given to him by clause 19.2 as though the notice required by that clause had been given and expired if:-

20.1.1 The Supplier dies or has a statutory demand or bankruptcy petition issued against him/her or applies to the court for an interim order under the Insolvency Act 1986 or makes a proposal for an individual voluntary arrangement under that legislation or, being a corporation:-

- (a) goes into compulsory or members voluntary liquidation or passes a resolution for voluntary winding up or its directors convene a meeting of shareholders for that purpose; or
- (b) has an administrative receiver or receiver appointed over all or any part of its assets or undertaking; or
- (c) has any action, step, legal proceedings or other procedure taken in respect of it by its directors, shareholders, bankers, creditors of any person seeking to appoint a liquidator or an administrator or takes any such act or step itself; or
- (d) has proposed in respect of it a company voluntary arrangement pursuant to the Insolvency Act 1986 as amended from time to time; or
- (e) gives the Buyer reasonable grounds for believing that it is unable to meet its debts as they fall due within the meaning of section 123 of the Insolvency Act 1986 as amended from time to time.

20.1.2 Anything analogous to any of the events described in clause 20.1.1 occurs under the law of any other jurisdiction to which the Supplier is subject.

## 21 INDEMNITY AND INSURANCE

21.1 The Supplier agrees to indemnify the Buyer against:-

21.1.1 all losses, costs, damages, expenses and claims caused to and made against the Buyer which would not have been caused or made had the Supplier fulfilled its express or implied obligations under this Contract;

- 21.1.2 any claims for infringement of any patents, design right, copyright, registered design, or trade mark by reason of the use or sale of the Goods or Services supplied (save where the same shall have been manufactured in accordance with specifications or designs supplied solely by the Buyer) and against all losses, costs, damages, expenses and claims which the Buyer may incur or have to bear or for which the Buyer may become liable as a result of such claims for infringement:
- 21.1.3 all claims in respect of royalties payable by the Supplier in respect of the Goods:
- 21.1.4 all claims arising out of errors and omissions in drawings, calculations, packing details or other particulars supplied by the Supplier;
- 21.1.5 all claims made against the Buyer arising out of the acts and omissions of the Supplier, its employees, agents or its sub-contractors; and
- 21.1.6 failure of the Goods or Services to comply with the requirements of any statute, statutory instrument, regulation, code or directive and/or any relevant standard applicable to the Goods or Services.
- 21.2 The Supplier shall take out and maintain an insurance policy against third party public liability for £5 million (or equivalent) or such other sum as required by the Buyer and upon terms which are approved in writing by the Buyer. If requested by the Buyer, the Supplier shall promptly produce to the Buyer such evidence as the Buyer may reasonably require that the Supplier has taken out and continues to maintain insurance upon the terms approved by the Buyer and that the premiums due in respect of such insurance have been paid. The Supplier shall be liable under all the provisions of this Agreement (including, without limitation, sub-clause 21.1) whether or not it complies with the provisions of this sub-clause 21.2.

## 22 PUBLICITY

The Supplier shall not permit any information about or photograph of the Goods to appear without the prior written consent of the Buyer. It shall supply to the Buyer such photographs of any part of the Goods as the Buyer may require or afford facilities to the Buyer to take such photographs for the purposes of indicating progress, technical description or publicity.

## 23 CONFIDENTIALITY

The Supplier shall only use the information and drawings provided by the Buyer in connection with this Contract in the performance of the Supplier's obligations under this Contract and for no other purpose whatsoever. Whether or not any such information is designated as "Confidential" the Supplier shall treat such information in confidence and with secrecy and shall not use, disclose, sell, assign, lease or licence to any third parties, or otherwise commercially exploit, the same nor shall the Supplier have any rights or interests in the same. The Supplier shall ensure that any of its employees, suppliers, sub-contractors or agents to whom it discloses such information and data are aware of and comply with the obligations of the Supplier as provided in this clause.

## 24 CANCELLATION

- 24.1 In addition to his rights under clause 19 the Buyer may cancel the Contract, whether in whole or part by 30 days' written notice to the Supplier. In such cases the Buyer's sole liability to the Supplier shall be to pay a reasonable proportion of the Contract price to the Supplier for all costs incurred by the Supplier in manufacturing the Goods and/or performing the Services as at the date of the notice to cancel. The Buyer shall not be liable for any costs of the Supplier incurred in terminating its commitments to third parties.
- 24.2 If the Buyer so requests, all Goods paid for by the Buyer under clause 24.1 (whether or not completed) shall be delivered to the Buyer.
- 24.3 The Buyer shall not be liable to make any payment under clause 24.1 unless and until a properly documented and complete claim is submitted by the Supplier and agreed by the Buyer.
- 24.4 If cancellation is solely due to the Buyer's customer having cancelled its contract with the Buyer, then the Supplier shall only be liable to charge for Goods delivered or Services performed to the extent that the Buyer's customer pays the Buyer for goods delivered or services performed by the Buyer.

## 25 VARIATIONS

- 25.1 Any amendments to the Purchase Order shall be made by agreement evidenced in writing.
- 25.2 Where the Buyer's customer has ceased to purchase from the Buyer the goods to which the Goods or Services relate or has reduced its requirements for such goods, the Buyer shall be entitled to cease to purchase the Goods and/or Service or to reduce its requirements therefore accordingly without liability. The Buyer shall endeavour to give the Supplier as much notice as it reasonably practicable in the circumstances of such cessation or reduction.

## 26 MISCELLANEOUS

- 26.1 The Supplier warrants that it has complied with, and will continue to comply with, all laws applicable to it from time to time in the provision of the Goods and/or Services (including, without limitation, the Health and Safety at Work etc Act 1974).
- 26.2 A failure by the Buyer to exercise, or a delay in exercising, any right or remedy under this Contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies which the Buyer may otherwise have and no single or partial exercise of any right or remedy under this Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 26.3 Any waiver of a breach of any of the terms of this Contract or any default under this Contract shall not be deemed a waiver of any subsequent breach or default and shall not affect the other terms of this Contract.

- 26.4 If any provision of these conditions is or shall become void in whole or in part the other provisions of these conditions shall remain fully valid and enforceable and the void provisions shall, where appropriate, be replaced in accordance with the meaning and purpose of these conditions.
- 26.5 Save as provided in clause 10 and 26.6, a person who is not a party to this Contract (a "third party") shall have no rights pursuant to the Contracts (Rights of Third Parties) Act 1999 (The "Act") to enforce any term of this Contract. Any right or remedy of a third party which exists or is available apart from the Act is not affected.
- 26.6 The Buyer is a member of a group of companies and the Buyer may perform any of its obligations or exercise any of its rights under the Contract by itself or through and for the benefit of any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Buyer.
- 26.7 Nothing in these conditions shall prevent the Buyer exercising any other rights or remedies it may have.
- 26.8 The Supplier will notify the buyer of any changes in
- (a) product
  - (b) process
  - (c) supply
  - (d) location
- 26.9 The Supplier will ensure any specific requirements of the order flow down the supply chain.

## 27 **DISPUTES AND LAW**

- 27.1 Any dispute or difference between the Buyer and the Seller arising out of or in connection with the Contract shall first be referred to an executive board member of the parties to be resolved within 30 days of such referral.
- 27.2 If the dispute or difference is not resolved in accordance with clause 27.1, either party may issue legal proceedings against the other (unless both parties agree in writing to refer the dispute or difference to arbitration or other method of dispute resolution).
- 27.3 The formation, interpretation and operation of this Contract shall be governed and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts or if the Buyer so requests to the jurisdiction of the courts in the country in which the Supplier is domiciled. The Supplier irrevocably waives any objection it might at any time have to the courts of England or (as the case may be) the courts of its domicile.

## 28 **NONCONFORMING PRODUCT**

- 28.1 The Supplier shall notify the buyer immediately of any incidence of nonconforming product which has been dispatched as soon as it becomes known
- 28.2 Should nonconforming product be identified prior to dispatch, the buyer shall be notified so that approval for a method of disposition can be issued.