STANDARD CONDITIONS FOR WORK AND SERVICES PROVIDED BY DELTA GBN LTD

Issued by:

DELTA GBN LTD

Specialists in Anti-Corrosion Surface Treatments
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In these Conditions:-

"The Company" DELTA GBN LTD
"The Contract" means any contract formed between the Customer and the Company for the application of finishing to Goods.
"The Customer" means the person firm or company placing any order with the Company for finishing services.
"The Goods" means the goods (or any part of them) to which finishing is to be applied by the Company pursuant to the Contract.
References herein to "finishing" and "finishing services" shall be deemed to include (but not be limited to) finishing, any associated processes and any other treatment or process applied by the Company.

1. **General**

(a) Unless otherwise expressly agreed in writing by a director of the Company these Conditions are the only terms on which the Company accepts any order or Goods for finishing. These Conditions apply to all orders, whether or not these Conditions were specifically referred to at the time of ordering, to the exclusion of all other terms and conditions including any contained in an acceptance of a quotation, a form of order or any other document issued by the Customer. Delivery of the Goods to the Company or collection of the Goods by the Company (as the case may be) shall be deemed to be conclusive evidence of the Customer's acceptance of these Conditions.

(b) The Company and the Customer acknowledge that the terms and conditions herein have been given due consideration and that they are considered fair and reasonable by both parties.

2. **Quotations and Order**

(a) Unless previously withdrawn the Company's quotations are only open for acceptance within three months from the date thereof and where given without sight of the Goods are provisional only.

(b) Each order placed by the Customer for finishing by the Company shall be deemed to be an offer by the Customer to purchase finishing services subject to these Conditions.

(c) Without prejudice to condition 2(e) below, any representations to be binding upon the Company must be specifically agreed to in writing by the Company.

(d) The Customer acknowledges that save in the circumstances provided for in condition 2(c) above no representation whether oral or in writing has been made by any of the Company's agents representatives or employees which has led the Customer to enter into the Contract.

(e) Specifications, descriptions and illustrations contained in the Company's catalogues, brochures or other advertising materials in whatever form, whether hard copy format, electronic format or otherwise, are intended to give only a general idea of the services concerned and the possible result of any finishing and none of these shall form any part of the Contract or form any warranty or representation by the Company.

(f) The Company may make any changes to the specification, materials or finishes which are required to conform with any applicable safety or other statutory requirements.

(g) No order placed by the Customer which the Company has accepted may be cancelled or varied by the Customer except with the written agreement of the Company. The Customer shall be liable for all losses (including loss of profit) costs, damages, charges and expenses suffered or incurred by the Company as a result of such cancellation or variation.

(h) After examination of samples of the Goods in bulk the Company has the right to amend any quotation or decline to accept Goods for finishing or not to proceed with any order, without any further liability to the Customer.

(i) The Company may by giving notice to the Customer at any time up to receipt of the Goods by the Company for finishing increase any price quoted to reflect any increase in the cost of finishing which is due to any increase in cost of labour, materials or other manufacturing costs and transport costs.

(j) Unless otherwise stated prices are quoted exclusive of VAT.

3. **Ownership**

The Customer hereby warrants that it is either the owner of the Goods delivered to or accepted by the Company for finishing or that it is authorised by such owner to accept these Conditions on such owner's behalf.

4. **Transportation of Goods**

(a) If the price quoted by the Company includes transport of the Goods to and from the Company's works the Company will arrange transport by whatever method the Company considers appropriate (which may be transport by a third party carrier, rather than by the Company). The Goods will be at the Customer's risk during such transport to and from the Company's Works and the Customer will insure the Goods at all times during such transport. Neither the Company nor any third party carrier utilised by the Company shall be liable for the loss or destruction of or damage to Goods in transit whether as a result of its or their negligence or otherwise.

(b) If the price quoted does not include transport of the Goods to and from the Company's works the Customer undertakes at its own expense and risk both to deliver the Goods to the Company's works on the date and at the time notified by the Company and to collect them within 5 days after notification by the Company that the finishing has been completed.

(c) The Customer shall be responsible for the adequate packing of the Customer's Goods in transit to protect them against weather conditions, impact damage and other transport risks and for the provision of suitable stillages, pallets and other containers. The Customer shall use such packing materials as are suitable for re-use by the Company when returning the Goods to the Customer. No warranty whatsoever is given by the Company that packing materials, cases, cartons and pallets will be returned to the Customer but wherever possible these will be returned to the Customer with the Goods.

5. **Variation in Prices**

(a) In the event of suspension of work on the Goods at the Customer's request or through the inadequacy or inaccuracy of the Customer's instructions, any price quoted by the Company may be increased to cover any additional costs or expenses incurred by the Company as a result thereof.

(b) If the Customer does not indicate to the Company plainly and correctly the type of Goods, including the make, brand, and grade of Goods to which finishing is to be applied and/or fails to give to the Company correct and complete instructions as to the processing, including the specification, required, the Customer shall be liable for any additional costs or expenses incurred by the Company and any loss or profit, loss of business or loss of use of processing lines suffered by the Company as a direct or indirect result thereof.

(c) The cost of any variation or modification to the order requested by the Customer after the date of the acceptance of order shall, if such variation or modification is accepted by the Company, be borne by the Customer.

6. **Unsuitability of Goods for Metal Finishing**

It shall be the Customer's responsibility to ensure that the Goods are suitable for finishing. However if at any stage the Company in its sole discretion considers that the Goods are unsuitable for finishing (or, if finishing has begun, for further finishing) whether in accordance with the Company's quotation or otherwise, the Company will advise the Customer as soon as is reasonably practicable and shall be entitled to discontinue finishing forthwith. The Company shall thereupon notify the Customer of the Company's outstanding charges in respect of finishing carried out up to the date of such discontinuance and the Customer shall pay the same within 28 days of the date of such notification. Unless the Company agrees in writing to arrange transport the Customer will collect the Goods at its own expense and risk from the Company's works as soon as possible following notification of the discontinuance of the finishing.

7. **Carrying Out of Work**

Any times quoted for completion of the Contract are to be treated as estimates only. The Company shall not be liable for any loss (including loss of profit, costs, damages or expenses arising directly or indirectly out of any delay in delivery or failure to complete the Contract within such time, even if caused by the Company's negligence) and time shall not be of the essence. Such times quoted shall run from receipt by the Company of the Goods and of all information required by the Company in order to put the work in hand. In any event, the time for completion shall be extended by a reasonable period if completion of the finishing is delayed by the nature of or lack of instructions from the Customer, or by any cause beyond the Company's control.

8. **Sub-Contracting**

The Company may sub-contract the whole or any part of the finishing (unless specifically instructed otherwise in writing by the Customer, at or prior to the time the Contract is made) without affecting the Company's obligations under the Contract. The Company may also store all or any part of the Goods on premises other than the Company's premises.

9. **Force Majeure**

If the Company is in any way prevented from or delayed in performing any of the Company's obligations under the Contract by reason of decisions or actions of any Government or other authority, war or threat of war, fire, explosion, material damage to or failure of plant and equipment, severe weather conditions, materials shortages or inadequacies, interruption or reduction in communications or means of transport, power or utilities failure, failure or delay in obtaining materials required for finishing, any strikes, lock-outs or industrial disputes (whether or not involving the Company's work force), accident or any other cause beyond the Company's control the Company shall be entitled at the Company's absolute discretion partially or totally to suspend performance of the Contract for a period equal to the delay caused by such events and shall be in no way liable for such failure to perform its obligations under the Contract or for such delay. If the period for performance of the Contract is extended as a result of such suspension by more than one month the Contract may be terminated (as regards any Goods which have not undergone finishing) by either party by written notice to the other but such termination shall be without prejudice to the Company's rights to require the Customer to take delivery of and/or collect any Goods and to pay for the finishing of such Goods as are or may be available for delivery and/or collection and without prejudice to any rights which may have accrued to either party prior to the date of such termination. Furthermore if the Company is unable to meet the demands of all its customers as a result of any such event the Company may allocate the available capacity for finishing Goods among such customers as the Company in its absolute discretion considers fit and without incurring any liability whatsoever to any customers of the Company.

10. **Payment Terms**

(a) Unless otherwise agreed in writing, payment in full of all sums due under the Contract shall be made in pounds sterling (or such other currency as the Company shall specify) within 30 days following the date of notification to the Customer that the finishing has been completed or (if the price includes transport) of delivery of the Goods following finishing to the Customer.

(b) Time for payment shall be of the essence. Without prejudice to the Company's other rights and remedies, interest shall be payable at the rate of 4% per annum above the base rate from time to time and shall accrue from day to day on all overdue payments (as well after as before judgment).

(c) Any payment due under the Contract shall be made in full without any deduction whether by way of set off, counterclaim or otherwise unless otherwise agreed by the Company in writing or unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Customer.

(d) Each Contract shall be subject to the Company being satisfied as to the Customer's credit status both prior to and during the period of the Contract. If the Company becomes dissatisfied with the Customer's credit status at any time, the Company may suspend performance of the Contract or withhold delivery until the Customer satisfies the Company as to the Customer's creditworthiness or gives the Company such security as the Company shall deem appropriate.

11. **Duties and Responsibility**

(a) The Customer is reminded of the associated hazards and effects of finishing, including (but not limited to) distortion, thread damage, overprocessing, chemical attack to base material, oven failure, mechanical damage during masking, electrical arcing during processing, embrittlement of high tensile steels and contamination of Goods in bulk processing. The Customer hereby acknowledges that the Contract is entered into in full knowledge awareness and acceptance of such hazards and effects.

(b) The Company warrants that it will carry out its obligations under the Contract with reasonable care and skill. This warranty shall be the only warranty given in respect of such obligations. All other conditions and warranties express or implied by statute common law or otherwise are hereby excluded.

(c) Subject to condition 11(h) below, the Company shall not in any event be liable for any breach of the warranty given in condition 11(b) above or for any breach of the Contract or breach of statutory duty or tort (including but not limited to negligence) misrepresentation or otherwise including, without limitation, failure to provide matching between different batches or for any damage to or loss of Goods as a result of finishing by the Company:-

(i) unless the methods employed in manufacturing the Goods prior to finishing pursuant to the Contract have taken into account the current state of knowledge in the finishing industry and the Customer has ensured that the Goods are made from the correct material and designed to appropriate engineering standards and have not been subject to any process or treatment by any person other than the Company which renders them unsuitable for finishing and full information concerning the Goods as referred to in condition 5(b) above has been supplied to the Company before the commencement of finishing; and

(ii) unless the Customer checks the quantity of Goods delivered to or collected by the Customer forthwith and notifies the Company in writing of any alleged shortfall of, damage to, or incorrect finishing of the Goods within 14 days thereafter in the case of defects which are reasonably obvious on inspection and in any event within 6 months of delivery; and

(iii) unless the Customer thereafter affords the Company a reasonable opportunity to inspect the Goods and if so requested by the Company returns the allegedly damaged Goods or the Goods the subject of allegedly incorrect finishing to the Company's works at the Customer's expense for inspection to take place there; and

(iv) unless the Customer has made no use of the Goods alleged to be damaged or the subject of allegedly incorrect finishing after it discovers or ought reasonably to have discovered that they were damaged or the subject of incorrect finishing; and

(v) if the Goods have been subjected to misuse or improperly or incorrectly stored after delivery to or collection by the Customer; and

(vi) unless and only to the extent that the allegedly damaged Goods or the Goods the subject of allegedly incorrect finishing exceed 2% of each batch (in the case of jigged or rack processed Goods) and 5% of each batch (in the case of bulk processed Goods) (losses of up to 5% of each batch being accepted as normal in the industry in processing large quantities of small parts).

(d) The Company shall be under no obligation to ensure that any Goods are an exact match, or that one batch exactly matches another whether the colour or finish are defined by reference to a sample or by description. Where a colour or finish is specified in the Contract by reference to a sample or description the Customer shall accept as complying with the Contract all Goods which are a commercial match with the sample or correspond with the description, as the case may be, and are a commercial match with each other in accordance with the standard generally recognised in the industry.

(e) In the light of the great disparity between the value of the Goods undergoing finishing and the charge for finishing made by the Company, the liability of the Company for any breach of the warranty given in condition 11(b) above and for any breach of the Contract or breach of statutory duty or tort (including but not limited to negligence) misrepresentation or otherwise is limited to three times the charge made for finishing of the relevant Goods under the Contract. In the case of breach of the warranty given in condition 11(b) above, instead of refunding or waiving the whole or the appropriate part of the charge for finishing the Company may at its option take such steps as the Company considers necessary so as to comply with the said warranty and thereupon this shall be the Company's only liability in respect of such breach of warranty.

(f) The Company shall not under any circumstances be liable for loss of profit, loss of use, loss of business or loss of goodwill including (but not limited to) delay in delivery, or for any indirect or consequential loss, injury or damage of any kind whether caused by negligence or otherwise howsoever and whether or not such loss has been suffered by the Customer or by some third party to whom the Customer may be liable and whether or not such loss has been caused by reason of the Goods infringing any patent, registered or unregistered design, copyright, trade mark or service mark owned by a third party.

(g) Goods are and remain at all times whilst at the Company's works at the entire risk of the Customer who shall be responsible for effecting and maintaining its own insurance cover in relation thereto, it being hereby acknowledged by the Customer that the charges of the Company do not include insurance.

(h) Nothing in these Conditions shall purport to exclude or restrict the Company's liability for fraudulent misrepresentation or for death or personal injury resulting from the Company's negligence.

12. **Indemnity by Customer**

The Customer shall indemnify and keep indemnified the Company in full from and against all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal expenses on an indemnity basis) awarded against or suffered or incurred or paid by the Company as a result of or in connection with:

(a) any claim that the Goods infringe any British or foreign patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right of any other third party;

(b) any claim threatened or made against the Company in respect of any liability, loss, damage, cost or expense sustained or incurred by the Company's employees or agents or by any customer or third party to the extent that such liability, loss, damage, cost or expense was caused by, relates to or arises out of or in connection with the Goods;

(c) any claim threatened or made against the Company by any third party relating to or arising out of or alleged to relate to or arise out of the finishing of the Goods;

(d) any breach by the Customer of any of these Conditions;

(e) any act or omission of the Customer or its employees, agents or sub-contractors in delivering and/or collecting the Goods; or

(f) any claims or demands made against the Company to the extent only that such claims or demands exceed the Company's liability under these Conditions.

13. **Jigs or Tooling**

Any jigs or tools made by the Company for the purpose of the Contract shall remain the Company's property notwithstanding that the cost thereof may be included in whole or in part in the price charged for finishing. All drawings and information relating to such tools and jigs remain the Company's property and the Company's copyright and the Customer undertakes that it will not copy or make use of the same for the benefit of itself or any third party without the Company's prior written consent.

14. **Lien**

The Company shall in respect of all sums due or owing from the Customer under the Contract or any other contract between the Customer and the Company have a general lien on all Goods and property of the Customer in the Company's possession (although finishing of such Goods or some of them may have been paid for) and shall after the expiration of 14 days' notice to the Customer be entitled to dispose of such Goods and property as it deems fit and apply the proceeds towards such sums.

15. **Confidential Information**

All specifications, drawings, technical descriptions and details of finishing (hereinafter called "information") submitted with the Company's quotation or supplied to the Customer pursuant to the Contract are supplied in confidence. The Customer shall keep the information confidential and shall not (save as required by law or unless the same is already in the public domain other than as a result of the default of the Customer) disclose the same to any third party without the Company's prior written consent and shall use the same only for the purposes of the Contract. Nothing in this condition 15 shall prevent the Company from undertaking or offering to undertake for third parties any work or services similar to or designed to achieve the same results as the work or services provided under this Contract.

16. **Termination**

(a) The Customer cannot terminate the Contract without the written consent of the Company.

(b) The Company shall be entitled to terminate the Contract or any other contract with the Customer forthwith by notice without prejudice to any of its other rights:-

(i) if the Customer (whether under the Contract or any other contract between the Customer and the Company) is overdue with any payment or commits any breach of contract which is incapable of remedy or which if the same be capable of remedy the Customer fails to remedy within 14 days of the Company's written notice so to do; or

(ii) if any distress or execution shall be levied on the Customer's assets or if the Customer shall make or offer to make any arrangement or composition with creditors or commits an act of bankruptcy or if any petition or receiving order in bankruptcy or any administration order shall be presented or made against the Customer or where the Customer is a limited company any resolution or petition to wind up the same (other than for the purposes of reconstruction or amalgamation of a solvent company) shall be passed or an administration order made or if a receiver, manager, administrative receiver or administrator is appointed in respect of the Customer's assets and undertaking or any part thereof or if the Customer is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

(iii) if the Company has reasonable doubts regarding the solvency of the Customer.

(c) The Company shall without prejudice to its right to terminate be entitled to suspend further finishing of Goods under the Contract or any other contract between the Customer and the Company:

(i) if any of the events mentioned in condition 16(b) above occur; or

(ii) if and to the extent that the value of the Goods which have undergone finishing but are not paid for exceeds the Customer's credit limit whether or not advised to the Customer and whether or not payment is overdue.

(d) Notwithstanding any termination or suspension in accordance with conditions 16(b) or 16(c) above the Customer shall pay the Company for all finishing done up to and including the date of suspension or termination and shall in addition indemnify the Company against any resulting loss damage or expense incurred by the Company in connection with such suspension or termination including, without limitation, the cost of any materials plant or tools used or intended to be used therefore and the cost of labour and other overheads including a percentage in respect of profit.

17. **Severability**

If at any time one or more of these Conditions (or any part thereof) is held to be or becomes void or otherwise unenforceable for any reason at law the same shall be deemed omitted herefrom and the validity and/or enforceability of the remaining provisions of these Conditions shall not in any way be affected or impaired thereby.

18. **Waiver**

The rights and remedies of the Company under the Contract shall not be diminished waived or extinguished by the granting of any indulgence forbearance or extension of time by the Company nor by the failure or delay by the Company in asserting or exercising any such rights or remedies.

19. **Notices**

Notices to be served hereunder shall be in writing and sent by post, e-mail or fax to either party at its last known address. Notices shall be deemed served by post 5 working days after posting and by e-mail or fax, when received.

20. **Applicable Law**

The Contract and these Conditions shall in all respects be construed in accordance with and be governed by English law and the parties submit to the exclusive jurisdiction of the English courts