

TERMS AND CONDITIONS

- FTTC2 (Oct 08)

These terms and conditions apply to the purchase of any goods and/or services by Fine Tubes Limited (**Fine Tubes, we, us, our**).

1. INTERPRETATION

1.1 In the Conditions the words below have the meaning annexed to them:

Advice Note	formal document from the supplier containing details of goods sent to us.
Conditions	these terms and conditions of purchase.
Contract	the Order and the Seller's acceptance of the Order.
Goods	Any goods agreed in the Contract to be brought by us from the Seller (including any part or parts of them).
Order	Our written instruction to buy the Goods, incorporating these Conditions.
Seller, you, your	the person, firm or company who accepts our Order.
Service	any services agreed in the Contract to be supplied to us by the Seller.

1.2 In these Conditions unless the context requires otherwise the singular includes the plural and vice versa; references to any gender include every gender; and references to persons include corporations, partnerships and other unincorporated associations or bodies of persons; all headings are for convenience, have no legal effect and should be ignored when interpreting these Conditions; any obligation not to do anything is deemed to include an obligation not to suffer, permit or cause that thing to be done if it is within the power of the relevant person to prevent that thing being done.

2. ACKNOWLEDGEMENT AND ACCEPTANCE

- 2.1. Subject to any variation under Condition 2.5, these Conditions are the only Conditions upon which we are prepared to deal with you and they shall govern the Contract to the entire exclusion of all other terms or conditions.
- 2.2. Each Order for Goods by us from you shall be deemed to be an offer by us to buy Goods subject to these Conditions and no Order shall be accepted until the Seller either expressly by giving notice of acceptance, or impliedly by fulfilling the Order, in whole or in part accepts the offer.
- 2.3. No terms or conditions endorsed upon, delivered with or contained in your quotation, acknowledgment or acceptance of Order, specification or similar document shall form part of the Contract and you waive any right which you otherwise may have to rely on such terms and conditions.
- 2.4. You acknowledge that except as specifically provided within the Order, the rates and prices therein are sufficient to cover your obligations, whether expressed or implied under the Order. When the work or any part of it is to be performed anywhere other than your premises, you shall be deemed to have satisfied yourself as to all local conditions and other factors as may affect the performance of the work.
- 2.5. The Conditions apply to all our purchases and any variations to these Conditions shall have no effect unless expressly agreed in writing and signed by the Purchasing Director or Purchasing Manager of Fine Tubes.

3. SPECIFICATIONS

- 3.1. We are at all times relying on your knowledge and skill. To that extent, you warrant that the quantity, quality and description of the goods and the services shall, subject as provided in these conditions of purchase, be as specified in our Order and/or in any applicable Specification supplied by us to you or agreed in writing by us. The goods and services shall comply with all relevant legislation and any applicable British or European standards.
- 3.2. The goods supplied shall be new and shall not have been used previously.
- 3.3. The goods shall be free from defects in design, material and workmanship.
- 3.4. Services shall be performed by appropriately qualified and trained personnel, with due care and diligence and to such high standard of quality as is reasonable and all equipment and tools provided will at all times be maintained in first class condition by you. We reserve the right to require the replacement of any personnel or tools that do not comply with the foregoing provisions at your cost.
- 3.5. All processing shall be in accordance with our orders, and is subject to our approval. It is agreed no payment will be made in respect of processing which we subsequently reject.
- 3.6. You shall clearly list any exceptions or deviations to requirements to the Specification and all other documents and standards and each deviation shall be serially numbered. The deviations must be supported by strong justification. In the absence of a separate exceptions list, the documents shall be considered accepted by you with no deviations and we can be confident that you comply with such documents in full.
- 3.7. You shall notify us of any changes in product and/or process definition and, where required, obtain organisational approval.
- 3.8. Any Specification supplied by us to you, specifically produced by you for us, in connection with our Order, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be our exclusive property. You shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of yours, or as required for the purpose of our Order. Our rights under these Conditions are in addition to the statutory conditions implied in favour of us by the Sale of Goods Act 1979.
- 3.9. These warranties shall survive acceptance of these items and are in addition to any warranties of additional scope given to us by you. No implied warranties are excluded.
- 3.10. Where relevant, you will flow down to sub tier suppliers the applicable requirements in the purchasing documents, including key characteristics where required.
- 3.11. If any of the Goods fail to comply with the provisions set out in this Condition 3 we shall be entitled to avail ourselves of any one or more of the remedies listed.

4. DOCUMENTS

- 4.1. All documentation provided by you (unless expressly agreed to the contrary) in connection with this Order shall be in the English language.

5. PRICES

- 5.1. The price of the Goods shall be stated in the Order and unless otherwise agreed in writing by the Company shall be exclusive of Value Added Tax but inclusive of all other charges.
- 5.2. No variation in the price nor extra charges shall be accepted by us other than with our prior written consent.
- 5.3. You warrant that all documents including invoices, and all supporting information submitted by you in support of any costs shall truly reflect the facts about the activities and transactions to which they pertain, and you warrant that we can rely on such documents and data as being complete and accurate.
- 5.4. The making of payment shall not be deemed to constitute acceptance of any defective work.

6. PAYMENT

- 6.1. Unless otherwise stated in the Order, we shall pay the price of the goods and the services at previously agreed terms. If no prior arrangement is in place, payment will be made sixty (60) days after the date of receipt by us of a proper Advice Note and invoice.

- 6.2. No invoice will be accepted for payment unless it refers to our Order number and we have received the Advice Note in respect of each item invoiced.
- 6.3. A monthly statement of account shall be sent to us not later than the fifth day of the month following the delivery of any goods.
- 6.4. You reserve the right to charge interest on any overdue amounts at the rate of 1% per annum over the base rate issued from time to time of the Bank of England 30 days from the due date to the date of payment.
- 6.5. Without prejudice to any other right or remedy, we reserve the right to set off any amount owing at any time from you to us against any amount payable to us by you under the Contract.

7. RISK AND PROPERTY

- 7.1. Risk of damage to or loss of the goods shall pass to us when the goods have been delivered and unloaded and
- 7.2. signed by an authorised officer of Fine Tubes
- 7.3. The property in the Goods shall pass to us on delivery except where payment for the goods is made prior to delivery the property in the goods shall pass to us once payment has been made and the goods have been appropriated to our Order.

8. DELIVERY AND IDENTIFICATION OF GOODS

- 8.1. The Goods shall be delivered, carriage paid, to our place of business or to such other place of delivery as agreed by us in writing prior to the delivery of the Goods you shall off-load the Goods at your own risk as directed by us.
- 8.2. The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days of the Order.
- 8.3. You shall invoice us upon, but separately from, despatch of the Goods to us.
- 8.4. You shall ensure that each delivery is accompanied by a delivery note which shows, amongst other things, the Order number, date of Order, number of packages and content and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 8.5. Goods shall not be despatched prior to receipt by you of our written Order.
- 8.6. The work shall be completed by the date(s) specified in our Order or as changed by any variation.
- 8.7. Time shall be of the essence of the Order. If the Goods are not delivered on the due date then, without prejudice to any other rights which it may have, we reserve the right to:
 - 8.7.1. cancel the Contract in whole or in part;
 - 8.7.2. refuse to accept any subsequent delivery of the Goods which you attempt to make;
 - 8.7.3. recover from you an expenditure reasonably incurred by us in obtaining the Goods in substitution from another supplier; and
 - 8.7.4. claim damages for any additional cost, losses or expenses incurred by us which are in any way attributable to your failure to deliver the Goods on the due date.
- 8.8. If the Goods are delivered to us in excess of the quantities ordered we shall not be bound to pay for the excess and any excess shall remain at your risk and shall be returnable at your expense.
- 8.9. To the extent that they do not conflict with the terms and conditions of this order, Incoterms DDP (Delivered Duty Paid) shall apply to the order.
- 8.10. Each package or case shall be clearly marked with your Company name and order number and our order reference. Where required in accordance with the relevant EC directive, goods shall be stamped with the CE mark on the product, the documentation and the packaging.
- 8.11. We shall not be deemed to have accepted the Goods until we have had 30 days to inspect them following delivery. We shall also have the right to reject the Goods as though they had not been accepted for 30 days after any latent defect in the Goods has become apparent.

8.12. You shall be responsible for proper packaging, loading and tie-down to prevent damage during transportation. No charge will be allowed for packing, crating, loading, or storage without our written permission. If you require us to return any packaging material to you that fact must be clearly stated on any delivery note delivered to us and any such packaging material shall only be returned to you at your cost.

8.13. All goods shall be suitably packed to withstand normal freight handling and to withstand periods of storage and if the goods or any parts of them are damaged due to faulty or inadequate packing the damaged goods or part of them shall be repaired or replaced at your expense whether or not delivery has been accepted.

9. INSPECTION

9.1. Upon reasonable prior notice a representative duly authorised by us (including organisation, customer and regulatory authorities) shall have access at all reasonable times to your works or those of a third party to test or inspect and examine the process, goods, services and records to ensure that the performance of the work meets the requirements of our Order.

9.2. If as a result of inspection or testing, we are not satisfied that the goods or the services comply in all respects with our Order, we have the right to reject any work which is considered to be defective or inferior in quality of materials, workmanship, processing or design and not in accordance with our Specification, you shall take such steps as are necessary to ensure compliance. Any work so rejected shall immediately be replaced or corrected at your expense. You shall resubmit the re-performed work for inspection or testing at our sole judgement.

9.3. You shall supply at your own expense, certificates of analysis, tests, and certificates of origin as are required by our Order in connection with the goods or services, or required by law. Such information shall be delivered no later than the work to which they relate and shall be addressed for the attention of the Purchasing Department. Invoices will not be passed for payment unless they are supplied as requested. Strict compliance with the foregoing will facilitate prompt settlement of account.

9.4. You shall retain originals of all quality records for a minimum of 5 years (unless otherwise stated in the Purchase Specification).

10. STATUTORY AND SAFETY OBLIGATIONS

10.1. You shall comply with all relevant statutes, laws, regulations, and by-laws and EEC Directives affecting the performance of the order (including the Control of Substances Hazardous to Health Regulations (COSHH), latest edition) and good engineering practice, and when appropriate shall comply with our safety regulations.

10.2. You shall provide us in writing with such information as is necessary, relating to any such materials supplied and /or used and its design testing and use relating to any conditions necessary to ensure it will be safe and without risk to health when properly handled, stored, transported and used.

10.3. All equipment, fittings, and accessories which may not have been specifically mentioned but which are necessary for the efficient working of the items to be supplied shall be deemed to have been included in the price. All such items shall be complete whether such details are mentioned in the Order or not.

10.4. A current safety data sheet shall be supplied with each delivery.

11. WARRANTIES

11.1. Where you have the benefit of warranties in relation to components comprised in the goods the benefit of such warranties shall be assignable to us.

11.2. We may assign warranties by you to our customers.

12. INDEMNITY

12.1. You shall indemnify us in respect of all loss, damage or injury whatsoever involving any person or property and against any action, claim, demand, cost, charge or expenses arising in connection with our Order, to the extent that the same shall have been caused or contributed to by any breach by you of your obligations under these conditions of purchase or by the negligence of yourself, your directors, employees or agents. You shall also hold us

indemnified from and against all claims, damages and costs in respect of any patents, which may be infringed by the goods, or services supplied under our Order.

- 12.2. You shall maintain insurance cover against such liabilities as are envisaged in clause 13.1 and shall provide to us on demand valid certificates of insurance in respect thereof.

13. DEFECTIVE GOODS OR SERVICES

- 13.1. If goods or services are defective or fail to meet the requirements of our Order we reserve the right to either: -
- 13.1.1. require you to remedy at your own expense any defects that may arise in the work within twelve months from the date when the goods have been put into service for their specified use, or twelve months from delivery, whichever is later. You shall guarantee for a further 12 months all remedial work carried out under this warranty. Where a defect arises within the aforesaid original warranty period but does not become apparent until that period has expired, your liability does not cease because we have not been able to give notice of the defect.
 - 13.1.2. return the goods for repair or replacement or require replacement services within the timescale specified by us at your cost; or
 - 13.1.3. carry out any necessary rectification and then charge your account for such work; or
 - 13.1.4. terminate this agreement.
- 13.2. In all cases, you will immediately provide formal notification of non-conforming product and where appropriate, seek organisation approval of non-conforming material.

14. TERMINATION FOR DEFAULT OR INSOLVENCY

- 14.1. In the event of any default by you in the performance of any obligations, including without limitation the attainment of delivery or failing to carry out our reasonable instructions, we may, where such default is capable of remedy give you written notice to rectify such default in a specified time. If you fail to comply with the requirements of the notice, or in our sole opinion your default is incapable of remedy to our satisfaction, we shall be entitled to terminate the Order in whole or in part, immediately serving notice in writing to you to such effect, without prejudice to any other rights under the Order or otherwise, and shall have the right to retain any goods previously supplied under the Order.
- 14.2. We shall be entitled to terminate our order if:
- 14.3. you make any voluntary arrangement with your creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) you become bankrupt or (being a company) become subject to an administration order or into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
- 14.4. an encumbrancer takes possession, or a receiver is appointed, of any of your property or assets; or
- 14.5. you cease, or threaten to cease, to carry on business; or
- 14.6. we reasonably apprehend that any of the events mentioned above is about to occur and notify you accordingly.
- 14.7. Our rights and remedies are in addition to and without prejudice to other rights and remedies under the Order including our right to allow you to continue the work and recover from you the loss or damage suffered by us in respect of your defective or delayed performance. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

15. TERMINATION FOR OUR CONVENIENCE

- 15.1. We shall be entitled, at any time, to terminate the Order in whole or in part, by serving notice on you. You shall cease all performance except to the extent provided in the notice of termination. In such event, we shall make payment to you (as full and final settlement of all claims which you may have against us as a result of termination) for all work satisfactorily performed up to the date of termination. This shall include all materials, which have been procured properly by you for incorporation in the work.
- 15.2. You acknowledge your obligation to take all reasonable steps to mitigate liabilities arising from such termination.

16. TOOLS

- 16.1. All special dies, tooling, moulds, patterns, jigs, fixtures, and any other property which we furnish to you or specifically pay for, for use in the performance of this Order, shall be and remain our property, shall be subject to removal upon our instruction, shall be for our exclusive use, shall be held at your risk, and shall be kept insured by you at your expense while in your custody or control in an amount equal to the replacement cost, with loss payable by you. You shall indemnify us against all liability, loss, damage and cost, sustained by us arising from a claim by your employees, agents or consultants for bodily injury or death in connection with the operation of such equipment while in your care, custody and control.

17. FREE ISSUE MATERIALS

- 17.1. Where we provide free issue material for incorporation into the work, you shall use such materials economically, and any surplus shall be accounted for to us and disposed of in accordance with our instructions. Waste, loss or damage to such materials arising from poor workmanship or your failure to maintain such materials in good order or condition shall be made good at your expense, replacements being of equivalent quality and specification and subject to our approval.

18. INTELLECTUAL PROPERTY RIGHTS

- 18.1. Where we commission you to produce a design in our Order the design you supply shall be capable of being implemented to achieve the purpose(s) specified in our Order. Copyright, design rights or any other intellectual property rights in the design shall be our exclusive property.
- 18.2. All copyright or other intellectual property rights in the work you produce (other than design rights already accruing to us under 18.1) shall be assigned to us and you undertake to execute all documents and take all steps necessary to secure to us all rights assigned by this clause.
- 18.3. You warrant that your work will not infringe the rights of any third party and will not have been previously assigned, licensed or otherwise encumbered.

19. CONFIDENTIAL INFORMATION

- 19.1. You shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to you by us or our agents and any other confidential information concerning our business or our products which you may obtain and you shall restrict disclosure of certain confidential material to such of your employees, agents or sub-contractors as need to know the same for the purpose of discharging your obligations to us and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as by you.

20. VARIATION

- 20.1. You shall perform any variations to the work required by us. Such changes may include additions to or reductions in the quantity of work or in the Specifications or drawings. When we are contemplating a variation, we shall give notice to you in writing, and you shall promptly advise us in writing of the reasonable effect on price and delivery.
- 20.2. No variation or qualification of these conditions of purchase shall be valid unless agreed by us in writing. Any action on our part in variance with these terms and conditions shall not be a waiver of them and we shall continue to be entitled to rely upon all the terms and conditions. We shall be entitled to rely on any statement, warranty, or representation made by any of your employees or agents.
- 20.3. You shall carry out variations which are required, and which have arisen as a result of an act or omission or default of you, at your own cost.

21. FORCE MAJEURE

- 21.1. Where either party is unable to perform the Order in the time specified by reason of unforeseen circumstances beyond their reasonable control, and whose effects they could not have avoided (including without limitation, acts of God, all or national emergency, acts of terrorism, riots, civil commotion, fire, flood, strikes or other labour disputes) and overcome by reasonable diligence or foresight, they shall be entitled to a reasonable extension of time for performance.
- 21.2. In any such event, the party concerned should immediately notify the other party in writing, and estimate how long these circumstances are likely to continue.
- 21.3. The party concerned shall take all reasonable steps to avoid further or consequential delay and to proceed with the due performance of the Order.
- 21.4. We shall have the right to terminate this Order if the delivery of the Order is delayed more than 60 days due to such force majeure, without additional liability to either party.

22. SUB-CONTRACTING

- 22.1. Our Order is placed subject to the work being carried out by you and no assignment, sub-contracting or transfer is permissible without specific prior arrangement with us in writing. No assignment or subcontract (even with our consent) shall relieve you of any obligations under the Order.

23. WAIVER

- 23.1. Failure or delay by us in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of our rights under the Contract.
- 23.2. No waiver or forbearance by us of any of our rights under our Order or any other Agreement with you shall be construed as a waiver of any right under the Contract preclude us from enforcing any of our legal rights whatsoever.

24. THIRD PARTY RIGHTS

- 24.1. The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or any person that is not a party to it.

25. SEVERENCE

- 25.1. If any provision of the Contract is found by any Court, Tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void or unenforceable it shall, to the extent of such illegality, invalidity, voidness or unenforceability be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in force and effect.

26. ENTIRETY

- 26.1. The Order and documents made a part hereof by express reference constitute the entire agreement between the parties and supersede all prior understandings and agreements written or oral. Should any error, omission, deficiency, ambiguity, or contradiction occur within the various parts of the Order documentation or between said documentation and any applicable code, law or statutory regulations, you shall immediately and in writing, bring the same to the attention of us, and shall not proceed or continue with your obligations affected until written clarification by us has been received. Any and all additional costs incurred by either party as a result of you failing to notify us as aforesaid shall solely be to your account.

27. ENGLISH LAW

- 27.1. The construction, validity and performance of this Order shall be governed by English law and you agree to submit to the exclusive jurisdiction of the English courts.