

**1. Definitions:** "Supplier" = Metall-FX LTD. Metall-FX LTD has a licence to use the Metall-FX brand for marketing purposes only.

"Customer" = the customer named on the Quotation.

"Quotation" = the Supplier's quotation or Pro Forma for the supply of the Goods and or Services accepted by the Customer and setting out such details as deposit, quantity, price, date for delivery, and/or completion, site address, date and invoicing.

"Goods and/or Services" = the Goods and/or Services to be supplied and/or installed by the Supplier.

"Site" means the Customer's site where the Goods and/or Services are to be delivered or where work is to be done by the Supplier.

"Delivery" = either delivery by the Supplier at the Customer's cost from the Supplier's premises to the Site or collection by the Customer from the Supplier's premises.

"Works" = the supply, delivery and installation of the Goods and/or Services as detailed in the Contract.

"Contract" = the contract between the Supplier and the Customer consisting of the Quotation, these Conditions and any other documents (or parts thereof) specified in the Quotation.

"Intellectual Property Rights" = any patent, patent application, know how, trade mark or name, service mark, design right, registered design, copyright or other similar industrial or commercial right.

"Contract Price" = the price for the Works as detailed on the Quotation.

**2. Conditions applicable and warranties** **2.1** These conditions shall apply to all Contracts for the sale of Goods/Services by the Supplier to the Customer to the exclusion of all other terms and conditions including any terms which the Customer may purport to apply under any purchase order, confirmation of order or similar document. Any variation to these conditions shall be inapplicable unless agreed in writing by the Supplier. Where the Goods and or Services are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these conditions. **2.2** The Supplier warrants to the Customer that it has used and will continue to use its reasonable endeavours to provide that the Goods and or Services: (i) will be of satisfactory quality; and (ii) will correspond with any relevant specification. **2.3** The Supplier reserves the right to inspect any alleged defective Goods and or Services [where practicable at its premises] and to repair and/or provide replacement Goods and or Services at its discretion. **2.4** Given the hand-made nature of the Services supplied, any samples are provided as an indication and guide as to the final appearance and not necessarily as a guarantee of quality or colour or consistency of the Goods. Variations in pattern, colour, texture and appearance are a natural result of the hand made process and are not considered a defect. Any such variation will not be considered as just cause for rejection by the Customer. This condition applies whether the sample is provided by the Supplier or by the Customer. **2.5** The Supplier is not responsible for the quality of the substrate(s) provided by the Buyer. The supplier retains the right to reject any substrate supplied by the Customer, if in the opinion of the Supplier, it is unsuitable to receive the finish. **2.6** The Buyer shall provide a full written description of his / her requirements together with a control sample where applicable. Failure to do so may result in miscommunication and different expectations for which the Supplier cannot be responsible. **2.7** The Goods and or Services shall be supplied in accordance with the description contained in the Quotation. The Seller may from time to time make changes to the specification of the Goods which do not materially affect the quality of the Goods. **2.8** Acceptance of a quotation, instruction to undertake works, issuance of a purchase order or any other instruction whether written or verbal, issued by the Customer, under which the Supplier undertakes any work, will be deemed to be an acceptance by the Customer of these Terms and Conditions. **2.9** Any instruction or variation issued by the Customer must be in writing and any such variation or instruction carries the implicit agreement by the customer to meet all reasonable costs incurred by the Supplier in the execution of said instruction. Where time is of the essence the Supplier may accept verbal instruction from the Customer and in these instances the same conditions as to acceptance of costs are deemed to be agreed by the Customer. **2.10** Notwithstanding article 2.9 above, the Supplier will, if time and circumstance permit, provide a written costing for works outside the original scope of the contract, prior to commencement of work. When such costings are not provided prior, all charges will be pro-rata if possible or by diarised dayworks or a cost plus basis at the discretion of the Supplier. **2.11** The area quoted in M2 or LM may sometimes be significantly greater than the area covered because of the different methods of metal coating and wastage. **3. Payment and Title** **3.1** The Contract Price quoted shall be available for acceptance for a period of 28 days unless agreed otherwise in writing. **3.2** No works will be commenced prior to a payment of a deposit ( usually 50% of the agreed quotation ) or other such amount as shall be agreed in writing. **3.3** Any deposit is non-refundable. Cancellation of the contract by the Customer does not entitle the Customer to reimbursement of any monies paid prior to cancellation. Payment of the Contract Price is to be made at the times and in the amounts stated in the Quotation. The Supplier reserves the right to receive payment in full prior to release of the Goods. The Customer may at any time by prior appointment inspect the goods at our premises, before making payment and accepting the goods. **3.4** Payment is to be made without any retention, deduction or set off. Interest at the statutory rate, currently 2.5% above the Bank of England interest rate applicable at the time, shall be payable by the Customer in respect of any late payment. **3.5** Without prejudice to any other rights of the Supplier in the event of any payment or part thereof being outstanding after the last date for payment the Supplier shall be entitled to suspend the performance of its obligations until payment in full is received. If any payment remains unpaid for 14 days after it has become due the Supplier may give notice to the Customer requiring payment within 7 days of the date of such notice and if the Customer shall fail to comply with such notice the Supplier may immediately terminate this Contract at its sole discretion. **3.6** Title to the Goods shall not pass to the Customer until the date that the Contract Price and value added tax thereon have been paid in full to the Supplier. Until payment is made the Customer shall hold the Goods on a fiduciary basis. The Customer shall be entitled to sell any Goods in the possession of the Customer but owned by the Supplier for the account of the Supplier and the Customer shall be under a fiduciary duty to account to the Supplier for the proceeds of sale thereof to the extent that any monies are owed by the Customer to the Supplier. **3.7** Risk of damage to or loss of the Goods will pass to the Customer in the case of Goods to be delivered to the Customers premises, at the time when the Supplier notifies the Customer that the Goods should be collected, or in the case of Goods to be delivered otherwise than at the Supplier's premises, at the time of Delivery or if the Customer wrongfully fails to take delivery of the Goods, the time when the Supplier has tendered delivery of the Goods. **3.8** Until such time as title to the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold) the Supplier shall be entitled at any time to require the Customer to deliver up the Goods to the Supplier and if the Customer fails to do so, to enter upon Site or any premises of the Customer or any third party where the Goods are stored and repossess the Goods. **4. Delivery** **4.1** Delivery will be effected by the Supplier; or at the discretion of the Supplier Delivery may be made by the Customer collecting the Goods at the Supplier's premises at any time after the Supplier has notified the Customer that the Goods are ready for collection. **4.2** In the case of the Supplier delivering the Goods to the Customer's site, the Customer shall provide the Supplier with unrestricted access to the Site and suitable labour for unloading the Goods. **4.3** If the Customer should fail to either arrange Delivery or accept Delivery following receipt of notification from the Supplier that the Goods are ready for Delivery the Supplier shall be entitled to have the total value of such delayed Goods included in an invoice for payment. Further, the Customer shall pay to the Supplier costs of storage including insurance, in respect of such delayed Goods and any further delivery costs. **4.4** Any dates quoted for Delivery are approximate only and the Supplier shall not be liable for any delay in the delivery of the Goods howsoever caused. Time for Delivery shall not be of the essence of the Contract unless previously agreed by the Supplier in writing. **4.5** The Customer shall be deemed to have accepted the Goods within 3 days after Delivery. After acceptance the Customer shall not be entitled to reject Goods other than when they are not in accordance with the Contract. **4.6** Any damage or defect must be notified to the Supplier within 24 hours of delivery or collection of the goods by the Customer. Such notification may be by telephone initially but must be followed up by

email or in writing. Reference must be made here to Article 2.3 and specifically 2.4.5. **Limit of Liability 5.1** Subject as expressly provided in these conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977). In no circumstances whatsoever shall the liability of the Supplier to the Customer under this Contract exceed the limit of liability set out in the Quotation. The Supplier shall be under no liability whatsoever to the Customer for or in respect of:- **5.1.1** any loss of or damage to the Goods which shall occur after the Delivery has been made. **5.1.2** any defect in the Goods arising from any drawing design or specification supplied by the Customer. **5.1.3** fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Supplier's instructions (whether oral or in writing) misuse or alteration or repair of the Goods without the Suppliers approval. **5.1.4** installation and/or laying by third parties. **5.2** The Supplier shall have no liability whatsoever or howsoever to the Customer by way of indemnity or by reason of any breach of the Contract or a statutory duty or by tort (including but not limited to negligence) for any loss of profit, loss of use, loss of production, loss of contracts or for any financial or economic loss or for any indirect or consequential damage whatsoever suffered by the Customer even where such loss and/or damage had been within the contemplation of the parties at the date of entering into the Contract. Neither will there be any right of offset against the contract value for any costs incurred by the customer or any agent of the customer, for any reason whatsoever. Nothing in this clause 5.2 shall exclude any liability for fraudulent misrepresentation. **6. Installation 6.1** The Customer shall provide the Supplier with unrestricted access to the Site, suitable labour for unloading the Goods and with all necessary power, water and any other services together with specialist equipment where practicable to enable the completion of any installation of the Goods at the Site. **6.2** The Customer shall ensure that suitable storage is provided on Site for the Goods to be stored in compliance with the relevant British Standard Institute recommendation. **6.3** Where installation is arranged and/or carried out by the Customer, the Customer is responsible for ensuring that the installation is carried out by persons experienced and competent in the installation of goods similar to the Goods supplied. **8. Storage Charges** The Supplier reserves the right to charge customers for storage at its premises in circumstances where the Customer has been notified that a job of work has been completed and the Customer fails to collect it or make arrangements for the collection of it. Charges shall be at the discretion of the Supplier but the following indicative weekly charges are specified for the periods following notification:-

The First Week	Free of Charge
The Second Week	£250
The Third Week	£500
The Fourth Week	£1000

Larger batches requiring unusually large storage space will be charged at a higher rate.

Goods will only be released to the Customer once such charges have been paid ofr.

**9. Intellectual Property Rights 9.1** Where the Contract requires the Supplier to carry out any design work or development or modification of design then the ownership of any Intellectual Property Rights arising out of or in relation to the design of the Goods shall be vested in the Supplier. **9.2** If any process is to be applied to the Goods by the Supplier in accordance with a specification submitted by the Customer, the Customer shall indemnify the Supplier against all actions claims demands costs charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any Intellectual Property Rights of any third party. **10. Promotion 10.1** Unless advised to the contrary, by the Client, at the time of placing the order, the Supplier reserves the right to use photographs, images or copies etc of any work or commission, for publicity purposes. **11. Force Majeure 11.1** Force Majeure means war, hostilities (whether war be declared or not), invasion, act of foreign enemies, riot, civil commotion or disorder; any form of government intervention, strikes and lock outs relevant to the Contract; delays by sub contractors or suppliers; any other circumstance beyond the reasonable control of either of the parties. **11.2** If either party is prevented or delayed from or in performing any of its obligations under the Contract by Force Majeure then it may notify the other of the circumstances constituting the Force Majeure and of the obligations performance of which is thereby delayed or prevented, and the party giving the notice shall be excused the performance of such obligation for so long as the circumstances of prevention may continue. **11.3** If either party shall be excused the performance of any obligation for a continuous period of 60 days then either party may at any time thereafter and provided such performance is still excused by notice to the other terminate the Contract. **11.4** If the Contract is terminated under sub clause 11.3 the Customer shall pay the Supplier as provided in sub-clause 12.2. **12. Termination 12.1** In the event of the Customer becoming bankrupt or (being a corporation) going into liquidation other than for the purpose of a scheme of reconstruction or amalgamation or carrying on its business under an administrator, receiver, manager or liquidator for the benefit of its creditors or any of them the Supplier may by notice in writing terminate the Contract forthwith. **12.2** In the event of termination under this Contract the Supplier shall be entitled to be paid the value of Works undertaken as at the date of termination together with any expenditure reasonably incurred by the Supplier in the expectation of the performance of or in consequence of the termination of the Contract and loss of profit on the Contract including the difference between the total price to be paid on termination and the Contract Price. Such payment shall be paid by the Customer within 30 days of the date of invoice. **13. Dispute Resolution 13.1** If any dispute arises out of this Contract the parties will attempt to settle it by mediation. To initiate mediation a party must give notice in writing ("the ADR Notice") to the other party requesting a mediation. If there is any point on the conduct of the mediation (including as to the nomination of the mediator) upon which the parties cannot agree within 14 days from the date of the ADR Notice it is agreed that the Centre for Dispute Resolution will be requested to decide that point for the parties having consulted with them. Any mediation will start not later than 28 days after the date of the ADR Notice. **13.2** No party may commence any court/legal proceedings in relation to any dispute arising out of this Agreement until they have attempted to settle it by mediation and that mediation has terminated. **13.3** The law of this Contract shall be English and subject to the obligation on the parties to try and achieve a settlement via mediation the courts of England and Wales shall have exclusive jurisdiction of any matter arising out of this Contract. **14. Notices** Any notice shall be served by leaving it at or by sending it by email or special delivery post to the address of the party specified in the Quotation. It should be deemed to be received two business days next following. Notice sent by email shall be deemed to be received at the time of transmission unless outside the normal business hours of the recipient in which case receipt shall be deemed to be 10am on the business day next following. **15. Entire Agreement** Notwithstanding anything to the contrary expressed in or to be implied from this Contract, this Contract shall be deemed to contain the entire agreement and understanding between the parties which supersedes any and all previous agreements and understandings between the parties and the Customer acknowledges that in accepting the Quotation and in entering into this Contract the Customer has not relied or will not rely on any statements, representations, warranties or undertakings which are not expressly set out in the documents referred to above including without limitation to the generality of the foregoing, any statements, representations, warranties or undertakings contained in any other documents made available by the Supplier prior to the execution of this Contract. This clause shall not exclude any liability for fraudulent misrepresentation. **16. Modifications 16.1** This Contract can only be modified in writing by a contract amendment issued by the Supplier. **17. Waiver** Failure by the Supplier at any time to enforce any provision of the Contract shall not in any way affect its right to require complete performance by the Customer nor shall the waiver of any breach of any provision be held or taken to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself. **18. Contracts (Rights of Third Parties Act)** For the avoidance of doubt nothing in the Contract shall confer on any third party any benefit or the right to enforce any term of the Contract. **19. Restocking Charges** A 25% restocking charge will be applicable on all returned goods as well as any return carriage charges.