

IMPORTANT
THESE CONDITIONS CONTAIN PROVISIONS WHICH DEFINE YOUR CONTRACTUAL OBLIGATIONS AS TO PRICE AND PERFORMANCE BY YOUR ACCEPTANCE OF OUR ORDER YOU ACCEPT THESE CONDITIONS.

1. INTERPRETATION

In these conditions:

- 1.1 the following words shall have the following meanings:
 - "Company" means Magnesium Elektron Limited (Registered No. 3141650);
 - "Contract" means a contract for the provision of Work by the Seller to the Company, which shall be concluded when the Seller accepts (whether orally or in writing) as Order;
 - "Confidential Information" means any commercially valuable information disclosed by the Company to the Seller whether prior to or after the date of any Contract whether communicated verbally, in writing or in any other recorded form, which according to commercial usage would be considered confidential, including (but not limited to) the following:
 - (a) all scientific and technical data, trade secrets, inventions, manufacturing processes, testing procedures, designs, drawings, diagrams, plans, specifications, know-how, formulae, computer software, reports, investigative studies, manuals and samples and any other material which includes any information relating to the Work;
 - (b) any information which, although some or part of that information may not be considered commercially valuable individually, is commercially valuable in combination with other information and in the context of the Work;
 - (c) commercial, financial and marketing information relating to the Company or the Work;
 - (d) commercial, financial, marketing and other information relating to the business of the Company.

"Goods Invoiced" means the goods (if any) described in the Order;
means:

- (i) in the case of an individual Seller, an application for an interim order under Section 253 of the Insolvency Act 1985 or the presentation of a bankruptcy petition;
- (ii) in the case of a corporate Seller an application for an Administration Order, the appointment of a Nominee under Section 2 of the Insolvency Act 1986, or the proposal of any resolution or the presentation of any petition for the winding up of the Seller (other than for the purpose of a bona fide solvent reconstruction or amalgamation); and
- (iii) in any case, the appointment of a receiver or manager of all or part of the Seller's assets; any distress or execution being levied on the Seller or the Seller entering into any negotiations for any arrangements or composition with creditors or the Seller being deemed unable to pay its debts as they fall due;

"Intellectual Property Rights" means any and all patents, trade marks, service marks, registered designs, drawings, utility models, database rights, copyright (including but not limited to copyright in computer software), inventions, trade secrets and other confidential information, technical information, know-how, business or trade names, goodwill and all other intellectual property and rights of a similar or corresponding nature in any part of the world, whether registered or not capable of registration or not and including all applications and the right to apply for any of the foregoing rights;

"Order Property" means a purchase order submitted by the Seller to the Seller whether issued orally (and confirmed in writing) or in writing; means all material of whatever nature (and all copies thereof) whether recorded in written, electronic or any other form supplied to the Seller by or on behalf of the company or generated at the expense of the Company at any time for the purpose of the Work or concerning, embodying or recording any Confidential Information or any part of it or any Intellectual Property Rights owned by the Company, including without limitation, all specifications, plans, drawings, patterns, blue prints, descriptions, designs, formulations, know-how, technical or manufacturing information or advice, manuals, samples, prototypes and all Tooling;

"Services/Tooling" means the person, firm or company with which the Company shall conclude a Contract; means the services (if any) described in the Order; and all jigs, fixtures, dies, moulds, materials, patterns and gauges and other such items used in the manufacture of any Goods or otherwise in carrying out any Work under any Contract;

"Work" means the supply of Goods or provisions of Services or both of them;
12 the headings shall not affect the construction;

13 the singular shall include the plural and vice-versa and the masculine shall include the feminine or neuter and vice-versa and references to persons shall include bodies corporate, partnerships and unincorporated associations and any other legal or commercial entity or undertaking;

14 references to any legislation or to any provision of any legislation shall include any modification, replacement or re-enactment of that legislation for the time being in force and all legislation, orders, regulations, statutory instruments, rules and bye-laws issued under the same;

15 each and every Order shall not, except where the Contract or another Condition expressly so requires, be in any way modified or restricted by reference to or inference from any other Condition; and

16 all trade terms shall be interpreted in accordance with INCOTERMS (1990 edition).

2. GENERAL
2.1 These Conditions shall apply to and form part of all Contracts and no variation (including, without limitation, any addition or deletion) shall be effective unless evidenced in writing signed by a duly authorised employee or representative of the Company, and containing a specific reference to these conditions being varied.

2.2 The commencing of any work by the Seller, or any other conduct of the Seller, pursuant to an Order, shall constitute unqualified acceptance by the Seller of the Order.

2.3 The Seller shall provide the Work to the Company
3. PRICE AND PAYMENT
3.1 Without prejudice to Condition 16 the price for the work shall be as stated in the Order and, without prejudice to Condition 3.4, the Company shall pay the price for the Work on the terms (including, without limitation, in the currency) set out in the Order. It shall be a precondition of payment that all invoices shall bear the relevant Order number. Invoices shall not be issued until all the Work the subject of the Order which they relate has been performed. Time for payment of the price shall not be of the essence of the Contract.

3.2 Where the price for the Goods to be delivered by the weight delivered, such weight shall be the weight of the Goods as measured by the Company once any and all packaging has been removed and the Goods have been sorted and screened (if appropriate). Invoices for such Goods shall not be payable by the Seller until the actual weight of the Goods received has been agreed between the Seller and the Company. Without prejudice to Condition 7.1 the Company shall screen and sort (if appropriate) Goods with all reasonable haste.

3.3 The Seller shall have no right to any lien over the Goods nor to any right of stoppage in transit whatsoever.

3.4 The Company reserves the right to deduct from any monies due or becoming due to the Seller whether under a Contract or otherwise, any monies due from the Seller to the Company on any account whatsoever and to withhold sums due to the Seller in the event of any claim against or dispute with the Seller whether under a Contract or otherwise.

3.5 No payment of or on account of the price for any work shall constitute any admission by the Company as to proper performance by the Seller of its obligations.
4. PACKAGING
4.1 The Seller shall ensure that the Goods are packed and packaged in accordance with the terms of the Order. If there are no express terms as to packing and packaging in the Order, the Seller shall ensure that the Goods are packed and packaged so as to be delivered in good condition.

4.2 Without prejudice to Conditions 4.1, 4.6 and 9 individual packages shall be packed and packaged to enable handling by mechanical means and if the Goods are not so packaged the Company may, at its option, reject the Goods or require the Seller at the Seller's cost to repack and/or repackage the Goods.

4.3 The Company shall be under no obligation to return any packing or packaging materials or cases and accepts no liability for the same. Any packing or packaging materials or cases returned by the Company to the Seller shall be returned at the Seller's risk and expense.

4.4 Without prejudice to Condition 6.4 the Company shall not be responsible for any failure to give notice to any carrier of any loss, damage, delay or deterioration in transit, or non-delivery.

4.5 The Seller agrees to supply the Company with any necessary declarations and documents stating the origin of the Goods immediately upon the Company's request.

4.6 Without prejudice to conditions 4.1, all deliveries of Goods shall be accompanied by complete and accurate instructions in English to enable the Goods to be used properly and safely. Any dangerous or potentially dangerous Goods shall be prominently marked as such and shall be labelled and delivered (including without limitation, packed and transported) in accordance with any and all relevant regulations (including without limitation UK and EC legislation regarding such). All transport and other documents relating to such Goods shall include a declaration of any hazard (actual or potential), together with the name of the hazardous material, and proper emergency information, in English. Without limitation to the generality of the foregoing provisions of this Condition 4.6 any and all Goods of a type usually used for remelting shall be clearly marked with warnings as to the consequences of not drying them prior to putting them in a furnace.

5. DELIVERY
5.1 The Seller shall deliver the Goods and the services shall be performed at the time and place and on the date stated in the Order. If no place for delivery is stated in the Order then the Goods shall be delivered and/or the Services shall be performed at such place for delivery as the signatory to the Contract shall nominate in writing to the Seller. If no time and date for delivery is stated in the Order the Seller shall deliver the Goods and/or perform the Services on the dates and the times specified by authorised personnel at the delivery address. Without prejudice to Condition 5.1 delivery of Goods shall only have taken place upon the physical transfer of the Goods to the Company, at the address for delivery stated in the Order, being confirmed by a duly authorised agent, employee or representative of the Company. Delivery to a carrier shall not be delivery to the Company. Time for delivery of the Goods and/or performance of the Services shall be of the essence, so that, without limitation, upon any delivery of Goods or performance of the Services being late, the Company may cancel the Contract in question or issue a notice suspending delivery of the performance until further notice save that, if such late delivery and/or performance is, in the Company's reasonable opinion, due the signatory to the Contract's failure to notify the Seller of the place for delivery in sufficient time to facilitate delivery and/or performance, the time for delivery shall be extended by the Company accordingly.

5.2 Without prejudice to Condition 5.2, if the Seller delivers to the Company a quantity of Goods which is greater or less than the quantity ordered the Company shall be entitled to reject the Goods or any of them by reason of such surplus or shortfall.

5.3 The Company so requests, the work shall be provided in instalments. Time for the provision of each instalment shall in each case be of the essence, so that any failure to provide an instalment on time will entitle the Company to terminate the entire Contract.

5.4 The Seller shall, on the same day that the Goods are despatched, post (or fax if less than 48 hours will elapse between despatch and delivery) to the Company (under separate cover) an invoice on time as to such despatch and ensure that a delivery accompanies the Goods. The Company may, at its option, reject Goods in respect of which the delivery note does not bear the relevant Order number. Without prejudice to the aforesaid, the Seller shall ensure that Goods despatched by post shall contain within their packaging an advice note bearing the relevant Order number.

5.5 The Company shall be entitled to postpone the date or dates for the provision of Work, in the event of any act of God, war (whether declared or not), riot, strike, lock out, trade dispute, fire, breakdown, mechanical failure, disruption of energy supplied, interruption of transport, Government action or any other cause whatsoever outside the Company's control which affects the Company's business, whether or not of like nature to those specified above. In the event that the delivery date is so postponed, the provisions of Conditions 5.1 and 5.3 shall apply to such postponed date. The Company may in the notice suspending delivery, suspend a period of suspension at the expiry of which, if the event still prevails, the Company may, at its option, cancel the Contract without incurring any liability whatsoever arising therefrom.

5.6 Without prejudice to Conditions 5.3 and 5.5 in the event of any delay in delivery, for whatever reason and whether or not resulting from the fault of the Company or the Seller, the Seller shall pay for all storage costs for the Goods.

5.7 The Seller shall notify the Company forthwith of any circumstances arising or anticipated to arise which may affect provision of the Work at the agreed times.

5.8 The signature of an employee, representative or agent of the Company on any delivery note or other documentation presented for signature in connection with the delivery of the Goods shall be no indication that the Goods delivered are in good condition or of the correct specification, quality or quantity.

6. TITLE AND RISK
6.1 Title in the Goods shall pass to the Company upon delivery, unless payment for the Goods is made prior to delivery, when it shall pass to the Company once payment has been made. The Goods shall be at the risk of the Seller until the Company is in accordance with Condition 5.1.

6.2 In the case of Services the risk remains with the Seller until completion thereof in accordance with the Contract. Such passing of property and risk shall be without prejudice to any right of rejection arising under these Conditions.

6.3 Notwithstanding, and in addition to, any implied obligations which the Seller may be under by virtue of the fact that the Goods remain at the risk of the Seller until delivery the Seller shall forthwith replace free of charge and Goods destroyed, damaged or lost, or which have deteriorated, during the course of transit. Section 33 of the Sale of Goods Act 1979 shall not apply.

6.4 If the Seller postpones delivery at the Company's request, title to the Goods shall nevertheless pass to the Company on the date when, but for such postponement, the Goods would have been delivered.

7. GUARANTEE, FITNESS, QUALITY, QUANTITY AND INDEMNITY
7.1 All Goods supplied shall, without prejudice and in addition to those Conditions and all terms as to fitness for purpose, quality or conformity with description or sample, which may be implied by statute or otherwise:

- 7.1.1 conform in all respects to all classifications, designs and other specifications (including without limitation any as to origin, grade, quality, purity, chemical content and input size) given or referred to in the Order and any literature (promotional or otherwise) issued in connection with the Goods;
- 7.1.2 be fit and sufficient for the purpose for which they are to be used;
- 7.1.3 without prejudice to Conditions 7.1.1 and 7.1.4 be of satisfactory quality and free from defects whether latent or patent, in design, material or workmanship;
- 7.1.4 not (unless specifically ordered by the Company) either contain or possess ionising radiation;
- 7.1.5 meet all standards stated or referred to in the Order;
- 7.1.6 without prejudice to conditions 7.1.1 and 7.4 comply with the requirements of all relevant (UK/EC or other) statutes, statutory rules and orders, regulations and standards (whether having the force of law or not), including, without limitation, any and all Aluminium Association standards, which may be in operation or delivery.

The Company shall be entitled, within a reasonable time of delivery, to random sample test items of Goods to confirm that they comply with all the provisions of this Condition 7.1. If any item of Goods is found not to comply with any or all of the provisions of this Condition 7.1 if any item of Goods is found not to comply with any or all of the provisions of this Condition 7.1, the Company reasonably regards as relevant, the Seller shall be in breach of its obligations pursuant to the Contract and, without limitation, the provisions of Conditions 10 and 12 shall apply. Any such test shall not constitute acceptance of the Goods and the provisions of Condition 12 shall remain in full force and effect whether or not such tests revealed, or should have revealed, any defect of the Goods.

7.2 Without prejudice to the generality of Condition 13.2 the Seller shall indemnify the Company against all losses, expenses or costs to the Company of the Company's participation in safety monitoring, information gathering, product marking and all other activities necessary for the Seller and the Company to fulfil their obligations under the General Product Safety Regulations 1994 or such equivalent.

7.3 The Seller shall on demand supply to the Company the name and address of the persons other than the Seller who actually or apparently produced the Goods (or any part or component thereof) or imported them into the EU or the United Kingdom or previously supplied them.

7.4 The Company relies on the skill and judgement of the Seller. The Seller warrants to the Company that the Services will be performed by appropriately qualified and trained personnel, with due care and diligence and to the highest professional standards; will conform in all respects with all drawings, specifications, descriptions or other requirements stated or referred to in the Order or any literature (promotional or otherwise) issued in connection with the Services; and will be free from all defects including (to the extent if any that the Seller is responsible for design) defects in design.

8. TOOLING
8.1 All Tooling

- (a) supplied to the Seller by or on behalf of or at the expense of the Company in connection with the Work; or
- (b) manufactured or supplied by the Seller in connection with the Work;

shall at all times be and remain in or the case of 8.1(b), become the Company's exclusive property immediately upon creation. All such Tooling shall be retained by the Seller on behalf of the Company and to all Companies and/or until disposal instructions are given by the Company to the Seller, which instructions shall be complied with forthwith. The Seller shall ensure that each item of such Tooling is clearly marked as being the legal property of the Company and is stored separately from all other tooling and all other materials of the Seller. The Seller undertakes that it shall not use or permit the use of such Tooling except for the purpose of carrying out the Work on behalf of the Company and, without limiting the generality of the foregoing shall not use such Tooling for the manufacturing of any goods for, or carrying out any contracts with, any third party.

8.2 In the course of the Work, the Seller shall be liable for any loss or damage to any of the Tooling referred to at Clause 8.1 above, and shall ensure that such Tooling is maintained in good working order at the Seller's own expense and shall maintain insurance for the full replacement value of such Tooling against all usual risks, including without limitation fire and theft. If any loss or damage is caused to such Tooling in the course of the Work, the Seller shall promptly and satisfactorily repair or replace such tooling at its own expense.

9. SAFETY
9.1 The Seller warrants that the Goods will be safe and without risk to health when properly used and the Seller will provide all necessary information in connection with the design, testing, handling, preparation for use and use of them (whether or not such information has been requested by the Company). In particular but without limitation it, the Goods will be packed and packaged so as to be safe and present no risk to health, and the weight of each package of Goods, with appropriate instructions as to its handling, will be clearly marked on each package of Goods.

9.2 Without prejudice to the generality of Condition 9.1 the Seller warrants that, in all aspects of the design, manufacture, supply and installation of the Goods (including all work on site) and the provision of information relating thereto, will comply with the duties imposed on it by the Health and Safety at Work Act 1974 and of all other statutory provisions, bye-laws, rules and regulations so far as they are applicable to the Seller and the Goods and that it will perform the Contract such that no liability is incurred by the Company under such statutory provisions, bye-laws, rules and regulations.

9.3 Without prejudice to the generality of Condition 13.2 the Seller hereby indemnifies and shall continue to keep indemnified to the Company and its affiliated companies from and against all claims which may be brought by the Seller or the Company's employees, representatives or agents against the Seller or the Company whether pursuant to or otherwise Compensation Liability Acts, Health and Safety at Work Regulations or otherwise.

10. BREACH
If the Seller shall commit any breach of its obligations under a Contract (including, without limitation, under any of these Conditions) and whether or not the Company has accepted the Work or part thereof and whatever the nature and consequences of such default or breach the Company shall be entitled, at the Company's option, to reject all or any part of the Work and to terminate the Contract in question and any other contract then subsisting, without prejudice to any other claim or right the Company might have or exercise; or to reject all or any part of the Work and require the Seller to take such steps as may be necessary to replace the Goods and/or repeat the Services so that Work in conformity with the terms of the Contract is provided; or to retain the Work as provided, subject to repossessing the Work in whole or in part and whether or not the Company has previously required the Supplier to do so; or to demand that the Supplier to remove from its premises and dispose of any Goods which (except where specifically ordered by the Company) contain or possess any element of ionising radiation including radioactivity. The Seller's rights (including the Company's rights to reject the Work) against the Seller under the provisions of this Condition 10 shall in no way be prejudiced if the Work is not inspected until used or the Work is shown to be unsuitable or defective after it is put into use.

11. INSOLVENCY
If the Seller shall become insolvent the Company shall be entitled to terminate forthwith any contract then subsisting with the Seller, whether or not a contract to which these Conditions apply (and immediately to collect all materials, goods or articles sent to the Seller for any purpose) without prejudice to any other claim or right the Company might make or exercise.

12. REJECTION OF GOODS/TERMINATION OF CONTRACT
12.1 Where all or any part of the Goods are rejected, for whatever reason, risk of damage to, or deterioration in, or theft of, the Goods shall pass to the Seller upon the Seller notifying the Seller of its rejection of the Goods. Upon rejection of the Goods, the Seller shall, if requested, collect the Goods (or any part thereof) during the Company's normal business hours at the Seller's own cost and expense but the Company shall not in any event be:

- 12.1.1 under any duty to return the Goods to the Seller whether or not it intimates to the Seller its rejection of them;
- 12.1.2 liable whether on contract or in tort and whether as bailee or in any other capacity, for any theft or loss of, or damage to, or destruction of, the Goods however caused;
- 12.1.3 under any obligation to insure the Goods whilst in its possession;
- 12.1.4 under any obligation to take reasonable care of or exercise caution in respect of the Goods.

12.2 If the Seller fails to collect the Goods as requested within 7 days of closing such the Company may return the Goods to the Seller entirely at the risk and expense of the Seller. Notwithstanding the aforesaid, the Company shall have a lien over any part of the price actually paid by the Company for the Goods and in respect of any deposit paid by the Company.

12.3 Without prejudice to Condition 12.2 if the Seller fails to collect as requested Goods which have been rejected by the Company within a reasonable time, the Company shall have the right at any time after written notice is given to the Seller, to sell or dispose of such Goods as it sees fit. The Company shall account to the Seller for any proceeds of sale it receives as a result, save that it shall be entitled to retain sufficient monies to recover any expenses it has incurred, or may incur, as a result of continued possession of the Goods or disposal of the Goods.

12.4 Section 35A of the Sale of Goods Act 1979 shall apply.

13. WARRANTY AND INDEMNITY
13.1 Without prejudice to, and in addition to, any terms as to title which might be implied by statute or otherwise the Seller specifically warrants that:

- (a) it has the right to sell the Goods and to provide the Services;
- (b) save in respect of any Intellectual Property Rights owned by the Company, all Intellectual Property Rights used by the Seller in carrying out the Work are either owned by or validly licensed to the Seller for the purposes of carrying out the Work;
- (c) that the Company shall have and enjoy throughout its use of the Goods, quiet possession of the Goods;
- (d) that the Goods are and shall remain free from any charge, lien, pledge or encumbrance in favour of the Seller or any third party;

13.2 All Work undertaken by it shall be its own original work and shall be free of all third party claim of ownership and shall not infringe the rights, including without limitation, the Intellectual Property Rights of any third party.

13.3 Notwithstanding and in addition to Condition 7, the Seller shall fully indemnify and keep fully indemnified, the Company and its affiliated companies (and employees and representatives of the same) from and against all damage, losses, actions, costs, expenses, claims or demands whatsoever (including without limitation, including without limitation, consequential loss or damage, claims, costs, fees and expenses, loss of profit) which the Company shall have to pay or incur as a result of or arising out of, whether directly or indirectly, the provision of Work, any use or operation (including, without limitation, any malfunction of the Goods, any misrepresentation, any delays in production, any breach of contract, any breach of statutory duty, any tort, or any act or omission by the Seller, its employees, sub-contractors or agents. Such shall also without prejudice include but not be limited to the costs of handling, removing from the Company's premises and disposing of, any Goods which contain or possess any element of ionising radiation and of cleaning or replacing any of the Company's property whatsoever which is contaminated by ionising radiation from any of the Goods. The Seller shall, upon request by the Company and at the Seller's cost, take control of the defence of any claims, actions or proceedings in connection with the same, however arising. Nothing in this Condition 13.2 or elsewhere in these Conditions is intended to exclude liability for death or personal injury caused by the Company's negligence, or any other liability which cannot be excluded.

13.4 Without prejudice to the generality of Condition 13.2, the Company shall not be responsible for acts, omissions or defaults of the Seller or any faults or defects whatsoever in the Goods or the Services supplied pursuant to any Order placed on it by the Company, or for any infringement of third party rights including (but not limited to) third party Intellectual Property Rights by the keeping, use or resale of such Goods by any other person or the provision and use of such Services or of any breaches of these terms and conditions by the Seller.

13.5 In the event of any claim being made or action brought or threatened against the Company in respect of infringement of any third party's Intellectual Property Rights, the Seller shall fully indemnify and keep the Company fully indemnified from and against all damage, losses, costs, expenses whatsoever incurred by the Company in respect of any such claim being made or such action being brought except where the Goods are manufactured to a design supplied by the Company and such claim or action is directly and exclusively referable to such design.

13.6 The Seller shall at all times during the continuance of the Contract and thereafter maintain adequate insurance to enable the Seller to indemnify the Company according to Condition 13.2. Nothing in this Condition 13.5 shall operate to limit or qualify the indemnity given to the Company by the Seller pursuant to Clause 13.2

14. CONFIDENTIAL INFORMATION, PROPERTY AND INTELLECTUAL PROPERTY RIGHTS
14.1 The Seller acknowledges that Confidential Information and Property is disclosed to or received by the Seller solely for the purpose of carrying out the Work and for no other purpose.

14.2 The Seller acknowledges that all title and interest in the Confidential Information and Property, including without limitation all Intellectual Property Rights of the Company in relation thereto, shall remain wholly at all times the property of the Company. The rights of any nature are given by the Company to the Seller in respect of the Property or the Confidential Information or any Intellectual Property Rights of the Company in relation thereto.

14.3 The Seller undertakes to treat the Property as proprietary to the Company and shall not consent in writing of the Company permit the Property to be disclosed to or used by a third party and shall not make any use of the Property except to the extent necessary to implement the Contract.

14.4 The Seller hereby undertakes to the Company as follows:

- (a) to keep all the Confidential Information received from the Company and all Property embodying or recording Confidential Information strictly confidential and not to disclose the Confidential Information to any third party for any purpose whatsoever without the express written authority of the Company;
- (b) to keep separate from all documents and other records of the Seller all the Confidential Information and Property and all information generated by the Seller based thereon;
- (c) subject to condition 14.4(a) above, to disclose the Confidential Information and Property only to such employees and professional advisors of the seller who have a need to know the Confidential Information and use the Property for the purposes of the Work and to ensure that such employees and professional advisors of the Seller are made aware of and comply with the terms of these Conditions;
- (d) not to use, reproduce, transform or store any of the Confidential Information or any information embodied in the Property in any externally accessible computer or electronic information retrieval system or transmit, in any form or by any means whatsoever outside the Seller's usual place of business;
- (e) not to use any Confidential Information disclosed by the Company or the Property for any purpose other than for the purposes of the Work and for no other purpose;
- (f) not to make copies of the Confidential Information or the Property except with the prior written consent of the Company.

14.5 The undertaking in Condition 14.4 shall not apply to any Confidential Information which:

- (a) is subsequently received by the Seller from a third party not under any obligation of confidence to the Company;
- (b) is required to be disclosed by law;
- (c) is obtained by the Seller as a result of wholly independent work which the Seller can prove by genuine documentary evidence is not in any way based on or derived from the Confidential Information;
- (d) is disclosed by the Seller with the Company's prior written approval.

14.6 Further, subject to Condition 14.5, the undertaking in Condition 14.4 heretofore shall not apply to any Confidential Information which:

- (a) the Seller can prove by genuine documentary evidence was already in the possession of the Seller prior to the date of the disclosure of the Confidential Information by the Company to the Seller;
- (b) if freely available to members of the public or which the Company subsequently becomes so available other than through a breach of these Conditions.

14.7 No Confidential Information shall fall within Condition 14.6:

- (a) merely because that some of the information comprising the Confidential Information falls within any of the provisions of Condition 14.6 provided that the combination of the entirety of the information material comprising the Confidential Information remains of a commercially valuable and confidential nature having regard to the nature of the Work;
- (b) if the Work has enabled the Seller to appreciate the true significance of the Confidential Information to the Company and such significance is not generally known to members of the public at the date of disclosure of the Confidential Information to the Seller.

14.8 The Seller undertakes to return all Confidential Information and Property to the Company forthwith upon request from the Company and to expunge and destroy any of the property (if any) from any computer, word processor or other device in the possession, power or control of the Seller or their professional advisors.

14.9 The obligations relating to the Confidential Information and Property contained in these Conditions shall continue in full force and effect notwithstanding the termination of any Contract for whatever reason.

14.10 Unless otherwise agreed in writing between the parties, all new Intellectual Property Rights created or arising as a result of the Work commissioned by the Company shall be owned exclusively by the Company and, in the event that such rights do not vest in the Company automatically upon their creation, the Seller hereby assigns to the Company by way of future assignment, all new Intellectual Property Rights however arising in connection with a Contract hereunder, (and saves or will procure waiver of any equivalent moral rights) immediately on their coming into existence.

To the extent that full legal title to any Intellectual Property Rights so arising shall fall automatically to the Company by virtue of the above provisions, the Seller shall hold such rights on trust for the Company absolutely, and shall forthwith at the request of the Company execute or procure the execution of any document required by the Company to vest in it (or as it shall direct) the full title to such Intellectual Property Right and to enable it (or its nominee) to enjoy the benefit of such right.

15. CANCELLATION
The Company may cancel a Contract at any time by giving notice in writing to the Seller and shall thereupon be liable (save in the case of a cancellation due to breach by the Seller of its obligations) to pay for Work provided, and any reasonable costs incurred by the Seller, prior to the date of the notice. In no case shall the Company be liable to pay more than the proportion of the purchase price attributable to the Work provided. The Seller shall supply to the satisfaction of the Company, documentary proof of actual costs incurred.

16. IMPORTS/EXPORTS
The Seller shall be responsible for complying with all legislation and regulations governing the importation and exportation of the Work (including, without limitation for obtaining all necessary or relevant licences or permits). The Seller shall be responsible for any delays due to such licences not being available when required and for the payment of all resultant taxes, duties and other levies or impositions whatsoever. Section 26 of the Unfair Contracts Act 1977 shall not apply.

17. MISCELLANEOUS
17.1 Any notices or communications (collectively "Communications") required to be given pursuant to these Conditions shall be given in writing and delivered by first class post or fax. Communications sent by first class post shall be deemed served at the expiry of 48 hours after posting in each case to the intended recipient's registered office address, or as notified to the other party in writing from time to time. Communications sent by fax shall be deemed served immediately upon transmission of the fax in its entirety, to the fax number of the intended recipient, as notified by the intended recipient to the party sending the fax from time to time, being confirmed by a satisfactory transmission report issued by the fax machine which sent the fax.

17.2 The rights and remedies of the Company under a Contract (including, without limitation these Conditions) are cumulative and without prejudice and in addition to any statutory or common law or equitable rights; nor does the Company of any one right or remedy under a Contract, or at law or in equity, shall (save to the extent, if any, provided expressly in these Conditions, or at law or in equity), operate so as to hinder or prevent the exercise by the Company of any other such right or remedy.

17.3 The termination of a Contract, however occasioned, shall be without prejudice to any obligation or rights on, or in, the part of either party which have accrued prior to such termination and shall not affect or prejudice any provision of the Conditions which is expressly or by implication provided to come into effect on, or continue in effect, after such termination.

17.4 The Seller shall not sub-contract any part of the Work hereunder without the consent of the Company, such consent to be in writing and signed by a duly authorised member of the Company, or waiver or concession by the Company of any breach of the Contract (including without limitation of these Conditions) by the Seller shall be valid unless made in writing. Further, no waiver or concession by the Company of any breach of the Contract shall be considered as a waiver of any subsequent breach of the same, or any other provision.

17.5 No waiver or concession by the Company of any breach of the Contract (including without limitation of these Conditions) is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable the remaining provisions shall remain in full force and effect unless the Company and the Seller agree in writing that the effect of such declaration is to defeat their original intention in which event the Contract in question shall terminate forthwith.

17.7 All Contracts shall be governed by and construed in accordance with English Law. The parties hereto agree to submit to the non-exclusive jurisdiction of the English courts.



Doc NO: Buy 1-00

Issue 01

Date 30 April 2008

1.0 Introduction

This document is supplementary to the Terms & Conditions applicable for general purchasing. All conditions stated within this document are applicable to the purchase of Raw Materials only and will be referenced as Buy1-00

2.0 Supplier Requirements

The supplier shall:

- 1) notify Magnesium Elektron of nonconforming product and arrangements for organisational approval of supplier nonconforming material.
- 2) notify Magnesium Elektron of changes in product and/or process definition and, where required, obtain organisational approval.
- 3) allow right of access to Magnesium Elektron, their customer, and regulatory authorities to all facilities involved in the order and to all applicable records.
- 4) flow down to sub-tier suppliers the applicable requirements in the purchasing documents, including key characteristics where required.
- 5) maintain records of all quality related information appertaining to the purchase order requirements for a minimum of 7 years.