

**KYOCERA SGS PRECISION TOOLS EUROPE LIMITED**

**TERMS AND CONDITIONS**

1.	<b>INTERPRETATION</b>		case may be.
1.1	<b>The following definitions and rules of interpretation apply in these Conditions.</b>	<b>Services</b>	the services supplied by the Supplier to the Customer as set out in the Order.
1.2	Definitions:	<b>Supplier</b>	Kyocera SGS Precision Tools Europe Limited registered in England and Wales with company number 04377521.
	<b>Business Day</b>		a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
	<b>Charges</b>	1.3	<b>Interpretation:</b>
	the charges payable by the Customer for the supply of the Deliverables and/or Services in accordance with clause 6 (Charges and payment).	1.4	A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
	<b>Conditions</b>	1.5	Any words following the terms <b>including, include, in particular, for example</b> or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
	these terms and conditions as amended from time to time in accordance with clause 12.5.	1.6	A reference to <b>writing</b> or <b>written</b> includes fax.
	<b>Contract</b>	2.	<b>BASIS OF CONTRACT</b>
	the contract between the Supplier and the Customer for the supply of Deliverables and/or Services in accordance with these Conditions.	2.1	The Order constitutes an offer by the Customer to purchase Services in accordance with these Conditions.
	<b>Customer</b>	2.2	The Order shall only be deemed to be accepted when the Supplier issues written acceptance of the Order at which point and on which date the Contract shall come into existence ( <b>Commencement Date</b> ).
	the person or firm who purchases Deliverables and/or Services from the Supplier.	2.3	Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Services described in them. They shall not form part of the Contract or have any contractual force. Any data provided by the Supplier relating to speed and/or feed information is provided as a guide only to the Customer and is based on minimum protrusion of a tool in the chuck and no warranty is given by the Supplier as to the accuracy or completeness of such data.
	<b>Deliverables</b>	2.4	In relation to the design and/or manufacture of any Deliverables in accordance with specific requirements or specifications from the Customer, the Supplier reserves the right to change certain dimensions and/or tolerances and shall notify the Customer when this is necessary. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
	the goods set out in an Order produced by the Supplier for the Customer.	2.5	Any quotation or price list given by the Supplier shall not constitute an offer, and is only valid for a period of 30 Business Days from its date of issue.
	<b>Intellectual Property Rights</b>	3.	<b>SUPPLY OF SERVICES</b>
	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.	3.1	The Supplier shall supply the Services to the Customer in accordance with the Order in all material respects.
	<b>Order</b>		
	the Customer's order for Deliverables and/or Services as set out in a purchase order form, the Customer's written acceptance of a quotation by the Supplier, or other agreement in writing as the		

- 3.2 The Supplier shall use all reasonable endeavours to meet any performance dates specified in the Order, but any such dates shall be estimates only and time shall not be of the essence for performance of the Services. the goods and special storage instructions (if any); and
- 3.3 The Supplier reserves the right to amend the provisions of Services if necessary to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services, and the Supplier shall notify the Customer in any such event. 5.1.2 it states clearly on the delivery note any requirement for the Customer to return any packaging material to the Supplier. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request.
- 3.4 The Supplier warrants to the Customer that the Services will be provided using reasonable care and skill. 5.2 The Supplier shall deliver the Deliverables to the location set out in the Order or such other location as the parties may agree or the Customer shall collect the Deliverables from the Supplier's premises or such other location as may be agreed with the Customer (**Delivery Location**) at the time after the Supplier notifies the Customer that the Deliverables are ready.
4. **CUSTOMER'S OBLIGATIONS**
- 4.1 The Customer shall:
- 4.1.1 ensure that the terms of the Order and any information it provides are complete, clear and accurate; 5.3 Delivery shall be completed on the completion of loading of the Deliverables at the Delivery Location.
- 4.1.2 co-operate with the Supplier in all matters relating to the Services; 5.4 Any dates quoted for delivery of the Deliverables are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in the delivery of the Deliverables that is caused by a force majeure event, in accordance with clause 11.1, of the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Deliverables.
- 4.1.3 provide the Supplier, its employees, agents, consultants and subcontractors, with access to the Customer's premises, office accommodation and other facilities as reasonably required by the Supplier to arrange delivery (if applicable); 5.5 If the Supplier fails to deliver the Deliverables, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Deliverables. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a force majeure event, in accordance with clause 11.1, or the Customer's failure to provide the Supplier with adequate delivery instructions for the Deliverables or any relevant instruction related other supply of the Services.
- 4.1.4 provide the Supplier with such information and materials as the Supplier may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects; and 5.6 If the Customer fails to take or accept delivery of the Deliverables within two Business Days of the Supplier notifying the Customer that the Deliverables are ready, then except where such failure or delay is caused by a force majeure event, in accordance with clause 11.1, or by the Supplier's failure to comply with its obligations under the Contract in respect of the Deliverables:
- 4.1.5 obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
- 4.2 If the Supplier's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Customer or failure by the Customer to perform any relevant obligation (**Customer Default**):
- 4.2.1 without limiting or affecting any other right or remedy available to it, the Supplier shall have the right to suspend performance of the Services until the Customer remedies the Customer Default, and to rely on the Customer Default to relieve it from the performance of any of its obligations in each case to the extent the Customer Default prevents or delays the Supplier's performance of any of its obligations; 5.6.1 delivery shall be deemed to have been completed at 9.00am on the second Business Day following the day on which the Supplier notified the Customer that the Deliverables were ready; and
- 4.2.2 the Supplier shall not be liable for any costs or losses sustained or incurred by the Customer arising directly or indirectly from the Supplier's failure or delay to perform any of its obligations as set out in this clause 4.2; and 5.6.2 the Supplier shall store the Deliverables until delivery takes place and charge the Customer for all related costs and expenses (including insurance).
- 4.2.3 the Customer shall reimburse the Supplier on written demand for any costs or losses sustained or incurred by the Supplier arising directly or indirectly from the Customer Default. 5.7 If the Supplier delivers more or less than the quantity of Deliverables ordered the Customer may not reject them and the Supplier shall make a pro rate adjustment to the invoice for the Deliverables.
5. **DELIVERY OF DELIVERABLES** 5.8 The Supplier may deliver the Deliverables by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.1 The Supplier shall ensure that 5.9 At its sole discretion, the Supplier may accept the return of standard Deliverables which are returned from the Customer undamaged and in their original packaging within 30 days of the delivery date. In the event that the Supplier does accept the return of such Deliverables, the Customer
- 5.1.1 each delivery of the Deliverables is accompanied by a delivery note which shows the date of the Order, the type and quantity of

shall be liable for an inspection and restocking charge equal to 20% of the relevant Charges.

5.10 The Customer shall be responsible for the payment of the full Charges in relation to any repair, refurbishment or regrind carried out in relation to Deliverables where such work has been carried out by the Supplier. In the event that the Customer wishes to cancel an Order before any repair, refurbishment or regrinding has taken place, the Supplier shall have the discretion to accept the Order as being cancelled and, in this event, the Customer shall be liable for an administration charge equal to 20% of the relevant Charges that would otherwise have been payable.

5.11 In the event that the Supplier has created any special Products or modified Products to meet the Customer's requirements, the Customer shall be liable to pay 100% of the relevant Charges and no cancellation will be possible.

## 6. CHARGES AND PAYMENT

6.1 The Charges for the Services:

6.1.1 shall be the Charges set out in the Order or, if no price is quoted, the price set out in the Supplier's published price list as at the date of the Order; and

6.1.2 shall be exclusive of all costs and charges of packaging, insurance, transport of goods, which shall be invoiced to the Customer.

6.2 The Supplier shall invoice the Customer on completion of the Services. All Deliverables shall remain the Supplier's property until all Charges in relation to such Deliverables have been paid in full by the Customer.

6.3 The Customer shall pay each invoice submitted by the Supplier:

6.3.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by the Supplier and confirmed on the Customer invoice; and

6.3.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and

time for payment shall be of the essence of the Contract.

6.4 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (VAT) and, unless otherwise agreed in writing, are exclusive of all charges relating to customs duties, consular fees, freight and delivery charges, insurance premiums or similar expenses. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

6.5 If the Customer fails to make a payment due to the Supplier under the Contract by the due date then, without limiting the Supplier's remedies under clause 10, the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. The interest rate payable shall be as permitted under the late payment of commercial debts legislation in force in the United Kingdom from time to time.

6.6 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law). In addition, no dispute as to the quality and/or

performance of the Deliverables or Services shall entitle the Customer to delay or withhold payment unless the Supplier has accepted liability for any alleged breach or is held to be so liable by a court of competent jurisdiction.

6.7 Without limiting the Supplier's remedies under clause 9, the Supplier shall have a general right of lien over all Deliverables and such lien shall be exercisable in respect of all Charges due from the Customer.

## 7. INTELLECTUAL PROPERTY RIGHTS

7.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any materials or goods provided by the Customer) shall be owned by the Supplier.

## 8. DATA PROTECTION

8.1 Both parties will comply with all applicable requirements of the Data Protection Act 2018 ('UK GDPR') and the General Data Protection Regulation ((EU) 2016/679), as it has effect in EU law ('EU GDPR'). This Clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the EU GDPR and UK GDPR.

## 9. LIMITATION OF LIABILITY

9.1 Nothing in the Contract shall limit or exclude the Supplier's liability for:

9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

9.1.2 fraud or fraudulent misrepresentation; or

9.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

9.2 Subject to clause 9.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with the Contract for:

9.2.1 loss of profits; or

9.2.2 loss of sales or business or revenue; or

9.2.3 loss of agreements or contracts; or

9.2.4 loss of anticipated savings; or

9.2.5 loss of use or corruption of software, data or information; or

9.2.6 loss of or damage to goodwill; or

9.2.7 any indirect or consequential loss.

9.3 Subject to clause 9.1, the Supplier's total liability to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with an Order shall be limited to £3,000 or twice the Charges for that Order, whichever is higher.

9.4 The terms implied by sections 3 to 5 of the Supply of Goods and Services Act 1982 are, to the fullest extent permitted by law, excluded from the Contract.

- 9.5 The Supplier shall have no liability in respect of any alleged defect in Deliverables or Services performed for the Customer unless the Customer has made a written claim to the Supplier within three calendar months of becoming aware of the alleged defect or within three months of the date on which a reasonable party would have been aware of the alleged defect.
- 9.6 This clause 8 shall survive termination of the Contract.
10. **TERMINATION**
- 10.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 10.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of that party being notified in writing to do so;
- 10.1.2 the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;
- 10.1.3 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.1.4 the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.2 Without affecting any other right or remedy available to it, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract within 14 days after the due date for payment and the Supplier has given a final written notice of 7 days to the Customer to make payment.
- 10.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of Services under the Contract or any other contract between the Customer and the Supplier if the Customer fails to pay any amount due under the Contract on the due date for payment, the Customer becomes subject to any of the events listed in clause 10.1.2 to clause 10.1.4, or the Supplier reasonably believes that the Customer is about to become subject to any of them.
11. **CONSEQUENCES OF TERMINATION**
- 11.1 On termination of the Contract
- 11.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 11.1.2 the Customer shall return all of the Deliverables which have not been fully paid for. If the Customer fails to do so, then the Supplier may enter the Customer's premises and take possession of them. Until they have been returned, the Customer shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 11.2 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 11.3 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
12. **GENERAL**
- 12.1 **Force majeure.** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from events, circumstances or causes beyond its reasonable control.
- 12.2 **Assignment and other dealings.**
- 12.2.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 12.2.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Supplier.
- 12.3 **Confidentiality.**
- 12.3.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 12.3.2.
- 12.3.2 Each party may disclose the other party's confidential information:
- 12.3.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 12.3; and
- 12.3.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

- 12.3.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 12.4 **Entire agreement.**
- 12.4.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 12.4.2 Each party acknowledges that in entering into the Contract it does not rely on and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 12.4.3 Nothing in this clause shall limit or exclude any liability for fraud.
- 12.5 **Variation.** Except as set out in these Conditions, no variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 12.6 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 12.7 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 12.8 **Notices.**
- 12.8.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number.
- 12.8.2 Any notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or, if sent by fax, at 9.00 am on the next Business Day after transmission.
- 12.8.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 12.9 **Third party rights.**
- 12.9.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 12.9.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 12.10 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 12.11 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.