

## Terms and Conditions of Sale

### 1. INTERPRETATION

**"Buyer"** means the person who accepts a quotation from the Company for the sale of the Goods or whose order for the Goods is accepted by the Company;

**"Contract"** means any contract between the Company and the Buyer for any purchase and sale of the Goods;

**"Despatch Note"** means the document provided by the Company to the Buyer upon delivery of the Goods stating details of the Goods provided (*including but not limited to the specification, grade and calculated weight of the Goods*);

**"Goods"** means the goods which the Company is to supply in accordance with the Contract; **"Insolvency"** means in relation to the Buyer any of the following (*as relevant*): the Buyer (a) stops or suspends payment of any of its debts, or is unable to (*or admits inability to*) pay its debts as they fall due; or (b) begins negotiations (*because of actual or anticipated financial difficulties*) with, or enters into any composition or arrangement with one or more of its creditors with a view to rescheduling any of its indebtedness; or (c) suffers any of the following events: (i) a moratorium of any indebtedness, winding-up, dissolution, suspension of payments, administration, reorganisation (*as a voluntary arrangement, scheme of arrangement or otherwise*), petition for bankruptcy, composition, compromise, assignment or arrangement with any creditor; or (ii) any liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer is appointed in respect of that person or any of its assets; or (iii) any event occurs in relation to that person that is analogous to the events listed in this definition;

**"IPRs"** means any intellectual property rights of any nature including without limit any and all inventions, patents, utility models, design rights, registered designs, copyright, know how, trade secrets, confidential information, trade marks, service marks, trade names and goodwill;

**"Order"** means an order placed by the Buyer with the Company for Goods; and

**"Terms"** means these standard conditions of sale.

### 2. FORMATION

2.1 The Contract shall arise when the Buyer's Order is accepted by the Company in accordance with condition 3.1 and the Contract shall be subject to these Terms which shall govern the Contract to the exclusion of any other terms and/or conditions of trading purported to be introduced by the Buyer and/or any other terms and conditions previously notified to the Buyer.

2.2 No variation of these Terms shall be binding unless agreed in writing and signed by a director of the Company.

2.3 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Company or its employees or agents as to the storage or use of the Goods which is not confirmed by the Company in writing, is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendations which are not so confirmed.

2.5 No quotation, tender or any other document published by the Company shall place the Company under any liability obligation or duty whatsoever and whilst all care will be taken in the production of the aforementioned, the accuracy thereof is not guaranteed and shall not form part of the contract between the Company and the Buyer nor constitute nor be deemed to be an inducement to the Buyer to finalise or enter into any contract.

### 3. ORDERS

3.1 An Order whether set out in writing, or communicated in oral form constitutes an offer to the Company to buy the Goods. All Orders are subject to acceptance by the Company and the Company will confirm such acceptance to the Buyer by sending a written acknowledgement of an order by the Company (*Order Confirmation*) or by delivery of the Goods

3.2 In the event that the Order contains a different specification or grade of the Goods than that set out in the quotation provided by the Company to the Buyer, the Company may either accept the Buyer's Order or ask the Buyer to clarify the quantity and pricing.

3.3 Any Order accepted by the Company may only be cancelled or varied by the Buyer with the prior written consent of the Company and on terms that the Buyer shall indemnify the Company in full against all losses (*including loss of profit*), costs (*including the costs of all labour and materials used*), damages, charges and expenses incurred (*directly or indirectly*) by the Company as a result of such cancellation or variation.

3.4 The Company reserves the right to make any changes in the specifications of the Goods that are necessary to ensure they conform to any applicable safety or statutory requirements or to make such other minor modifications which the Company deems necessary or desirable.

### 4. DELIVERY AND NON-DELIVERY

4.1 Delivery times/dates named/accepted by the Company are given in good faith but are an estimate only. Time of delivery of Goods is not of the essence. Subject to condition 10.1, if the Company fails to deliver the Goods within 30 days of the estimated delivery date, it shall only be liable to the Buyer for the purchase price of the Goods and, subject to condition 10.2, any losses that the Buyer suffers as a result of the Company's failure to comply (*whether arising in contract, tort (including negligence), breach of statutory duty or otherwise*) which are a foreseeable consequence of such failure. The Buyer shall have no right to cancel the Contract in the event of such failure.

4.2 Goods will be delivered as stated in the Company's quotation or acknowledgement of order or if one is not issued as agreed by the Company. Delivery shall be deemed to take place when the Goods arrive at the place stated in the Company's acknowledgement of order or if one is not issued at such place as is agreed by the Company except that delivery to a carrier for the purpose of transmission to the Buyer shall be deemed to be delivery to the Buyer. Section 32(2) of the Sale of Goods Act 1979 shall not apply.

4.3 Goods will be banded or otherwise appropriately packaged so as to adequately protect against damage in normal conditions of transit of usual duration. The Buyer shall be responsible for arranging carriage and insurance provided that upon request by the Buyer the Company shall make such arrangements for carriage of the Goods and their insurance during carriage as it thinks appropriate and the Buyer shall indemnify the Company against all costs and/or expenses that the Company incurs in arranging for carriage and insurance of the Goods (*including without limit, costs of packaging, loading and/or unloading*) other than those arising due to the breach of contract or negligence of the Company, such costs and/or expenses to be paid by the Buyer when it is due to pay for the Goods.

4.4 The Buyer shall be responsible for providing labour and facilities at the delivery point for the unloading of Goods ordered by it, and shall indemnify the Company against all claims whatsoever arising from such unloading operations. The Company reserves the right to refuse to take vehicles on to a site and the Buyer shall be liable for any costs incurred by the Company, if in the opinion of the driver or carrier the site conditions are such as to constitute a danger to the vehicles, the Goods or to any persons or property.

4.5 The Company may deliver Goods in instalments and each delivery shall constitute a separate contract. Failure by the Company to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

4.6 If the Buyer fails or refuses to accept delivery of any Goods; or the Company agrees (*at its sole discretion*) to postpone delivery of the Goods at the request of the Buyer; or the Buyer, or its servants or agents, fails to provide any instructions consents or authorisations required to enable the Goods to be delivered on the due date; then risk in the Goods shall pass to the Buyer, delivery of the Goods shall be deemed to have taken place and the Company may store or arrange for storage of such Goods and charge the Buyer, without limitation, for all related costs, charges and expenses (*including storage, vehicle or wagon retention and insurance*) and may sell such Goods after 28 days after such failure or refusal and deduct any monies payable to the Company by the Buyer from the sale proceeds and account to the Buyer for any excess or charge the Buyer for any shortfall below the Contract price.

4.7 If the Company agrees to permit the Buyer to collect the Goods from the Company's place of business then delivery shall be deemed to take place when the Company notifies the Buyer that the Goods are ready for collection and unless otherwise agreed in writing by the Company it is a condition of the Contract that the Buyer will collect the Goods within seven days of such notice. If the Goods are not collected by the Buyer within this period, the provisions under condition 4.6 will apply.

4.8 The calculated weight or quantity of the Goods printed upon the Company's Despatch Note shall be final unless the Buyer shall have given notice to the Company of any discrepancy in weight or quantity within 3 days after receiving the Goods and shall have given the Company a reasonable opportunity to witness the weight and/or quantity of the Goods being verified before they have been used, processed or sold.

4.9 Unless otherwise agreed in writing by the Company, delivery to the Buyer of a weight or quantity of goods up to 5% less than or greater than that which the Company has agreed to sell and is contained in the Despatch Note shall under no circumstances be a breach of contract by the Company or entitle the Buyer to reject the Goods delivered. The Buyer shall pay for the quantity of Goods actually delivered to it.

4.10 Upon delivery to the Buyer, all Goods should be examined. The Company shall not be liable for any shortages or defects in, or non-delivery of, Goods unless the same is notified by the Buyer to the Company (*together with all specific details*) in writing within 3 days of the actual or anticipated date of delivery (*as relevant*). Subject to such notice being provided (*and the Goods being in their delivered state*) the Company shall, if it is satisfied upon inspection of the Goods that any Goods are defective or have not been delivered and the cause thereof being beyond the reasonable control of the Company, at its sole discretion, either arrange for delivery as soon as reasonably possible or give credit to the Buyer for such Goods.

Shortages or defects in, or non-delivery of some or part of the Goods shall not affect the Contract in respect of the other or other parts of the Goods.

### 5. FORCE MAJEURE

In the event that the Company is prevented or delayed in or from carrying out its obligations under the Contract as a result of any cause beyond its control (Force Majeure Event) such as but not limited to: acts of God; governmental intervention or restriction, import or export regulations; war; riots; strikes or trade disputes (*including by and with the Company's own employees*); lock-outs, shortage of raw materials or fuel (*notwithstanding that the Company has taken all reasonable steps to procure such raw materials or fuel*), shortage of labour, power failure; inadequate performance of, failure of or incorrect processing by computer systems; fire; flood; default of suppliers or sub-contractors, cancellation of orders made with suppliers or breakdown of plant, machinery or vehicles then the Company shall be relieved of its obligations and liabilities under the Contract for as long as such fulfilment is prevented. The Buyer will have the right to terminate the Contract if a Force Majeure Event is in continuation for a period equal to or greater than 30 days.

### 6. RISK/TITLE

6.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery or at the notified time for delivery if the Buyer fails for whatever reason to take delivery of the Goods at the notified time. Section 20(2) Sale of Goods Act 1979 shall not apply.

6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provisions of these Terms, title to the Goods (*both legal and equitable*) shall remain with the Company and not pass to the Buyer until full payment with cleared funds of all monies due from the Buyer to the Company under all contracts between the Company and the Buyer has been made, or title is properly vested in some other person by the operation of any statute.

6.3 Until title to the Goods passes, the Buyer shall hold the Goods on a fiduciary basis as the Company's bailee and must store the Goods (*at no cost to the Company*) such that they are easily identifiable as the property of the Company and must not destroy or deface any identifying marks on the Goods or their packaging; and must keep the Goods insured on the Company's behalf for the full price of the Goods against "all risks" to the reasonable satisfaction of the Company and produce the policy of insurance to the Company upon request and must hold all proceeds of such insurance on trust for the Company and shall not mingle them with any other money nor pay the proceeds into an overdraft bank account.

6.4 Until title to the Goods passes, the Buyer shall still be entitled to re-sell, use or otherwise dispose of the Goods in the ordinary course of its business provided that the Buyer shall ensure that the entire proceeds arising by virtue of any such sale, use or disposal shall be held in trust for the Company and shall not be mixed with any other monies or paid into any other overdraft bank account and shall at all times be identifiable as monies belonging to the Company.

6.5 Once payment becomes due, the Company may while the owner of the Goods (*without prejudice to its other rights*) demand the immediate return of the Goods at any time and the Buyer must comply with (*and bear the cost of*) such demand immediately. If the Buyer fails to return such Goods, the Company or its successors in title, and their respective employees and agents, may enter the Buyer's premises (*with or without vehicles*) during normal business hours to remove the Goods (*the cost of which shall be borne by the Buyer*) and/or may sell or

otherwise deal with the Goods.

6.6 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but if the Buyer does so all monies owing by the Buyer to the Company shall (*without prejudice to any other rights or remedy of the Company*) forthwith become due and payable.

## 7. PRICE

7.1 The price of the Goods shall be the Company's quoted price or, if no quotation has been given, the price valid on the date of the Buyer's Order. All prices quoted are valid for 5 days only, after which time they may be altered by the Company without giving notice to the Buyer.

7.2 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (*such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, increase in the costs of labour, raw material, fuel, power, raw material surcharges, steel mill increases, changes in legislation or any statutory charges or any other costs which may affect the price*) any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.

7.3 The Company prices set out in the Company's price lists, quotations, and/or acknowledgement of order are exclusive of any value added, purchase or other taxes but inclusive of reasonable costs of carriage to addresses within Great Britain provided that the Company reserves the right (*at its sole discretion*) to charge for carriage of small orders and/or of any orders to geographically remote areas. Such taxes and costs shall be payable in addition to the price when the price is due.

7.4 Unless otherwise agreed in writing by the Company, the Company shall be entitled to select the basis on which to charge for the Goods, and such basis may include charging for the Goods on a calculated basis taking into account any usual industry standard tolerances applicable to such Goods, including the weight, length, thickness or quality of Goods.

## 8. PAYMENT

8.1 The Company may invoice the Buyer for the Goods at any time after delivery of the Goods and Goods delivered in instalments may be invoiced separately provided that if delivery of Goods is postponed at the request or by the default of the Buyer then the Company may submit its invoice at any time after the Goods are ready for delivery or would have been ready in the ordinary course but for the request or default on the part of the Buyer.

8.2 Buyers who have been granted by the Company (*in its sole discretion*) a credit account facility shall pay the Contract price within 30 days from the end of the month in which the Goods are delivered. The Company may (*in its sole discretion*) amend the terms of or withdraw such credit account facility at any time without notice with immediate effect and upon such withdrawal all amounts due or accruing to the Company (*under the Contract or otherwise shall become immediately payable notwithstanding any other condition*).

8.3 Buyers who have not been granted a credit account facility shall pay the Contract price at the same time as placing an Order.

8.4 Payment shall only be deemed received by the Company from the Buyer and an Order will only be processed upon receipt by the Company of cleared funds. Payment shall be made in full without any deduction, set off or abatement on any grounds. The Company may appropriate any payment made by the Buyer to any outstanding invoice. The Company may bring an action for the price of the Goods even though the property in them may not have passed to the Buyer.

8.5 Time for payment of the Contract price (*including, without limit, any costs or charges payable pursuant to condition 4.3*) shall be of the essence. If the buyer fails to make any payment on the due date, then without prejudice to any other right or remedy available to the Company, the company shall be entitled to:

8.5.1 cancel the Contract or suspend delivery of the Goods;

8.5.2 appropriate any payment made by the Buyer to such of the Goods (*or the goods supplied under any other contract between the Buyer and the Company*) as the Company may think fit (*notwithstanding any purported appropriation by the Company*); and

8.5.3 charge the Buyer interest (*both before as well as after any judgment*) on any outstanding amount at the annual rate of eight per cent above the base lending rate of Barclays Bank plc from time to time, until the Contract price and/or any costs and/or charges are paid in full. The Buyer shall indemnify the Company against all expenses and legal costs incurred by the Company in recovering overdue amounts. The Company reserves the right to claim interest under the Late Payment of Commercial Debt (*Interest*) Act 1998.

## 9. QUALITY

9.1 Subject to condition

9.2 The Company warrants that all Goods shall upon delivery and for a period of 90 days thereafter meet the specification, grade, weight and/or quantity set out in the Contract and all conditions, warranties or other terms whether express or implied, statutory or otherwise, inconsistent with this condition 9.1, are hereby expressly excluded to the fullest extent permitted by law.

9.2 The warranty given in condition 9.1 will not apply:

9.2.1 where the defect complained of arises from any drawing, design, specification, instruction or IPR supplied by the Buyer;

9.2.2 where the defect complained of arises from fair wear and tear, wilful damage, the Buyer's negligence, abnormal working conditions, or misuse or alteration or repair of the Goods without the Company's approval or arises from any failure to follow the Company's instructions (*whether oral or in writing or whether relating without limit to the fabrication, operation, use or maintenance of the Goods*), or misuse or alteration or repair of the Goods without the Company's approval;

9.2.3 if the Company or its agents is not given a reasonable opportunity to safely inspect the Goods;

9.2.4 if the total price for the Goods has not been paid by the due date for payment;

9.2.5 to any parts, materials or equipment not manufactured by the Company, in respect of which the Buyer shall only be entitled to the benefit of any warranty or guarantee as is given by the manufacturer to the Company.

9.3 The obligations of the Company under the Contract are limited such that in the event of a breach by the Company of the warranty in condition 9.1 or any defect in any Goods, the Company shall only be obliged (*and shall have no further liability in contract, negligence or otherwise for any defect in quality of the Goods or fitness for purpose of the Goods*) at its option either to credit the price (*if already paid*) attributable to the faulty Goods or repair, or replace the faulty Goods or provided that such Goods are returned to the Company in their delivered state at the Buyer's expense if so requested by the Company within 7 days from the date of their delivery. Any replacement Goods will be guaranteed on the terms set out in this condition 9 for the unexpired portion of the 90 days.

## 10. LIABILITY

10.1 Nothing in these conditions shall exclude or limit the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.

10.2 The Company shall not be liable to the Buyer in contract, tort (*including negligence or breach of statutory duty*) or otherwise howsoever and whatever the cause thereof for any: (i) economic loss of any kind whatsoever, or (ii) loss of profit, business contracts, revenues or anticipated savings, or (iii) damage to the Buyer's reputation or goodwill, or (iv) loss resulting from any claim made by any third party, or (v) special, indirect or consequential loss or

damage of any nature whatsoever.

10.3 Without prejudice to condition 9.3, 10.1 and 10.2 the Company's liability in contract tort, (*including negligence or breach of statutory duty*), misrepresentation or otherwise arising by reason of or in connection with the Contract shall be limited to the greater of the Contract price or the amount received by the Company for the claim under its insurance policy covering such risks provided that nothing in this condition shall oblige the Company to obtain any insurance or claim upon any insurance which it holds. The Buyer acknowledges that delay in notifying any claim may prevent the Company recovering any money under such policy.

10.4 The Buyer warrants that the use by the Company of any IPRs, designs, specifications, drawings or other materials or information of any nature provided to the Company by the Buyer pursuant to an order shall not infringe any third party's IPRs. If any claim is brought or threatened against the Company in respect of such an infringement the Company shall be entitled to suspend the delivery of the Goods to the Buyer, and the Buyer shall indemnify and keep indemnified the Company against all actions, claims, costs, demands, expenses and liabilities of whatsoever nature suffered or incurred by the Company as a result of any such claim or threatened claim brought against the Company.

10.5 Nothing in these conditions shall be construed as a representation or warranty by the Company that the design, manufacture, use or sale of the Goods is not an infringement of any third party's IPRs.

## 11. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

11.1 The Buyer shall not, under any circumstances acquire any right in or to any of the IPRs (*including, without limitation, copyright*) subsisting in, resulting from or relating to the Goods, or any documents, drawings and/or specifications relating thereto supplied by the Company to the Buyer in connection with the Goods, unless otherwise expressly agreed by the Company in writing. If the Buyer shall in any way acquire any such rights then the Buyer shall immediately inform the Company and shall forthwith take such steps as may be required by the Company to assign such rights or vest such title in the Company.

11.2 The Company shall have the right to apply any trade marks, trade names and/or service marks to the Goods. The Buyer acknowledges that no rights are granted to the Buyer by the use by the Buyer of such trade marks, trade names and/or service marks. The Buyer shall not deface, remove or obliterate any trade marks, trade names or logos applied by the Company on or in relation to the Goods.

11.3 Where the Goods are not manufactured by the Company, the Company gives no assurance or guarantee that the sale or use of the Goods will not infringe the IPRs of any third party.

11.4 The Buyer shall keep confidential and not use, without the prior written consent of the Company, all or any information including without limit, those (*as referred to in condition 11.1*) supplied by the Company to the Buyer or disclosed to or obtained by the Buyer pursuant to or as a result of the Contract, and shall not divulge the same to any third party except to the extent that any such information is or becomes public through no fault of the Buyer, or disclosure of the same is required by law or by any other governmental or other regulatory body.

## 12. TERMINATION

Without prejudice to any of its other rights the Company may immediately terminate the Contract and demand payment of any amount due or accruing to the Company whether under the Contract or otherwise, re-sell the Goods and/or withhold or cancel any deliveries if any of the following occurs or is likely to occur:

12.1 the Buyer is in breach of any of its obligations under the Contract which, if capable of remedy, the Buyer has not remedied within 30 days of receiving written notice from the Company; or

12.2 the Buyer is or becomes Insolvent or the Buyer suffers a distress or execution or other legal process to be levied or enforced or sued upon or against any part of the property, assets or revenue of the Buyer which is not discharged or stayed within seven days or the Buyer ceases or threatens cease to carry on business.

## 13. GENERAL

13.1 The Buyer hereby consents to the Company using any information provided by the Buyer for any purposes connected with the supply of goods under the contract, including, without limitation, the carrying out of a credit check on the Buyer, arranging credit insurance, processing payment by the Buyer, enforcing the Buyer's obligations under the contract and carrying out its own obligations under the contract.

13.2 Any notice required or permitted to be given by either party to the other under these Terms shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

13.3 The failure to exercise or delay in exercising by the Company of a right or remedy provided by the Contract or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies.

13.4 The Buyer shall not be entitled to assign or sub-contract any of its rights or the obligations under the Contract, without the prior written consent of the Company. The Company may assign, license or sub-contract all or any part of its rights or obligation under the Contract without the Buyer's consent.

13.5 The conditions contain the whole agreement between the Company and the Buyer. All other understandings, agreements, warranties, conditions, terms or representations, whether express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law

13.6 The Buyer shall be responsible for complying with all relevant laws, bylaws, regulations, orders, directions, codes of practice or requirements of any statutory, public, local or other competent authority or court of competent jurisdiction applicable to the storage, sale, marketing, provision and use of the Goods after delivery by the Company.

13.7 If any provision of these Terms is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Terms and the remainder of the provision in question shall not be affected thereby.

13.8 A person who is not party to these conditions shall have no right under the Contracts (right of Third Parties) Act 1999 to enforce any conditions of these Terms. This condition does not affect any right or remedy of any person which exists or is available otherwise than pursuant to such Act. 13.9 The Contract shall be construed in accordance with and governed in all aspects by English Law and both parties irrevocably submit to the exclusive jurisdiction of the English Courts.