

1. These Terms and Conditions (**Conditions**) apply to the Contract to the exclusion of any and all other terms that Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, and shall apply to all subsequent sales by Seller to Buyer whether expressly stated or not. In the event of any discrepancy between these Conditions and the terms of the Sales Confirmation, the terms of the Sales Confirmation shall prevail.

## 2. INTERPRETATION

- 2.1. The following definitions apply in these Conditions.

- 2.1.1. **Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 2.1.2. **Conditions:** these terms and conditions as amended from time to time
- 2.1.3. **Contract:** the contract between Seller and Buyer for the supply of Goods contained in the Sales Confirmation together with these Conditions.
- 2.1.4. **Delivery:** The point at which risk transfer to the Buyer, defined in accordance with Incoterms
- 2.1.5. **Delivery Location:** The place of Delivery specified in the Sales Confirmation.
- 2.1.6. **Goods:** the goods (or any part of them) set out in the Sales Confirmation.
- 2.1.7. **Sales Confirmation:** The document recording the agreement between Buyer and Seller to sell and purchase the Goods which may be in the form of a formal document, or an email from a Party accepting an Order from Buyer, or Offer from Seller.
- 2.1.8. **Specification:** The specification for the Goods stated in the Sales Order/Confirmation.
- 2.1.9. **Order:** Buyer's order for the purchase of Goods
- 2.1.10. **Offer:** Seller's offer for the supply of Goods
- 2.1.11. **Storage Period:** any period specified in Sales Confirmation as included in the price where Goods stored await collection from Buyer

## 3. BASIS OF CONTRACT

- 3.1. 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. Buyer 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 based on any statement in the Contract.
- 3.2. Any quotation given by Seller shall not constitute an Offer unless specified as such.
- 3.3. Buyer shall have no right to terminate the Contract for any reason prior or subsequent to Delivery except as specified in Clause 10.

## 4. QUALITY AND QUANTITY

- 4.1. Mill Test Certificate shall be final and binding for all purposes under the Contract.
- 4.2. Seller reserves the right to amend the Specification if required by any applicable statutory or regulatory requirement, upon notice to Buyer.
- 4.3. Seller warrants that on Delivery the Goods shall conform in all material respects with their description and any applicable Specification, **and all other conditions, warranties or terms express or implied by statute or otherwise are expressly excluded from the Contract to the fullest extent permissible by law. Seller gives no warranty that the Goods shall be merchantable or fit for any specific purpose. Buyer shall satisfy himself that the Goods are suitable for any product or application for which they are to be used.**
- 4.4. The weights ascertained either by the producer of the Goods or on a tested weighbridge at Seller's option shall be final and binding on both parties. The number of pieces stated in Seller's invoice shall not be binding where Goods are charged according to weight.
- 4.5. The quantity of Goods actually delivered may vary from the quantity specified in the Contract and a variation of not more than plus or minus ten per cent from such quantity shall not constitute a breach of Seller of his obligations under the Contract.
- 4.6. Where Specification(s) or instructions relating to manufacture or delivery are to be supplied by Buyer, these should be provided to Seller on demand and, if not so provided, Seller may at its option either postpone for a reasonable time the delivery date for the Goods or terminate the Contract and claim damages for all losses incurred as a result. If Buyer has prepared the Specification, it will be responsible for the Specification's accuracy and completeness.

**5. CLAIMS AND LIMITATION OF LIABILITY.**

- 5.1. Buyer shall notify Seller of any defect in the Goods within 14 days of Delivery, or in respect of latent defects only: within 10 days of any latent defect becoming apparent or within 10 weeks of Delivery whichever is earlier. Any claims submitted after these deadlines shall be invalid.**
- 5.2.** All claim notifications must be accompanied by an independent assessors' report, detailing the alleged defects in the Goods.
- 5.3.** Seller shall be permitted to inspect the Goods and if the Goods are found not to conform in all material respects with their description and or the Specification, Seller shall, at its sole option, repair or replace the defective Goods, or refund the price paid for the defective Goods less the value of the defective Goods, which shall be Buyers' sole remedy for any claims for defective Goods.
- 5.4.** No claims will be accepted where:
- 5.4.1.** Buyer makes any further use of such Goods after giving a claim notice; or
  - 5.4.2.** the defect arises out of Buyer's failure to follow Seller's written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or  
or
  - 5.4.3.** Buyer alters or repairs such Goods without the written consent of Seller; or
  - 5.4.4.** the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions; or
  - 5.4.5.** the Goods differ from their description or the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory standards.
  - 5.4.6.** The alleged defect is light atmospheric rust.
- 5.5.** The restrictions on liability in this Clause apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 5.6.** Nothing in the Contract limits any liability which cannot legally be limited, including liability for death or personal injury caused by negligence and fraud or fraudulent misrepresentation.
- 5.7.** Seller's liability for failure to deliver the Goods shall be limited to the cost of obtaining replacement goods of similar description and quality in the cheapest market available, less the Contract price of the Goods. Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or Buyer's failure to provide Seller with adequate delivery instructions for the Goods or any relevant instruction related to the supply of the Goods.
- 5.8.** Seller's total liability for all Claims shall not in any event exceed the Contract price of the Goods.
- 5.9.** Under no circumstances shall Seller be liable for loss of profits; loss of sales or business; loss of agreements or contracts; loss of anticipated savings; loss of or damage to goodwill; and indirect, special or consequential loss or damages.

**6. DELIVERY AND ACCEPTANCE OF THE GOODS**

- 6.1.** Unless otherwise specified in the Sales Confirmation, Delivery shall occur in accordance with the relevant Incoterms specified.
- 6.2.** Where Goods are to be collected by Buyer from the Delivery Location:
- 6.2.1.** Delivery of all Goods is effected from the moment they arrive at the Delivery Location and/or made available to Buyer for collection, irrespective of when Buyer chooses to collect.
  - 6.2.2.** Goods must be called off in full truckloads
  - 6.2.3.** Goods will be stored at Seller's expense for the Storage Period provided in the Contract Confirmation.
  - 6.2.4.** Goods collected within the Storage Period will be invoiced upon collection.
  - 6.2.5.** Any Goods remaining uncollected at the end of the free Storage Period will be invoiced in full and storage charges applied until the balance is cleared.
  - 6.2.6.** Any Goods not collected and not paid for within the Storage Period shall remain at Buyer's risk, and in the event Seller's invoice is not paid within 30 days, Seller shall be entitled to either:
    - (a) Continue to store the Goods without liability at the cost and risk of Buyer; or
    - (b) Resell or otherwise dispose of the Goods and charge Buyer for all losses incurred as a result of Buyer's failure to take Delivery and pay for Goods.
- 6.3.** Any dates quoted for Delivery or Collection of the Goods are approximate only, and the time of Delivery is not of the essence unless previously agreed by Seller in writing. Seller shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or Buyer's failure to provide Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.4.** Seller may deliver the Goods by instalments, which may be invoiced and paid for separately.. Any delay in delivery or defect in an instalment shall not entitle Buyer to cancel any other instalment.

## **7. TITLE AND RISK**

- 7.1.** Risk in the Goods shall pass to Buyer on Delivery in accordance with clause 6.
- 7.2.** Title to the Goods shall pass to Buyer only upon receipt of payment in full for the Goods.
- 7.3.** Until title to the Goods has passed to Buyer, Buyer shall:
  - 7.3.1.** store the Goods separately from all other goods held by Buyer so that they remain readily identifiable as Seller's property and maintain the Goods in satisfactory condition and keep them insured against all risks for their full price on Seller's behalf from the date of Delivery.
  - 7.3.2.** not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 7.3.3.** notify Seller immediately if it becomes subject to any of the insolvency events listed in condition 12.1; and
  - 7.3.4.** give Seller such information relating to the Goods as Seller may require from time to time.
- 7.4.** If before title to the Goods passes to Buyer, Buyer becomes subject to any form of insolvency event or Seller reasonably believes that any such event is about to happen and notifies Buyer accordingly, then, without limiting any other right or remedy Seller may have, Seller may at any time require Buyer to immediately pay all invoices raised (whether outstanding or not yet fallen due) and/or deliver up the Goods and, if Buyer fails to do so, enter any premises of Buyer or of any third party for the purposes of effecting Seller's retention of title.
- 7.5.** 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 Seller, but if Buyer does so all monies owing by Buyer to Seller in respect of the Goods shall (without prejudice to any other right or remedy of Seller) forthwith become due and payable.
- 7.6.** Seller shall be entitled to maintain an action for the price of any Goods notwithstanding that title in them has not passed to Buyer and it shall not be a defence to such an action that title has not so passed.

## **8. CHARGES AND PAYMENT**

- 8.1.** The price for Goods:
  - 8.1.1.** shall be the price set out in the Sales Confirmation; and
  - 8.1.2.** is exclusive of VAT and any other sales taxes and customs duties which shall be for the account of Buyer
  - 8.1.3.** unless otherwise specified in the Sales Confirmation, shall be exclusive of all costs and charges of packaging, insurance, transport of the Goods, which shall be invoiced to Buyer at cost.
- 8.2.** Seller reserves the right to increase the price of the Goods in the event of:
  - 8.2.1.** any request by Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Goods Specification; or
  - 8.2.2.** any delay caused by any instructions of Buyer in respect of the Goods or failure of Buyer to give Seller adequate or accurate information or instructions in respect of the Goods.
- 8.3.** All taxes on Goods imposed in the country of delivery are for Buyer's account.
- 8.4.** Unless otherwise specified in the Sales Confirmation, Buyer shall pay each invoice submitted by Seller within 30 days of the date of the invoice in full and in cleared funds to a bank account nominated in writing by Seller, and time for payment shall be of the essence of the Contract.
- 8.5.** If Buyer fails to make a payment due to Seller under the Contract by the due date, then, without limitation to Seller's other remedies:
  - 8.5.1.** Seller may issue an accelerated invoice for all Delivered, unpaid for Goods due for immediate payment; and
  - 8.5.2.** , Buyer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
  - 8.5.3.** Buyer shall pay additional interest at a rate of 25%/annum on any sums which remain unpaid 60 days after Invoice Due Date to reflect the additional financing cost incurred by Seller for long term unpaid debts.
- 8.6.** 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).

## **9. TERMINATION**

- 9.1.** Without affecting any other right or remedy available to it, either Party may suspend or terminate the Contract with immediate effect by giving written notice if the other Party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 5 days after receipt of notice in writing to do so.
- 9.2.** Either party may terminate the Contract as provided in Clause 10.
- 9.3.** Without affecting any other right or remedy available to it, Seller may suspend or terminate the Contract with immediate effect by giving written notice if;
  - 9.3.1.** Buyer 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), 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 or, if the step or action is taken in another jurisdiction, in

connection with any analogous procedure in the relevant jurisdiction;

- 9.3.2. Buyer suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 9.3.3. Buyer's financial position deteriorates to such an extent that in Seller's opinion Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.4. Without affecting any other right or remedy available to it, Seller may either suspend performance or terminate the Contract with immediate effect by giving written notice to Buyer if Buyer fails to pay any amount due under the Contract on the due date for payment, or Buyer becomes subject to any of the events in Clause 9.3, or Seller reasonably believes that Buyer is about to become subject to any of them.
- 9.5. On termination of the Contract, Buyer shall immediately pay all unpaid invoices and interest owing to Seller
- 9.6. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.7. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.

## 10. FORCE MAJEURE

- 10.1. 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 including, without limitation, acts of God, governmental intervention or restriction, prohibition of exports and/or imports, breakdown of machinery, problems with supply of raw materials, imposition of any taxes, levies or duties after the date of the contract, non-performance by the mill or Seller's supplier or a ship owner, war, riots, strikes or trade disputes, pandemics, shortages of raw materials, extreme weather events and any such similar event (a **Force Majeure Event**). The Party directly affected by the Force Majeure Event (Directly Affected Party) shall inform the other Party (the Non-Affected Party) immediately of the occurrence of the Force Majeure Event. The Directly Affected Party shall be entitled to suspend obligations affected by the Force Majeure Event, and the Non-Directly Affected Party may suspend any corresponding obligations, pending the cessation of the Force Majeure Event, except any obligations to make any payments due hereunder. Under no circumstances shall any payment due hereunder be suspended due to Force Majeure. Where Delivery is delayed by Force Majeure for a period of up to 3 months, Buyer shall extend any letter of credit to allow Delivery. Where Delivery is delayed by more than 3 months, the Non-Affected Party may terminate the Contract without liability to either Party.

## 11. GENERAL

- 11.1. Seller 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. Buyer 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.
- 11.2. Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by email to the address specified in the Sales Confirmation. Any notice shall be deemed to have been received at 9.00 am on the Business Day after posting or transmission.
- 11.3. 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.
- 11.4. A waiver of any right or remedy under the Contract or by law or variation of the Contract is only effective if given in writing and shall not be deemed a waiver or variation of any subsequent right or remedy. 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.

## 12. GOVERNING LAW AND JURISDICTION.

- 12.1. Any dispute arising out of or in connection with this Contract including any questions regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration before a sole arbitrator under the LCIA Rules, which Rules are deemed to be incorporated by reference into this Clause. The seat, or legal place of arbitration shall be London in accordance with the Arbitration Act 1996. The language to be used shall be English.
- 12.2. The Contract shall be governed by the substantive law of England and Wales.