



STEEL TRADERS (MIDLANDS) LIMITED

TERMS AND CONDITIONS OF SALE OF MATERIALS

The customer's attention is drawn in particular to the provisions of clause 9

1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 11.6.

Contract: the contract between the Seller and the Customer for the sale and purchase of the Materials in accordance with these Conditions.

Customer: the person or firm who purchases the Materials from the Seller.

Force Majeure Event: has the meaning given in clause 10.

Materials: the materials (or any part of them) set out in the Order.

Order or Purchase Order: the order by the Customer for the Materials, as set out in the purchase order form of the Customer.

Sales Order: the Seller's written acceptance of the Order.

Specification: any specification for the Materials including but not limited to as set out in the Sales Order, including any related plans and drawings (if any), that are agreed in writing by the Customer and the Seller.

Seller: Steel Traders (Midlands) Limited (registered in England and Wales with company number 12414423).

1.2 Construction. In these Conditions, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality)
- (b) A reference to a party includes its personal representatives, successors or permitted assigns
- (c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted

- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms
- (e) A reference to **writing** or **written** includes faxes and e-mails

2. BASIS OF CONTRACT

- 2.1 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.
- 2.2 The Order constitutes an offer by the Customer to purchase the Materials in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in writing in the Contract.
- 2.5 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the catalogues or brochures of the Seller are produced for the sole purpose of giving an approximate idea of the Materials described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 A quotation for the Materials given by the Seller shall in no way constitute an offer. The Customer's Order is the offer as provided at sub-clause 2.2 above and the Seller is entirely at liberty to accept that offer (or not) at its absolute discretion.
- 2.7 Any Purchaser's terms and conditions are hereby rejected

3. MATERIALS

- 3.1 The Materials are described in the Sales Order.
- 3.2 The Seller reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. DELIVERY

- 4.1 The Seller shall ensure that:
 - (a) each delivery of the Materials is accompanied by a delivery note which shows the date of the Sales Order, specifying the relevant Steel standard applicable to the Materials per bundle of Materials, all relevant reference numbers of the Customer and the Seller, the type and quantity of the Materials (including the code number of the Materials, where applicable), special storage instructions (if any), and
 - (b) if the Seller requires the Customer to return any packaging materials to the Seller, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Seller shall

reasonably request. Returns of packaging materials shall be at the expense of the Seller.

4.2 The Customer shall either:-

- (a) Take delivery by way of its collection of the Materials (**Collection**) from the location specified in the Sales Order or as may be otherwise advised by the Seller prior to delivery or
- (b) accept delivery of the Materials carried by the Seller (**Carriage**), at the Customer's premises

(in each case, **Delivery Location**)

within such time period as is specified in the Sales Order after the Seller has notified the Customer that the Materials are available or such other reasonable period as may be otherwise advised by the Seller

4.3 Delivery of the Materials shall be completed, in the case of Collection, on the completion of loading of the Materials at the sellers warehouse/port storage facility. and, in the case of Carriage, on the completion of un-loading of the Materials at the Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Seller shall not be liable for any delay in delivery of the Materials, including but not limited to any delay, that is caused by a Force Majeure Event or the failure of the Customer to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Materials.

4.5 If the Seller fails to deliver the Materials at all the Seller shall have no liability for any such failure to the extent that such failure is caused by a Force Majeure Event or the failure of the Customer to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Materials.

4.6 If the Seller fails to deliver the Materials at all for any reason other than provided at clause 4.5 its liability shall in any event be limited to an obligation to refund the price of the Materials. This would of course only arise where payment has been made in advance.

4.7 If the Customer fails to accept or take delivery of the Materials within the time period specified in the Sales Order after the Seller has notified the Customer that the Materials are available, or within such other reasonable period as may be otherwise advised by the Seller, then, except where such failure or delay is caused by a Force Majeure Event or the failure of the Seller to comply with its obligations under the Contract:

- (a) delivery of the Materials shall be deemed to have been completed at 9:00 am on the 2 Business Day following the day on which the Seller notified the Customer that the Materials were ready; and
- (b) the Seller shall store the Materials until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

4.8 If within the time period specified in the Sales Order after the Seller has notified the Customer that the Materials are available or such other reasonable period as may be otherwise advised by the Seller the Customer has not accepted or taken delivery of them, the Seller may resell or otherwise dispose of part or all of the Materials and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Materials or charge the Customer for any shortfall below the price of the Materials.

- 4.9 The Customer shall not be entitled to reject the Materials if the Seller delivers up to and including 10% more or less than the quantity of Materials ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Materials was delivered, and subject to receipt of such reasonable evidence as the Seller may require.
- 4.10 The Seller may deliver the Materials 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. QUALITY

5.1 The Seller warrants that, subject to the provisions of sub-clause 5.2 herein, on delivery the Materials shall:

- (a) conform in all material respects with the Specification; and
- (b) be free from material defects in design, material and workmanship.

5.2 Deviations from Specifications as to dimension, weight or analysis are permitted within the range allowed by the applicable steel standards to which the Materials are supplied and, where no standard is specified on the Sales Order, as is customary industry practice.

5.3 Subject to clause 5.4, if:

- (a) the Customer gives notice in writing to the Seller within a reasonable time of discovery that some or all of the Materials do not comply with the warranty set out in clause 5.1;
- (b) the Seller is given a reasonable opportunity of examining such Materials; and
- (c) the Customer (if asked to do so by the Seller) returns such Materials to a location specified by the Seller within a reasonable distance at the cost of the Customer,

the Seller shall, at its option, repair or replace the defective Materials, or refund the price of the defective Materials in full.

5.4 The Seller shall not be liable for failure of the Materials to comply with the warranty set out in clause 5.1 in any of the following events:

- (a) the Customer makes any further use of such Materials after giving notice in accordance with clause 5.2; or
- (b) the defect arises because the Customer failed to follow the oral or written instructions of the Seller as to the storage, commissioning, installation, use and maintenance of the Materials or (if there are none) good trade practice regarding the same; or
- (c) the defect arises as a result of the Seller following any drawing, design or Specification supplied by the Customer; or
- (d) the Customer alters or repairs such Materials without the written consent of the Seller; or
- (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

- (f) the Materials differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.5 Except as provided in this clause 5, the Seller shall have no liability to the Customer in respect of the failure of the Materials to comply with the warranty set out in clause 5.1.
- 5.6 The terms implied by sections 13 to 15 of the Sale of Materials Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 5.7 These Conditions shall apply to any repaired or replacement Materials supplied by the Seller.

6. TITLE AND RISK

- 6.1 The risk in the Materials shall pass to the Customer on completion of delivery.
- 6.2 Title to the Materials shall not pass to the Customer until the Seller has received payment in full (in cash or cleared funds) for:
 - (a) the Materials; and
 - (b) any other materials or services that the Seller has supplied to the Customer in respect of which payment has become dueexcept to the extent (if at all) that:
 - (c) the Materials have been resold in the ordinary course of its business; or
 - (d) irrevocably incorporated into another product in the ordinary course of its business; or,
 - (e) notwithstanding the obligations set out in sub-clause 6.3 herein, the Materials are not sufficiently identifiable as the property of the Seller to enable the Materials to be delivered or recovered pursuant to the provisions of sub-clause 6.4 below.
- 6.3 Until title to the Materials has passed to the Customer, the Customer shall:
 - (a) hold the Materials on a fiduciary basis as the bailee of the Seller;
 - (b) store the Materials separately from all other materials held by the Customer so that they remain readily identifiable as the property of the Seller;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Materials;
 - (d) maintain the Materials in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - (e) notify the Seller immediately if it becomes subject to any of the events listed in clause 8.2; and
 - (f) give the Seller such information relating to the Materials as the Seller may require from time to time,

but the Customer may resell or use the Materials in the ordinary course of its business.

- 6.4 If before title to the Materials passes to the Customer the Customer becomes subject to any of the events listed in clause 8.2, or the Seller reasonably believes that any such event is

about to happen and notifies the Customer accordingly, then, provided that the Materials have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Seller may have, the Seller may at any time require the Customer to deliver up the Materials and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Materials are stored in order to recover them.

7. PRICE AND PAYMENT

- 7.1 The price of the Materials shall be the price set out in the Sales Order, or, if no price is quoted, the price set out in the published price list of the Seller in force as at the date of delivery.
- 7.2 The Seller may, by giving notice to the Customer at any time up to 30 Business Days before delivery, increase the price of the Materials to reflect any increase in the cost of the Materials that is due to:
- (a) any factor beyond the control of the Seller (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or
 - (b) any request by the Customer to change the delivery date(s)], quantities or types of Materials ordered, or the Specification; or
 - (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Seller adequate or accurate information or instructions.
- 7.3 The price of the Materials is exclusive of the costs and charges of packaging, insurance and transport (carriage) of the Materials and storage (unless otherwise expressly stated in the Sales Order), and which shall be invoiced to the Customer.
- 7.4 The price of the Materials is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Seller, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Materials.
- 7.5 The Seller may invoice the Customer for the Materials on or at any time after delivery or collection.
- 7.6 The Customer shall pay the invoice in full and in cleared funds within 60 Business Days from the end of the month of invoice. Payment shall be made to the bank account nominated in writing by the Seller. Time of payment is of the essence.
- 7.7 If the Customer fails to make any payment due to the Seller under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the base rate of Barclays Bank PLC from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.8 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Seller to the Customer.

8. TERMINATION AND SUSPENSION

8.1 If the Customer becomes subject to any of the events listed in clause 8.2, the Seller may terminate the Contract with immediate effect by giving written notice to the Customer.

8.2 For the purposes of clause 8.1, the relevant events are:

- (a) the Customer suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
- (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;;
- (d) (being an individual) the Customer is the subject of a bankruptcy petition or order;
- (e) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- (g) (being a company) the holder of a qualifying charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- (i) any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 8.2(a) to clause 8.2(h) (inclusive);
- (j) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;
- (k) the financial position of the Customer deteriorates to such an extent that in the opinion of the Seller the capability of the Customer to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

- (l) (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 8.3 Without limiting its other rights or remedies, the Seller may suspend provision of the Materials under the Contract or any other contract between the Customer and the Seller if the Customer becomes subject to any of the events listed in clause 8.2(a) to clause 8.2(i), or the Seller reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 8.4 On termination of the Contract for any reason the Customer shall immediately pay to the Seller all of the outstanding unpaid invoices and interest of the Seller.
- 8.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 8.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

9. LIMITATION OF LIABILITY

- 9.1 Nothing in these Conditions shall limit or exclude the liability of the Seller for:
 - (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - (b) fraud or fraudulent misrepresentation; or
 - (c) breach of the terms implied by section 12 of the Sale of Materials Act 1979; or
 - (d) defective products under the Consumer Protection Act 1987; or
 - (e) any matter in respect of which it would be unlawful for the Seller to exclude or restrict liability.
- 9.2 Subject to clause 9.1:
 - (a) the Seller shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for:-
 - (i) fitness for a specific purpose save where that specific purpose is clearly specified on the Sales Order or is otherwise expressly included within the description of the Materials themselves, such as the description "scaffolding tubes"
 - (ii) any loss of profit, or
 - (iii) any indirect or consequential loss
 - (iv) indirect or consequential loss shall include, but is not limited to:-
 - a) labour costs;
 - b) crane hire;
 - c) other plant hire;

- d) buying in of replacement material at higher price.
- e) management time, surveyors time and costs
- f) inspection and testing fees

arising under or in connection with the Contract; and

- (b) the total liability of the Seller to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100 % of the price of the Materials the subject matter of the liability claim.

10. FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A Force Majeure Event means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers, carriers or subcontractors.

11. GENERAL

11.1 Assignment and other dealings.

- (a) The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- (b) The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

11.2 Notices.

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first-class post or other next working day delivery service, commercial courier, fax or e-mail.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 11.2(a); 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; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one Business Day after transmission.
- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

11.3 Severance.

- (a) 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.
- (b) If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

11.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

11.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights to enforce its terms.

11.6 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is in writing and signed by the Seller.

11.7 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

11.8 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).