

# All Steels Trading Limited Terms and Conditions of Sale 1<sup>st</sup> April 2006

## 1. Interpretation

1.1 The following Conditions shall apply so far as the same are not varied by any special terms or conditions agreed in writing between the Seller and the Buyer. No variation of the Contract or these Conditions will become binding unless confirmed in writing by the Seller and any provision of the Buyer's order or conditions of purchase which is inconsistent with these Conditions shall be of no effect.

1.2 In these Conditions:

'BUYER' means the person who accepts a written quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller; reference to "Buyer" includes the successors and assigns of the Buyer;

'CONDITIONS' means the standard terms and conditions of sale set out in this document subject to any special terms and conditions agreed in writing between the Buyer and the Seller;

'CONTRACT' means the contract for the purchase by the Buyer and sale by the Seller of the Goods and shall be deemed to incorporate and be subject to the Conditions;

'GOODS' means the goods (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with the Contract;

'INCOTERMS' means the edition of the International Rules for the Interpretation of Trade Terms in force at the date of the contract which shall be deemed to apply to the interpretation of the Contract;

'SELLER' means the party who is to supply the Goods pursuant to the Contract; reference to Seller includes the successors and assigns of the Seller;

'WRITING' includes facsimile and e-mail transmission.

1.3 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.4 If any provision of the Contract is held by the Court or by the arbitrator to be void, illegal, unenforceable or otherwise invalid in whole or in part, such provision shall be deemed not to form part of the Contract but the remainder of the Contract shall continue to be fully binding.

## 2. Delivery

2.1 Any dates referred to or quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any loss or damage whatsoever due to delivery of the Goods upon a different date or the expiry of any delivery period referred to in the Contract or quotation. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing.

2.2 Where:

2.2.1 the Contract provides (or the Seller and the Buyer agree in writing) that the Goods are to be collected or called forward by the Buyer and the Buyer fails to do so within 7 days after the Buyer is notified in writing by the Seller that they are ready for collection or calling forward, or

2.2.1.2 within the period (if any) as notified by the Seller to the Buyer during which the Seller has arranged for the Goods to be stored at port free of charge to the Buyer awaiting collection by the Buyer, or

2.2.2 the Buyer fails to give to the Seller shipping instructions for the Goods within 7 days before the estimated delivery date, or

2.2.3 the Buyer unreasonably refuses to accept delivery of the Goods, or

2.2.4 the Seller is unable, due to circumstances beyond its control, to make the Goods available for collection by the Buyer or to deliver the Goods by the dates or within the periods specified in the Contract (or as agreed in writing between the Seller and the Buyer)

the Seller shall be entitled to store the Goods (in the open if necessary) at the cost and risk of the Buyer or to sell the Goods at a reasonable price.

2.2.5 Where Condition 2.2.1.2 applies, if the Buyer fails to collect the Goods before the expiry of the free storage period (if any) as notified by the Seller the Buyer shall

2.2.5.1 be responsible for and shall pay the owner or operator of the storage facility any additional storage charges after the expiry of such period, and

2.2.5.2 if the owner or operator of the storage facility is unable or unwilling to extend the storage period, the Buyer shall arrange (at its own cost) alternative storage arrangements, and

2.2.5.3 indemnify the Seller against any claims, costs and expenses of any nature whatsoever which may be incurred by the Seller as a result of failure by the Buyer to collect the Goods within the period (if any) referred to in Condition 2.2.1.2.

2.3 If the Seller indicates within seven days after the estimated delivery date or period that delivery of the Goods has been delayed due to any cause beyond the Seller's reasonable control then the delivery date or period shall be altered as required by the Seller so as to take account of such delay.

2.4 Each part delivery or instalment of the Goods shall be deemed to be sold under a separate contract and no default by the Seller in respect of any such part delivery or instalment shall entitle the Buyer to treat the Contract as repudiated as regards any balance or instalment remaining to be delivered.

2.5 Where the Goods are sold F.O.B. (Incoterms), the Seller's responsibility shall cease immediately the Goods are so placed and the Seller shall be under no obligation to give the Buyer the notice specified in Section 32(3) of the Sale of Goods Act 1979.

2.6 If the Contract provides (or the Seller and the Buyer agree in writing) that the Goods are to be delivered by or on behalf of the Seller, the Seller shall not in any event be liable:

2.6.1 for any loss or damage to the Goods in the course of transit unless the Buyer has **within three working days of the receipt** of the Goods sent to the Seller and the carrier a written notice specifying the loss or damage; or

2.6.2 for non-delivery or non-arrival of the whole or any consignment of the Goods or of any separate package unless the Buyer has, **within seven working days** from the scheduled date of delivery of the Goods sent to the Seller and the carrier a written notice thereof.

## 3. Price and Payment

3.1 Unless otherwise stated in the Contract (or the Seller and the Buyer agree in writing) the Buyer shall pay the Seller within 30 days of the date of the Seller's invoice.

3.2 The Seller will generally invoice at the same time as delivery of the Goods, however if the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods or delivery of the Goods is delayed due to a cause beyond the Seller's reasonable control, the Seller shall be entitled to invoice the Buyer for the Goods (plus any additional costs as stated in the invoice) at any time after the Seller has notified the Buyer that the Goods are ready for collection or the Seller has attempted to deliver the Goods or that delivery has been delayed (as the case may be).

3.3 If the Buyer fails to pay the Seller in compliance with Condition 3.1 the Seller shall be entitled to charge the Buyer interest on a daily basis on overdue payments at the rate of 4% per annum over the base rate of Lloyds TSB Bank plc in force during the period between the date when payment becomes due and the date when payment is made.

3.4 The Buyer shall pay the Seller any increase after the date when the Seller quoted the price for the Goods in relation to insurance, transportation charges, dock charges, duties or taxes providing the Seller, if so requested by the Buyer, provides reasonable evidence of such increase.

3.5 If the Buyer requires and the Seller agrees to deliver the Goods to a place other than that specified in the Contract the Buyer shall pay Seller any additional costs reasonably incurred by the Seller.

3.6 The Buyer shall not without the prior written consent of the Seller (such consent not to be unreasonably withheld) be entitled to withhold payment or set off against of any amount payable to the Seller under the Contract.

3.7 All prices shall be deemed exclusive of value added tax and any other sales taxes or import duties.

## 4. Retention of Title

The risk in the goods shall pass from the seller to the buyer in accordance to Clause 9. However, notwithstanding delivery and the passing of the risk in the goods, title and property in the goods, including full legal and beneficial ownership, shall not pass to the buyer until the seller has received in cash or cleared funds payment in full for all goods delivered to the buyer under this and all other contracts between the seller and the buyer for which payment of the full price of the goods thereunder has not been paid. Payment of the full price of the goods shall include the amount of any interest or other sum payable under the terms of this and all other contracts between the seller and the buyer under which the goods were delivered.

## 5. Force Majeure

5.1 The Seller shall not be liable to the Buyer or any third party or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure is due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, causes beyond the Seller's reasonable control shall include Acts of God, acts, restrictions, regulations, prohibitions or measures of any kind by any governmental or other competent authority, industrial disputes of any kind, fire, explosion, lightning, storm, ice, severe weather conditions, accidents of navigation, acts of terrorism, war, sabotage.

5.2 Any additional Costs (whether direct or indirect) and risks resulting from any cause beyond the Seller's reasonable control shall be borne by the Buyer. Despatch of the Goods is conditional upon payment by the Buyer of such additional costs immediately upon receipt of advice that the Goods or the relevant part of the Goods are ready for despatch.

## 6. Weights or Lengths

The weights or lengths of the Goods shall, at the Seller's option, be ascertained:

6.1.1 by the Seller or by the producer of the Goods, or

6.1.2 on a tested weigh-bridge, or

6.1.3 on a theoretical basis and such ascertainment shall be final and binding on both the Seller and the Buyer except that where the Goods are charged according to weight, the number of pieces stated in the Seller's invoice shall not be binding.

6.2 Where the Contract provides (or the Seller and the Buyer agree in writing) that the Goods are to be delivered by the Seller, the Seller shall not be liable for any discrepancies in the weight between that specified in the Contract (or agreed in writing between the Seller and the Buyer) and the weight as delivered unless the Buyer gives the Seller written notice thereof within seven days of receipt of the Goods and gives the Seller a reasonable opportunity of witnessing and re-weighing the Goods before they have been used, processed or sold.

6.3 The quantity of Goods actually delivered may vary from the quantities specified in the Contract and a variation of not more than plus or minus 10 per cent from such quantities shall not constitute a failure to perform the Contract and no claim alleging such failure shall be made against the Seller in respect of any variation within such limits.

## 7. Acceptance

7.1 The Buyer shall be deemed to have accepted the Goods and it shall be conclusively agreed that the Goods are in accordance with the Contract unless:

7.1.1 The Buyer gives notice in accordance with Conditions 2.6, or 5.2, or 6.2; or

7.1.2 **Within three working days after receipt of the Goods and prior to their use or re-sale**, the Buyer gives written notice to the Seller specifying any alleged non-compliance of the Goods with the Contract which would be apparent on careful inspection or by reasonable testing in all the circumstances and thereafter gives to the Seller a reasonable opportunity to inspect or test the Goods before they are used or re-sold; or

7.1.3 If a defect in the quality or state of the Goods which would not be apparent upon careful inspection or reasonable testing is alleged, the Buyer gives the Seller written notice of such defect forthwith upon its discovery **(and in any event not later than three months after risk of damage to or loss of the Goods has passed to the Buyer in accordance with Condition 8)** specifying the matters complained of and giving the Seller a reasonable opportunity to inspect the Goods

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- before any making good or replacement is undertaken. The Buyer shall not be excused from providing such opportunity by reason only of the incorporation of the Goods in the property of a third party or the location of the Goods in upon or under the premises or land of a third party.
- 7.2 If the Contract provides (or the Seller the Buyer agree in writing) for testing or inspection of the Goods by or on behalf of the Buyer before delivery such testing and inspection shall be the Buyer's final opportunity of examining whether they conform with the Contract. The Buyer shall be conclusively
- 7.3 deemed to have accepted the Goods as being in conformity with the Contract if upon reasonable notice the Buyer does not inspect or test the Goods or if having inspected or tested the Goods the Buyer does not **within seven days thereafter notify the Seller in writing of any claim** that the Goods are not in conformity with the Contract, and specifying the alleged non compliance. The Buyer shall not thereafter be entitled to reject or require replacement of the Goods or to claim compensation in respect of any such non-compliance.
- 7.4 Any dispute between the Seller and the Buyer as to whether any Goods are not in compliance with the Contract shall be referred to arbitration in accordance with Condition 11.6.
- ## 8. Warranties and Liability
- 8.1 Subject to Condition 7.3 the Seller warrants that the Goods shall be substantially in conformity with the description specified in the Contract and that it has good title to the Goods. The Buyer agrees that any other representation or warranty in respect of the Goods (whether express or implied by law or custom or otherwise) is hereby excluded to the fullest extent permitted by law.
- 8.2 Subject to Condition 7.3 the liability of the Seller for failure to comply with warranty in Condition 7.1 shall be limited (save in respect of any non-excludable statutory liability) to replacement of the Goods or at the Seller's sole option refund of the price (or a proportionate part of that price) of any defective Goods (provided always that such price has already been paid) or if such price has not yet been paid to relieve the Buyer of all obligations to pay the same by issue of a credit note in favour of the Buyer in the amount of such price.
- 8.3 Goods sold as "non-prime" are sold in their actual state, as seen, without warranty, with all faults whether or not the Goods have been inspected by the Buyer prior to delivery. Any statement, specification, description or other information provided by the Seller in respect of such Goods is given in good faith but the Seller can accept no responsibility for its accuracy. In no circumstances will the Seller be under an obligation to replace such Goods or entertain any claim whatsoever in respect thereof. If the Buyer shall re-sell such Goods the Buyer shall ensure that a provision in similar form to this Condition is incorporated in the re-sale agreement unless prior to reselling the Goods, the Buyer caused the Goods or such part of the Goods as the Buyer re-sells to comply with a recognised specification or standard.
- 8.4 Where the Goods are either packed or protected in the manner specified in the Contract, or if there is no such specification, delivered with packing or protection which is reasonable in the opinion of the Seller, the Seller shall not be liable for any damage to or deterioration of the Goods during carriage or delivery.
- 8.5 Without prejudice to the foregoing, no statement or undertaking contained in any British Standard, Euronorm, ISO Recommendation, or other standard or technical specification as to the suitability of the Goods for any purpose shall give rise to any legal liability. The Buyer shall satisfy himself or herself that the Goods are suitable for any product or application for which they are to be used.
- 8.6 The Buyer shall indemnify the Seller against all claims, costs and expenses of any nature whatsoever which may arise pursuant to Part 1 of the Consumer Protection Act 1987 or any other product liability in respect of any alleged defect in the Goods.
- ## 9. Risk and Property
- 9.1 Risk of damage to or loss of the Goods shall pass to the Buyer from the occurrence of the first point in time of any of the following events:-
- 9.1.1 the passing of property in the Goods to the Buyer, or
- 9.1.2 physical delivery of the Goods to the Buyer's carrier or to an Independent carrier for the purpose of transmission to the Buyer or its nominee, or
- 9.1.3 physical delivery of the Goods to the delivery address specified in the Contract (or otherwise agreed in writing between the Seller and the Buyer) or
- 9.1.4 if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods, or
- 9.1.5 if the Contract provides (or the Seller and the Buyer agree in writing) that the Goods are to be collected or called forward by the Buyer, from the time when the Seller notifies the Buyer that the Goods are ready for collection or calling forward
- 9.2 The property in the Goods shall not pass to the Buyer until the Buyer has received in cash or cleared funds payment in full of all sums due for Goods supplied by it to the Buyer. If payments received from the Buyer are not stated to refer to a particular invoice the Buyer may appropriate such payments to any outstanding invoice
- 9.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods in a fiduciary capacity and as bailee for the Seller, and shall where practicable keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and clearly marked and identified as the Seller's property. Until that time the Buyer shall only be entitled to resell or use the Goods if it provides evidence to the Seller, in a form reasonably acceptable to the Seller, that the Seller's title to such Goods will be preserved notwithstanding such resale or use.
- 9.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.
- 9.5 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 Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller in respect of the
- Goods shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.
- 9.6 The Seller shall be entitled to maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Buyer and it shall not be a defence to such an action that title has not so passed.
- ## 10. Cancellation
- 10.1 The Seller shall be entitled, without prejudice to his other rights or remedies, either to terminate the Contract or any other contract between the Seller and the Buyer wholly or in part or to suspend any further deliveries under the Contract or any other contract between the Seller and the Buyer in any of the following events:
- 10.1.1 if any debt is due and payable by the Buyer to the Seller but is unpaid; or
- 10.1.2 if the Buyer has failed to provide within the time specified in the Contract (or agreed in writing between the Seller and the Buyer) any letter of credit, bills of exchange or any other security required by the Contract; or
- 10.1.3 if the Buyer has failed to collect or take delivery of any goods under any contract between it and the Seller otherwise than in accordance with the Buyer's contractual rights and obligations; or
- 10.1.4 if the Buyer becomes insolvent or, in the case of a body corporate or a partnership a resolution is passed for its winding up (except solely for the purpose of amalgamation or reconstruction) or an Order of the Court for its winding up is made or a Receiver is appointed (whether administrative or otherwise), or in the case of an individual or partnership, he is or they are adjudicated bankrupt or payment of his or their debts is suspended in whole or in part or the Buyer convenes a meeting of or proposes or enters into any composition or arrangement with its creditors or a comparable act occurs under another jurisdiction; or
- 10.1.5 if the prompt transfer of funds from the country of the Buyer's residence to the country of the Seller's residence is impeded either by Government acts, orders or regulations or by reason of strikes or breakdowns in the banking system in the country of the Buyer's residence; or
- 10.1.6 if the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 10.2 Without prejudice to the preceding Condition 9.1 the Seller shall be entitled to withdraw credit from the Buyer without prior notice or divulgence of reasons.
- ## 11. Data Protection
- 11.1 If and to the extent that the Data Protection Act 1988 applies to the Seller and/or the Buyer each party shall comply with their respective obligations thereunder.
- ## 12. General
- 12.1 The Seller's rights shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver by the Seller in respect of any breach shall operate as a waiver in respect of any subsequent breach.
- 12.2 The Buyer shall indemnify the Seller against all claims, demands, damages, penalties, costs and expenses and other liabilities for which the Seller may become liable by reason of:
- 12.2.1 the infringement or alleged infringement of any patent design trademark or other industrial or other intellectual property rights arising as a result of compliance by the Seller with the Buyer's specifications, or
- 12.2.2 any act, omission or negligence of the Buyer, its servants, agents, employees or sub-contractors.
- 12.3 Subject to Condition 7.2 of the Conditions and to any other provisions of the Contract and to any law applicable to the Contract which operates to render the following provisions of this Condition 11.3 void, unenforceable or otherwise of no legal effect:
- 12.3.1 the Seller shall not be liable for any loss (including but not limited to any loss of profit, business, contracts revenues or anticipated savings), damage (including consequential damage), injury or death under or arising out of the Contract
- 12.3.2 the Seller's liability to the Buyer under or arising out of the Contract (in contract, tort or negligence) shall be limited to the price of the Goods.
- 12.4 Any notice under this Contract shall be sufficiently given if served personally on or left at the registered office or principal place of business of the party on whom it is served or sent by facsimile transmission, e-mail or by recorded or registered delivery pre-paid first class or air mail letter post to the party on whom it is served at its registered office or principal place of business. A notice shall in the case of posting be deemed to have been served at the expiration of forty eight hours after posting to a United Kingdom destination or four days after posting to a destination outside the United Kingdom. A notice sent by facsimile transmission or e-mail shall be confirmed by post and shall be deemed to have been received upon the sending machine's confirmation of sending. Whenever the last day for giving any notice falls upon a Sunday, or a Bank Holiday, the time for giving such notice shall be extended until the next following ordinary working day.
- 12.5 The Contract shall be construed in accordance with English law.
- 12.6 The Seller and the Buyer agree that any dispute under or arising out of the Contract shall be referred to a single arbitrator to be agreed between the Seller and the Buyer or in default of agreement to be nominated by the President for the time being of the Law Society of England and Wales. The arbitration shall take place in London in accordance with the provisions of the Arbitration Act 1996 (or any modification or re-enactment of such Act for the time being in force).
- 12.7 Deletion of any Condition, Conditions or part of the same by written agreement of the Seller and the Buyer does not invalidate the remaining Conditions.
- 12.8 The Buyer acknowledges that it is entering into the Contract without reliance on any warranty, representation, undertaking or statement of fact or opinion made to it by or on behalf of the Seller in relation to the subject matter of the Contract other than as expressly contained in the Contract provided that nothing in this Condition shall exclude the Seller from liability for fraud or fraudulent misrepresentation.
- 12.9 The Contract is enforceable by the Seller and the Buyer and by their successors in title and permitted assignees. Any rights of any other person to enforce the terms of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.