

TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS

1. Definitions and Interpretation

1.1 In these Conditions, the following words and expressions shall have the following meanings unless inconsistent with the context:

“Conditions” these terms and conditions as amended from time to time in accordance with clause 14.5.

“Confidential Information” without limitation, business, commercial, economic, financial, operational, technical, administrative, marketing, planning and staff information and data relating to the Supplying Party or its interests disclosed including any Intellectual Property Rights to the Receiving Party whether before, during or after the provision of the Goods, whether in written, oral, pictorial or any other form, and all information, data, know-how, trade secrets, formulae, processed, designs, photographs, drawings, specifications, software programs, samples or other material attributable to or deriving its existence from the provision of the Goods. “Supplying Party” and “Receiving Party” shall have the meanings ascribed in clause 10.1.

“Contract” the contract between the Customer and the Supplier for the supply of Goods in accordance with these Conditions created in accordance with clause 2.2.

“Customer” Malcolm Clarke (Steel) Hollinwood Limited a company incorporated in England and Wales with company number 00989222, whose registered office is at Jubilee Works, Clifton Street, Miles Platting, Manchester, M40 8HN.

“Delivery Date” the date(s) on which the Supplier shall deliver the Goods to the Customer and as specified in the Order or as otherwise notified by the Customer to the Supplier from time to time.

“Delivery Location” such location as is set out in the Order or as otherwise instructed by the Customer from time to time prior to delivery of the Goods.

“Goods” the goods (or any part of them) as set out in the Order to be supplied to the Customer.

“Order” the Customer’s order for the supply of Goods, as set out in the Customer’s purchase order form including the Specification.

“Specification” any specification or description for the Goods (including any relevant plans or drawings) produced by the Supplier and agreed in writing by the Customer.

“Supplier” the person or firm from whom the Customer purchases the Goods.

“Working Day” a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

1.2 In these Conditions, the following words and expressions shall have the following meanings unless inconsistent with the context:

1.3 References to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified or re-enacted and in force from time to time and any subordinate legislation made from time to time under the relevant statute or statutory provision.

1.4 References to “persons” include natural persons, firms, partnerships, companies, corporations, associations and organisations, (in each case whether or not having separate legal personality).

1.5 Use of any gender includes the other genders.

1.6 Words in the singular include the plural and words in the plural include the singular.

1.7 Any reference to “writing” or any cognate expression includes communications by post, email, facsimile, text messages (or other similar messaging service) provided the messages are acknowledged by the Customer.

1.8 The headings to Conditions do not affect the interpretation of these Conditions.

1.9 Any phrase introduced by the term “include”, “including”, “in particular” or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

2. Basis of Contract

2.1 The Order constitutes an offer by the Customer to purchase Goods from the Supplier in accordance with these Conditions.

2.2 The Order shall be deemed to be accepted on the earlier of:

2.2.1 the Supplier issuing written acceptance of the Order; or

2.2.2 any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence.

2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.4 The Customer may cancel an Order within 28 days of placing an order without liability to the Supplier for any loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of such cancellation.

3. Goods

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 conform and correspond with all descriptions any and applicable specifications set out in the Specification;

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);

3.1.3 be fit for any purpose held out by, or expressly or impliedly made known to, the Supplier by the Customer and shall remain so for 12 months after delivery, and in this respect the Customer relies on the Supplier’s skill and judgment;

3.1.4 where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery;

3.1.5 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

3.1.6 display the CE mark; and

3.1.7 be supplied with a Declaration of Performance (DoP) certificate prior to delivery.

3.2 Where the Supplier is not the manufacturer of the Goods, the Supplier shall use its best endeavours to transfer to the Customer the benefit of any warranty or guarantee given to the Supplier in relation to such Goods but in any event this will not affect the warranties set out in clauses 3.1.3 and 3.1.4.

3.3 The Supplier shall obtain and at all times maintain all necessary licences, permissions, authorisations, permits and consents, and comply with all applicable laws and regulations.

3.4 The Customer shall have the right to inspect and test the Goods at any time before the Delivery Date.

3.5 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier’s undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.6 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier’s obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

4. Packaging

4.1 The Supplier shall ensure that:

4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

4.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.3 if the Supplier requires the Customer to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

5. Delivery

5.1 The Supplier shall deliver the Goods to the Customer at the Delivery Location on the Delivery Date. The time for delivery of the Goods shall be of the essence to the Contract.

5.2 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

5.3 If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.

5.4 The Supplier may deliver the Goods in instalments which may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Customer to the remedies set out in clause 7.

6. Title and risk

6.1 Title in the Goods shall pass to the Customer at the Delivery Date or on the date the Customer makes payment for the Goods in accordance with clause 8 whichever is sooner.

6.2 Risk in the Goods shall pass to the Customer on receipt of the Goods at the Delivery Location.

7. Customer Remedies

7.1 If the Goods are not delivered on the Delivery Date or do not comply with the undertakings set out in clause 3.1, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:

7.1.1 to renegotiate the price of the Goods where the market price has decreased;

7.1.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier’s own risk and expense;

7.1.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods;

7.1.4 to terminate the Contract with immediate effect by giving written notice to the Supplier;

7.1.5 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

7.1.6 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;

7.1.7 where the Customer has paid in advance for Goods that have not been provided by the Supplier, to have such sums refunded by the Supplier; and

7.1.8 to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier’s failure to carry out its obligations under the Contract.

7.2 These Conditions shall extend to any repaired or replacement goods supplied by the Supplier.

7.3 The Customer’s rights under the Contract are in addition to its rights and remedies implied by statute and common law.

8. Charges and Payment

8.1 The price for the Goods shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier’s published price list in force at the date of the Contract.

8.2 The price of the Goods shall be inclusive of the costs of packaging, insurance and delivery of the Goods unless otherwise agreed in writing by the Customer. No extra charges shall be effective unless agreed in writing and signed by the Customer in advance.

8.3 The Supplier shall invoice the Customer on or at any time after completion of delivery of the Goods. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

8.4 In consideration for the supply of Goods by the Supplier, the Customer shall pay invoices which have been correctly raised in accordance with the Order, or if no such date is specified then within 60 days of the end of the month after delivery, to a bank account nominated in writing by the Supplier.

8.5 All amounts payable by the Customer under the Contract are inclusive of VAT chargeable from time to time or any other sales tax which will be charged at the rate in force at the time of provision of the Goods. Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods at the same time as payment is due for the supply of the Goods.

8.6 If the Customer fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of 2% per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause 8.6 shall not apply to payments that the Customer disputes in good faith.

8.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Goods, and the Supplier shall allow the Customer to inspect such records at all reasonable times on request.

8.8 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Customer in order to justify withholding payment of any such amount in whole or in part. The Customer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Customer to the Supplier.

9. **Liability**
- 9.1 The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:
- 9.1.1 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 9.1.2 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
- 9.1.3 any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply, receipt or use of the Goods.
- 9.2 The Supplier shall at all times take all steps to mitigate its losses under the Contract.
- 9.3 For the duration of the Contract and for a period of six thereafter, the Supplier shall maintain in force with a reputable insurance company appropriate insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 9.4 Nothing in these Conditions shall limit or exclude either party's liability for:
- 9.4.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
- 9.4.2 fraud or fraudulent misrepresentation; or
- 9.4.3 any other liability which cannot be limited or excluded by English law.
- 9.5 The Customer shall not under any circumstances whatsoever be liable to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for:
- 9.5.1 loss of profits, sales, business, or revenue;
- 9.5.2 business interruption;
- 9.5.3 loss of anticipated savings;
- 9.5.4 loss or corruption of data or information;
- 9.5.5 loss of business opportunity, goodwill or reputation; or
- 9.5.6 any indirect or consequential loss or damage.
- 9.6 Subject to clause 9.4 and other than with regards to the losses set out in clause 9.5 (for which the Customer shall not be liable), the Customer's maximum aggregate liability under or in connection with the Contract whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the value of the Goods.
- 9.7 This clause 9 shall survive termination of the Contract.
10. **Protection of Confidential Information**
- 10.1 Notwithstanding termination of the Contract, each party ('Receiving Party') shall keep the Confidential Information of the other party ('Supplying Party') confidential and secret, the Receiving Party shall only use the Confidential Information of the Supplying Party as necessary to supply of the Goods (in the case of the Supplier) or as necessary for the purpose of making reasonable use of the Goods (in the case of the Customer) and for performing the Receiving Party's obligations under the Contract. The Receiving Party shall inform its officers, employees and agents of the Receiving Party's obligations under the provisions of this clause 10, and ensure that they meet such obligations.
- 10.2 The obligations of clause 10.1 shall not apply to any information which:
- 10.2.1 was known or in the possession of the Receiving Party before it was provided to the Receiving Party by the Supplying Party;
- 10.2.2 is, or becomes, publicly available through no fault of the Receiving Party;
- 10.2.3 is provided to the Receiving Party without restriction or disclosure by a third party, who did not breach any confidentiality obligations by making such a disclosure;
- 10.2.4 was developed by the Receiving Party (or on its behalf) without direct access to, or use or knowledge of the Confidential Information supplied by the Supplying Party; or
- 10.2.5 is required to be disclosed by order of a court of competent jurisdiction.
11. **Termination and Consequences**
- 11.1 Without prejudice to any other remedies or rights whether under the Contract or otherwise, the Customer may terminate the Contract at any time by written notice to the Supplier and the notice taking effect as specified in the notice if:
- 11.1.1 the Supplier commits a material or persistent breach of any of these Conditions, and (if such a breach is remediable), fails to remedy that breach within 14 days of being notified in writing;
- 11.1.2 the Supplier suspends, or threatens to suspend, payment of its debts or makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 11.1.3 a creditor or encumbrancer 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 any property or assets of the Supplier;
- 11.1.4 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 11.1.5 the Customer reasonably apprehends that any of the events mentioned above is about to occur and notifies the Supplier accordingly.
- 11.2 For the purposes of clause 11.1.1, a breach shall be considered capable of remedy if the Supplier can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).
- 11.3 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect, or in accordance with clause 12, by giving written notice to the Supplier, in which case the Customer shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss and shall be subject at all times to the provisions of clause 9.2.
- 11.4 In any of the circumstances in these Conditions in which the Customer may terminate the Contract, the Customer may instead terminate part of the Contract in respect of an element of the Goods, and the Contract shall continue in respect of the remaining supply.
- 11.5 On termination of the Contract or any part of it for any reason:
- 11.5.1 the Customer shall be entitled to immediately take possession of the Goods in respect of which title has passed to the Customer in accordance with clause 6 and the Supplier irrevocably authorises the Customer and the Customer's representatives, with or without vehicles, to enter the Supplier's premises for such purpose; and
- 11.5.2 each party shall return, delete or destroy all Confidential Information and all other information which has been provided to it by the other party belonging to that other party in whatever medium in accordance with the instructions of that other party.
- 11.6 The accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- 11.7 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.
12. **Force Majeure**
- 12.1 The Customer shall not be liable to the Supplier or be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Customer's reasonable control such as (but without limitation) any strike, lock-out or other form of industrial action, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or subcontractors or inability to procure materials required for performance of the Contract.
- 12.2 The Supplier shall promptly notify the Customer in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than 4 weeks, the Customer may terminate the Contract by written notice to the Supplier and the provisions of clause 11.3 shall apply.
13. **Notices**
- 13.1 Any notice required or permitted to be given by either party to the other under these Conditions 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. Notices:
- 13.1.1 sent by post shall be deemed served on the next Working Day following posting where the notice is sent and received within the United Kingdom, or 7 Working Days following posting where the notice is sent and/or received outside of the United Kingdom;
- 13.1.2 delivered personally shall be deemed served at the time of personal delivery, provided the same occurs on a Working Day;
- 13.1.3 sent by email shall be deemed served at the time of transmission provided that the transmission occurs on a Working Day.
- 13.2 To prove service it shall be sufficient to show that the email was transmitted to the email address of the other party or that the envelope containing the notice was properly addressed and posted.
14. **Other important terms**
- 14.1 **Entire Agreement.** Each Contract constitutes the entire agreement between the parties in relation to its subject matter, supersedes any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- 14.2 **No Partnership or Agency.** Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for or to bind another party in any way.
- 14.3 **Further Assurance.** Each party to the Contract shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.
- 14.4 **Assignment.** The Customer may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract. The Supplier shall not, without the prior written consent of the Customer, assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights or obligations under the Contract.
- 14.5 **Variation.** Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Customer.
- 14.6 **Severance.** If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions shall remain in full force and effect.
- 14.7 **Waiver.** A waiver of any right or remedy under the Contract 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 the Customer 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 14.8 **Cumulative Remedies.** All rights and remedies available to either of the parties under the terms of the Contract or under the general law are to be cumulative, and no exercise by either of the parties of any such right or remedy is to restrict or prejudice the exercise of any other right or remedy granted by the Contract or otherwise available to that party.
- 14.9 **Third Party Rights.** A person who is not a party to the Contract will not have any rights under any term of the Contract.
- 14.10 **Governing Law and Jurisdiction.** 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, English law, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England.