

GENERAL TERMS AND CONDITIONS OF OFFER AND SALE

DEFINITIONS

"Buyer" shall mean the person, company or firm referred to overleaf.

"Conditions" shall mean the Seller's general terms and conditions of offer and sale set out below.

"Contract" shall mean the agreement between the Buyer and the Seller for the purchase of the Materials, including the Conditions and all other documents to which reference may properly be made in order to ascertain the rights and obligations of the parties under the said agreement.

"Contract Price" shall mean the sum in the Sellers quotation increased or reduced by such sums (if any) as under the Conditions are to be taken into account in ascertaining the Contract Price.

"Materials" shall mean the goods to be supplied under the contract.

"Seller" shall mean Clarkes of Stillington Plate & Profiles Limited or such of its subsidiary companies as trade upon the conditions.

OFFER AND ACCEPTANCE

- 1.1 Quotations whether written or oral do not constitute an offer by the Seller and no order shall result in a binding Contract until accepted by the Seller in writing. The Seller may at any time refuse to accept any order placed as a result of any quotation.
- 1.2 Any order placed by the Buyer must be accompanied by sufficient information to enable the Seller to proceed forthwith otherwise the Seller shall be at liberty to amend the prices quoted to cover any increase in cost which has taken place after acceptance of the order.
- 1.3 The Buyer warrants that all information and data supplied by him or his agent or representative to the Seller shall be accurate and comprehensive for the purpose of performance of the Contract and hereby indemnifies the Seller against any and all losses, costs, damages, expenses and liability of whatsoever kind incurred as a result (direct or indirect) of any breach of this warranty.
- 1.4 The Seller accepts orders for the supply of Materials subject only to these conditions. The Buyer accepts that these conditions shall govern relations between himself and the Seller to the exclusion of any other terms including without limitation conditions and warranties (written or oral, express or implied) even if contained in any of the Buyer's documents which purport to provide that the Buyer's own terms shall prevail.
- 1.5 No variation, waiver or supplement of the Conditions shall be binding on the Seller unless expressly accepted by the seller in writing.
- 1.6 An order must be placed by the Buyer in response to a quotation within twenty-eight days of the date of the quotation failing which the quotation shall be deemed to have been withdrawn.
- 1.7 No agent or representative of the Seller has the power to accept any variation, waiver or supplement to these Conditions.

DELIVERY

- 2.1 Delivery shall mean delivery of Materials to the Buyer at the Seller's works or delivery of Materials to a carrier nominated by the Buyer. In the absence of specific instructions from the Buyer the Seller may nominate a carrier. The Buyer shall bear all transport, storage, insurance and forwarding costs.
- 2.2 The Buyer is required to acknowledge receipt of all Materials by signing the appropriate Delivery Note, the delivery note duly signed, should then be forwarded to the Seller (as indicated on the invoice) at the risk of the Buyer. If deliveries or shipments are delayed upon the Buyer's request or as a result of delayed payment by the Buyer, or delayed shipping instructions, then the Buyer shall be charged storage costs for every month, or part thereof, after notice that the Materials are ready for delivery or shipment. The Seller, after expiration of a reasonable time limit (which shall be set by the Seller) may (without prejudice to any other rights of the Seller):-
 - 2.2.1 deliver the Materials to the Buyer in accordance with clause 2.1 above or
 - 2.2.2 dispose of the Materials ordered either, if the goods are easily resalable at the best price obtained or if the Materials are not easily resalable in any way so desired by the Seller (including for the value of the Materials as scrap).
- 2.3 The date for delivery stated in the Contract is given as accurately as can be predicted but is not to be of the essence of the Contract and in the event of delay the Buyer shall not be entitled to refuse delivery or to terminate the Contract and the Seller shall not incur any liability in respect thereof.
- 2.4 The Seller reserves the right to deliver Materials by instalments and in such event each instalment shall be treated as a separate contract provided that deliveries of further instalments may be withheld until the Materials comprised in earlier instalments have been paid for in full. The Buyer agrees to accept partial delivery any Material delivered in part shall be paid for in accordance with the provisions of these conditions.
- 2.5 If goods have not been received within fourteen days of despatch the Buyer shall advise the Seller in writing immediately.
- 2.6 Upon the receipt of such notice within the period specified, the Seller will use reasonable endeavours to assist the Buyer to obtain proof of delivery or admission of damage or short delivery from the carrier.

PRICE VARIATION

- 3.1 Unless otherwise stated the quotation prices shall be ex-works and exclude packing and insurance costs.
- 3.2 Unless otherwise stated in the quotations the Contract Price is exclusive of Value Added Tax ("VAT") and any other duty tax or surcharge (collectively "Taxes") and VAT and any appropriate Taxes will be added to all invoices at the rate applicable on the tax point date which date shall be the date of the invoice.
- 3.3 The Contract Price is based on the cost of materials, labour and other rates and prices ruling at the date of the Sellers quotation. If by reason of any rise or fall in the rates of wages, salaries or other payments (including allowances payable to labour or in the cost of Materials or transport or of conforming to such laws, orders, regulations and bye-laws (including the imposition of any new such matter) above or below such rates and costs ruling at the date of the Seller's quotation), the cost to the Seller or performing its obligations under the Contract shall be increased or reduced, the amount of such increase or reduction (including such proportionate additional profit as the profit assigned to the goods or services in question in the original Contract Price) shall be added or deducted from the Contract price as the case may be. For the purpose of the Condition "the cost of material" shall be construed as including any duty tax by whomsoever payable which is payable under or by virtue of any Act of Parliament on the import, purchase, sale appropriation, processing or use of such material.

LIMITATION OF LIABILITY OF THE SELLER

- 4.1 The Seller will endeavour to ensure that the materials are free from defect and that all materials and workmanship have been performed to specifications but:-
 - 4.1.1 The Seller shall not be liable for any expenditure, damages, loss (including consequential loss) or injury arising out of any use or dealing with any Materials delivered pursuant to any Contract, howsoever such expenditure, damages, loss or injury shall arise and whether from any defect in two Materials or otherwise.
 - 4.1.2 The Buyer shall assume sole responsibility for the capacity, fitness and performance of the Materials being sufficient and suitable for the purpose for which he requires the Materials: and
 - 4.1.3 any implied condition or warranty as to compliance with, description, quality or fitness of the Materials, whether statutory or otherwise is excluded.
- 4.2 The Seller's liability shall be strictly limited to executing any necessary repairs to or replacement of any defective materials or material not meeting specification notice of which must be received by the Seller within fourteen days of receipt of the goods by the Buyer. If such notice is not received within the stated time limit the Materials shall be deemed to be free from any defect. The Seller may at its option refund the purchase price applicable.
- 4.3 The Seller shall not be liable for any loss or damage whatsoever (including consequential loss or injury) in any way suffered by the Buyer or any other person, firm or company whatsoever (on the grounds of negligence or otherwise) by reasons of the fact that the Seller may have inspected, advised or approved any site, plans, data or information supplied by or on behalf of the Buyer and the Buyer shall at the times indemnify and keep the Seller indemnified against all losses, claims, damages, charges and expenses for injury, including death suffered by any person or loss or damage to property belonging to any person, firm or company for which the Seller, its sub-contractors or their respective employees may be liable or be deemed to be liable under the Contract (except where such losses, claims, damages, charges and expenses arise out of or are caused by the negligence or willful misconduct of the Seller, its sub-contractors or their respective employees).
- 4.4 If the Seller is held to be legally liable for any breach of this contract or shall become legally liable to the Buyer in any way howsoever the liability of the Seller in respect of any or all causes of action shall in no circumstances exceed the Contract Price.

BUYER'S DEFAULT

- 5.1 If under the Contract deliveries are made over an extended period each consignment shall be invoiced separately.
- 5.2 If the Buyer fails to make payment of a sum when the same becomes due whether under the Contract or any other contract which the Seller may have with the Buyer, the Seller shall be entitled to charge the Buyer interest on the sum due under the Contract and unpaid calculated at a rate of four per cent annum over the Barclays Bank Base rate (minimum 5 per cent) from time to time ruling. If such payment, or any part thereof, shall remain in arrears for 7 days after written demand shall have been made thereof, the Seller shall have the further right to cancel the Contract and/or any such other contract and in either case, without prejudice to any other right or remedy which the Seller may have.
- 5.3 If the Buyer becomes bankrupt or insolvent or enters into any arrangement or composition with its creditors or if a resolution is passed or an order made for the winding up of the Buyer (other than for the purposes of solvent re-construction or solvent amalgamation) or if a receiver or receiver and manager is appointed or an administration order granted then the Seller may without prejudice to any other remedy determine the Contract and re-sell the Materials and any loss on such resale shall be paid by the Buyer.
- 5.4 Where the Seller tenders the Material but delivery is not accepted the Seller may store the Materials in its own or any other warehouse for the account of the Buyer and the Buyer shall be liable for the cost of storage, additional handling, transport and associated costs. The Seller may also deliver its invoice for the Material's stored and payment thereof shall be due at the same time and in the same manner as if the Materials had been delivered to the Buyer at the time they were placed in store.
- 5.5 Any concession, latitude or waiver the Seller may allow or has allowed the Buyer at any time shall not prevent the Seller subsequently exercising its full under the Contract.

RISK AND TITLE

- 6.1 Whilst risk in Materials supplied to the Buyer under the Contract shall pass on delivery, legal and beneficial ownership of the Materials shall remain with the Seller until such time as the Seller has received payment and in full in respect of all sums owing from the Buyer to the Seller whether under the Contract or otherwise or until such time as the Materials are sold to the Buyer's customers by way of bona fide sale at full market value (whichever shall be the earlier) and until such time the buyer shall keep such goods separate from its property and clearly identified as the property of the Seller.
- 6.2 Notwithstanding terms of payment specified herein or elsewhere payment for all Materials supplied to the Buyer shall become due immediately upon the commencement of any act or proceeding in which the Buyer's solvency is invoiced (whether voluntary or upon application to any court) or upon the appointment of a receiver over the whole or any part of the Buyer's assets or undertaking and upon such occurrences the power of sale granted to the Buyer above shall automatically determine.
- 6.3 If payment for any Materials is overdue whether in whole or in part and any Materials have been delivered to the Buyer the Seller may without prejudice to any of its other right enter upon the Buyer's premises to recover and/or re-sell the Materials or such of them as the Seller in its absolute discretion may designate as necessary to recover the amount of payment overdue and the Seller's reasonable costs incurred in giving effect to its rights hereunder and for these purposes the Buyer hereby irrevocably authorises the Seller to enter and take all necessary and reasonable steps upon the premises of the Buyer.
- 6.4 Until the Seller is paid in full in respect of all sums owing from the Buyer to the Seller whether under the Contract or otherwise the Buyer is and shall remain a fiduciary for the Seller in respect of the Materials and if the Buyer sells or allows to be sold the Materials the proceeds of sale shall be held in a separate clearly identifiable account and the beneficial interest of the Seller shall attach to the proceeds of sale and the Seller shall have the right to trace such proceeds of sale.
- 6.5 If any of the Materials are incorporated or used in other products before full payment in respect of all sums owing from the Buyer to the Seller whether under the Contract or otherwise has been made title in such products be and shall remain with the Seller until such full payment has been made or such products have been sold and all of the above provisions of this clause shall extend to such products.

PAYMENT

- 7.1 Payment is due on the invoice date but the Seller waives the right to take action to recover payment of the sum due under the Contract and to charge interest pursuant to Condition 5.2 provided that and only for as long as payment of the invoice value is made within 30 days of the date of the invoice and also that no other unpaid sums due to the Seller from the Buyer relating to invoices predating to invoice date of the Contract have given or, during the said period give, to the Seller the right to recover interest thereon.
- 7.2 No right of set-off shall exist in respect of any claims by the Buyer against the Seller unless and until such time as such claims are accepted by the Seller in writing and the Buyer shall not withhold all or any part of the sum which has become due for payment under the Contract.

SUSPENSION AND CANCELLATION

- 8.1 The Buyer may suspend or cancel the Contract only with the prior written consent of the Seller which consent will be strictly conditional upon the Buyers reimbursing the Seller in respect of all costs, expense losses and damages incurred directly, indirectly or otherwise as a result of any such suspension or cancellation and which shall be paid within 30 days of the notification of such sums by the Seller to the Buyer.
- 8.2 Upon the resumption of the Contract after any suspension the Seller shall be allowed such extensions of time for the performance of its obligations as is fair and reasonable having regard to the period of suspension and the Contract Price shall be adjusted in accordance the provisions of Condition 3.3 above.

PATENTS AND COPYRIGHT

- 9.1 Where the Materials or any part thereof shall consist of any article to be manufactured, altered or worked upon by the Seller in accordance with the design specification or instruction of the Buyer. The Buyer warrants that any such article or design or construction thereof shall not in any way whatsoever infringe any letters patent, registered designs, copyrights or any other intellectual property rights whatsoever subsisting in favour of third parties and hereby agrees to indemnify and hold harmless the Seller against any and all actions, claims and demands which may be made against it in such respect including without limitation any and all costs, expense damages, losses incurred by the Seller in respect thereof.
- 9.2 In all other cases in the event of any claim being made against the Buyer in respect of infringement or alleged infringement of letters patent copyright or other protection in respect of Materials supplied by the Seller the Buyer shall inform the Seller immediately. The Buyer shall be permanently prohibited from using the Materials by reason of such claim shall be limited to accepting a return of the said Materials and refunding the Buyer the Purchase price thereof paid by him less a fair proportion thereof for the benefit which may have been derived from the use of the Materials whilst it remained in the Buyers possession.

MISCELLANEOUS

- 10.1 All descriptions and illustrations of goods in any catalogue, brochure, price list or in any other document provided by the Seller are intended for general guidance only and do not form part of any Contract between the Seller and the Buyer and the Seller accepts no responsibility for any error or omission in such document and shall not be liable in any circumstances for any loss or damage of whatsoever nature and howsoever caused resulting from reliance on such description or illustration.
- 10.2 The Seller shall not be liable for any alleged short weight unless the Seller is notified in writing within 48 hours from the date the Buyer receives the Materials and an opportunity is afforded to the Seller to re-weigh the Materials.
- 10.3 The Seller reserves the right to substitute without prior notice or consultation other materials for those which maybe specified in the Contract provided that the operating capabilities and technical properties are not, in the opinion of the Seller adversely affected.
- 10.4 Any alteration to design and/or specification requested by the Buyer shall be notified to the Seller in writing. Any costs incurred in complying with such alterations shall be added to the Contract Price and shall be paid by the Buyer.
- 10.5 The Materials will be supplied in accordance with British Steel Corporation tolerances as to dimension and weight.

SUB CONTRACTING

- 11 The Seller reserves the right to sub-contract any part of the Contract but in doing so the Seller will not be relieved of any liabilities under the Contract.

FORCE MAJEURE

- 12 In the event of the Seller being delayed in or prevented from performing any or all of its obligations hereunder owing to any cause whatsoever beyond its control including without limitation Act of God, war, strikes, lock outs, trade disputes, or any other cause the Seller will not be liable for any loss, damage, or expense thereby incurred and shall bear liberty to cancel or suspend the Contract without incurring any liability arising therefore.

STATUTORY AND BY-LAW APPROVALS

- 13 It shall be the responsibility of the Buyer to obtain all necessary permissions and licenses and to conform to the provisions of Acts of Parliament, export laws of the United Kingdom and to any other by-laws orders and regulations for the time being in force affecting the sale of Materials under the Contract and the Buyer shall pay and indemnify the Seller against all fees payable, costs claims and actions in connection therewith.

THIRD PARTY CONTRACTS

- 14 The Buyer shall in no way pledge the credit of the Seller nor make any representation, nor give any warranty with regard to the Seller's Products, other than that contained in these terms and conditions, nor shall the Buyer sell the Seller's goods in the name of the Seller, nor describe nor infer that the Buyer is the agent of the Seller. The Seller will be held not liable in any way whatsoever for any loss incurred by the Buyer under any Contract between the Buyer and any third party due to any default of breach whatsoever.

LAW AND INTERPRETATION

- 15.1 The Contract represents the entire agreement between the parties and supersedes all earlier warranties, representations, or statements (whether oral or in writing) and may only be varied or amended in writing between the parties.
- 15.2 The headings of each provisions are intended to be for convenience only and shall not affect the interpretation thereof.
- 15.3 The Contract shall be governed by and construed in accordance with English Law and the parties hereby irrevocably submit to the non-exclusive jurisdiction of the English Courts.