

Cooper & Turner Limited, Templeborough Works, Sheffield Road, Sheffield, S9 1RS, South Yorkshire, England, United Kingdom

CONDITIONS OF SALE

1 DEFINITIONS AND INTERPRETATION AND GENERAL

- 1.1 In these Conditions.
- 1.1.1 'The Company' means the company issuing the document, whose name, registered office and registered number are set out below.
- 1.1.2 'The Customer' means the individual, firm, company or other party with whom the Company contracts.
- 1.1.3 'International Supply Contract' means such a contract as is described in section 26 (3) of the Unfair Contract Terms Act 1977.
- 1.1.4 'Normal Business Hours' means the hours of 9am to 5pm Monday to Friday excluding English Bank Holidays.
- 1.1.5 'Supply' includes (but not limited to) any supply under a contract of sale.
- 1.1.6 'These Conditions' means the standard conditions and any other terms of sale set out or referred to in the Company's acknowledgement of order.
- 1.2 The heading in these Conditions are for convenience only and are not for the purpose of interpretation.
- 1.3 Any reference in these Conditions to any provision of a statute shall be constituted as a reference to that provision as amended re-enacted or extended at the relevant time.
- 1.4 If any provision of these Conditions (or of any other conditions or other terms that may be agreed in writing between the Buyer and the Supplier) is or becomes illegal, void or unenforceable for any reason the validity of the remaining provisions shall not be affected.
- 1.5 Failure by the Company to enforce strict compliance with these Conditions by the Customer will not constitute a waiver of any of the provisions of these Conditions.
- 1.6 References to clauses are to clauses of these Conditions, unless otherwise stated.

2 CONTRACT TERMS, VARIATIONS AND REPRESENTATIONS

- 2.1 No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. Any Contract made between the Company and the Customer shall be subject to these Conditions and save as after mentioned no representatives or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them; any such term representation or contract will bind the Company only if in writing and signed by a Director of the Company.
- 2.2 Unless otherwise agreed in writing by the Company these Conditions shall apply to the exclusion of any terms and conditions stipulated or referred to by the Company in his order or pre-contract negotiations or any inconsistent terms implied by law or trade custom, practice or course of dealing.
- 2.3 Any general description contained in the Company's catalogues or other advertising material or otherwise shall not for a representation or be part of the contract.
- 2.4 Where the Company has not given a written acknowledgement of the Customer's order these conditions will nonetheless apply to the contract provided that the Customer has had prior notice of them.
- 2.5 The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.

3 SPECIFICATION, INSTRUCTION OR DESIGN

- 3.1 If goods are made to a specification, instruction or design supplied by the Customer or any third party on behalf of the Customer then:
- 3.1.1 The suitability and accuracy of that specification, instruction or design will be the Customer's responsibility; and
- 3.1.2 The Customer will indemnify the Company against any infringement or alleged infringement of any third party's intellectual property rights and any loss, damage or expense which it may incur by reason of any such infringement or alleged infringement of any country; and
- 3.1.3 The Customer will indemnify the Company against any loss, damage or expense in respect of any liability arising in any country by reason of the goods being made to such specification, instruction or design.

4 INSPECTION

- 4.1 Upon written agreement with the Company the Customer shall be entitled to inspect, or to arrange inspection on its behalf by a third party, of the goods at the Company's premises during Normal Business Hours. The Customer shall upon such agreement provide the Company with the name and address of the persons to be authorised to carry out such inspection, which persons shall be subject to the Company's approval.
- 4.2 Before any inspection is carried out pursuant to clause 4.1, the Customer shall give the Company not less than 3 days' written notice.
- 4.3 In the course of any inspection carried out by or on behalf of the Customer, the Customer shall ensure that any person appointed by it to carry out the inspection shall comply with the Company's safety requirements.
- 4.4 The Customer shall not disclose and shall procure that its employees or agents appointed to carry out the inspection shall not disclose any confidential information or trade secrets of the Company which are discovered in the course of inspection.

5 CUSTOMER'S REPRESENTATION

- 5.1 Where the Company has supplied the goods to the Customer accompanied by a test certificate the Customer shall maintain a record of the identity of such goods from the date of delivery until such time as the goods are installed/incorporated into other items.
- 5.2 If the Customer is to determine the thickness of plating, this shall be done in accordance with BS7371: Part 3: 1993 Annex B, B1 (c)l thickness.
- 5.3 If the Customer modifies the goods whether by plating or any other operation, the provision of clause 11.3 shall not apply and the Company shall have no liability in respect of any loss or damage arising from or in connection with any defect or failure in the goods or any error regarding weight, dimensions, capacity.
- 5.4 The Customer shall store the goods in clean, dry, well ventilated conditions.

6 QUOTATIONS AND PRICES

- 6.1 Unless otherwise agreed in writing the Company shall be entitled to increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or manufacturing, working on or supplying any goods (including but not limited to any such increase arising from any error or inadequacy or change of any specification, instruction or design provided by the Customer, any modification carried out by the Company at the Customer's request or any change in taxes, customs duties, freight charges, insurance premiums or exchange rates) such increased prices ruling at the date of despatch by the Company shall be substituted for the previous contract price. In particular, but without prejudice to the generality of the foregoing, if the contract price is specified or payable in the Euro or in a currency other than pound sterling and the payment currency (as evidenced by the exchange rates quoted by HSBC Bank plc) which is to the detriment of the company and which occurs between the acceptance of the order and the actual payment of the contract price.

- 6.2 All prices quoted are exclusive of Value added Tax and the Customer shall pay any and all duties and other government charges payable in respect of the goods.

7 DELIVERY

- 7.1 For all contracts other than international supply contracts and unless otherwise specified in writing the Company:
- 7.1.1 The Company shall deliver the goods by the means most convenient to the Company to the address or addresses specified by the Customer at the time of placing the order or (in the case of a company, the definition of that term set out in section 123 of the Insolvency Act 1986) to any address at which the Customer resides or carried out business;
- 7.1.2 The prices quoted by the Company shall include standard inspection, packaging and UK Delivery. Any special aspects of inspection, packaging, insurance and overseas delivery shall be charged separately and over and above the price for the goods;
- 7.1.3 The Customer shall provide proper access for and any facilities appropriate for the accommodation and off-loading of 40 foot articulated vehicles.
- 7.2 If the contract requires the Customer to take delivery of the goods at the Company's premises then:
- 7.2.1 For the purpose of this sub-clause 'the Goods' shall mean the whole or any instalment of the goods and 'the Collection Date' shall mean the date on which the goods are or will be ready for delivery;
- 7.2.2 The Company shall notify the Customer of the collection date and the Customer shall take delivery of the goods within 5 days of the collection date.

- 7.3 If the contract is an international supply contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the contract save that in the event of any inconsistency between Incoterms and any express term of the contract the latter shall prevail. The Company shall be under no obligation to give the Customer notice specified in section 32(3) of the Sale of Goods Act 1979.
- 7.4 Should the Company be delayed in or prevented from delivering the goods due to failure of the Company's or its sub-contractors computerised business or manufacturing systems or due to any cause whatsoever beyond the reasonable control of the Company, the Company shall be at liberty to terminate the contract or suspend the order placed by the customer without incurring any liability for any loss or damage arising there from, but without prejudice in any such case to rights accrued to the Company in respect of deliveries already made.

- 7.5 While the Company will endeavour to deliver the Goods by any date or within any period agreed upon, such dates and periods are estimates only given in good faith and the Company will not be liable for any failure to deliver by such date or within such a period. Time for delivery shall not be of the essence of the contract. The Company shall be entitled to deliver delivery or performance until monies due from the Customer have been received.
- 7.6 If the Customer shall for any reason fail to take delivery of the Goods on the agreed date or dates or delay in doing so then without prejudice to any other rights of the Company whether under these terms and conditions or otherwise the Company shall be entitled to make an additional charge in respect of any delayed caused by such failure and for any costs incurred as a result of repeated delivery necessitated by such failure.
- 7.7 Quantities despatched may vary by up to plus or minus 10% from those ordered, such variation will be due execution of the order and may be charged pro rata.

8 RISK IN THE GOODS

- 8.1 In the case of international supply contracts and subject to any agreement in writing by the Company, the risk in goods which the Company agrees to supply shall pass to the Customer on:
- 8.1.1 Delivery; or
- 8.1.2 The date on which the Customer defaults (which expression shall have the meaning set out in clause 9.1.3); or
- 8.1.3 The date, on which the goods being ready for delivery, delivery is postponed at the Customer's request, whichever shall first occur. Delivery shall be deemed to be completed before off-loading or (in the case of delivery at the Company's premises) loading of the goods.
- 8.2 All other goods or materials shall be at the Customer's sole risk at all times, and the Company shall not be liable for any loss of or damage sustained by any goods or materials left with the Company however caused and whether or not attributable to negligence or willful default on the part of any employee or agent of the Company. The Customer shall adequately insure such goods and materials in respect of loss or damage whilst the same are under the Company's control and/or in transit from and to the premises occupied by the Customer.

9 PAYMENT

- 9.1 For the purpose of this clause:
- 9.1.1 'the goods' shall mean the whole or any instalment of the goods which the Company has agreed to supply;
- 9.1.2 'the relevant date' shall mean the date on which
- 9.1.2.1 The invoice is dated on which
- 9.1.2.2 The Company despatches the goods or
- 9.1.2.3 The Customer takes delivery of the Goods or
- 9.1.2.4 The Customer defaults, whichever shall first occur.
- 9.1.3 The Customer defaults if he fails to provide an address for delivery as required by the contract or (if it is agreed that the Customer will take delivery at the Company's premises) he fails to take delivery in accordance with such agreement.
- 9.2 Unless otherwise specified in writing by the Company payment shall be made by the Customer net cash in Pounds Sterling not later than 30 days after the relevant date notwithstanding that property in the goods has not passed to the Customer.
- 9.3 Time for payment shall be of the essence of the contract. Without prejudice to any other rights it may have the Company reserves the right to charge interest at HSBC bank plc base rate Commercial Debts (Interest) Act 1998 (whichever is the higher) on all overdue accounts and for the purpose of paragraphs 10 and 13 hereof the full purchase price of goods shall include all interest payable hereunder.

10 FAILURE TO PAY, CANCELLATION OR DEFERMENT

- 10.1 For the purpose of this clause 'an intervening event' shall mean any such event as is described in sub clause 10.3.
- 10.2 If there shall be an intervening event the Company may, within a reasonable time thereafter, defer or cancel any further deliveries or services, stop any goods in transit and treat the contract of which these conditions form part as determined but without prejudice to its rights to the full purchase price of goods delivered and damages for any loss suffered in consequence of such determination.
- 10.3 An intervening event shall be any of the following:
- 10.3.1 Failure by the Customer to make any payment which it becomes due;
- 10.3.2 Breach by the Customer of any of the terms and conditions of the contract;
- 10.3.3 The Customer's proposal for or entry into any composition or arrangement with creditors;

- 10.3.4 The presentation against the Customer of any petition for a Bankruptcy Order, Administrative Order, Winding Up Order, or similar process;
- 10.3.5 The appointment of an Administrative Receiver or Receiver in respect of the Business or any part of the assets of the Customer;
- 10.3.6 The Company forming the reasonable opinion that the Customer has become or is likely in the immediate future to become unable to pay his, her or its debts (adapting, in the case of a company, the definition of that term set out in section 123 of the Insolvency Act 1986).
- 10.4 Cancellation by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting in the company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the company if in writing and signed by a Director of the Company.
- 10.5 Any costs incurred by the Company due to suspension or determent of any order by the Customer or in the event that the Customer defaults in collecting, or giving instructions for the delivery, of any goods or the performance of any Services will be payable by the Customer forthwith on demand.

11 LIMITATIONS OF LIABILITY

- 11.1 The Company will have no liability for damage in transit, shortage or delivery or loss of goods unless the Customer shall have given to the Company written notice of such damage, shortage or loss with reasonable particulars thereof within 3 days of receipt of the goods or (in the case of total loss) of receipt of the invoice or other notification of despatch. The Company's liability, if any, shall be limited to resupplying or (in its discretion) repairing such goods and it shall be a condition precedent to any such liability that the Customer shall if so requested provide authority of the Company's employees or agents to inspect any damaged goods within 14 days of such a request.
- 11.2 Save as provided in clause 11.1 the Company will have no liability for any direct or consequential loss arising out of any damage in transit, shortage or delivery or loss of goods.
- 11.3 :

- 11.3.1 The Company's liability in respect of any breach of the Company's declaration of confidence or in respect of any defect, or any failure of goods supplied or work done is limited to resupplying (with new goods), or (at its discretion) repairing or paying for the repair, or re-supply, of any goods which (in the case of defects apparent upon inspection) within 14 days of delivery and (in the case of defects not so apparent) within 12 months of delivery to the Customer, by reason of faulty or incorrect design, workmanship, parts or materials are found to be defective or fail or are unable to perform in accordance with the contract.
- 11.3.2 Without prejudice to clause 3 the Goods shall not be deemed to be defective by reason that they are not fit for their purpose unless the customer has made the exact purpose known to the Company and the Company has undertaken as part of the contract to be solely responsible for providing the goods for the exact purpose.

- 11.3.3 In the event of any error in any weight, dimension, capacity, performance or other description which has formed a representation or is part of a contract the Customer as a result of such error shall not exceed the price of the goods in respect of which the description is incorrect.

- 11.3.4 Conditions precedent to the Company's liability hereunder shall be that the Customer shall have given to the Company reasonable notice of any defects, failure or error and shall have provided authority for the Company's servants or agents to inspect the Goods.
- 11.3.5 The Company shall have no other or further liability in respect of any direct or consequential loss (including but not limited to loss of profits, loss of business or other economic loss) or damage sustained by the Customer arising from or in connection with any such breach, defect, failure or error as aforesaid.

- 11.4 Where the Company repairs or resupplies Goods in accordance with the foregoing provisions of this clause 11 or otherwise any time specified for delivery shall be extended for such period as the Company may reasonably require.
- 11.5 All goods supplied by the Company are supplied with the benefit of the Terms implied by section 12 of the Sale of Goods Act 1979. Subject thereto, and whether or not the contract is a contract of sale, all other conditions, warranties and the terms express or implied, statutory or otherwise, are expressly agreed by the Company in writing provided that if and insofar as any legislation or any order made there under shall make or have made it unlawful to exclude or purport to exclude from the contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of the paragraph will not apply to any such term.

- 12 :
- 12.1 In the event of any negligence or willful default on the part of the company, it's employees, agents or sub-contractors in or in connection with the supply of any goods or the design or manufacture thereof or in the carrying out of any work the Company shall have no liability to the Customer save as otherwise provided in these conditions.

- 12.2 For the purpose of sub-clause 12.1 the expression 'the carrying out of any work' shall without prejudice to its generality include the carrying out of all work done in or in connection with the design, manufacture treatment, testing, delivery, erection, installation, repair or servicing of any Goods or in the preparation of provision of any information or advice.
- 12.3 This clause and these conditions shall have effect subject to the provisions of section 2 (1) of the Unfair Contract Terms Act 1977.

- 12.4 The Customer shall not in any circumstances be entitled to withhold payment of monies due whether as a means of setting off monies owed to it by the Company or otherwise.

13 RETENTION OF TITLE

- 13.1 The following provisions shall apply to all contracts other than international supply contracts and all goods which under the contract of the Company agrees to supply to the Customer. No failure by the Company to enforce strict compliance by the Customer with such provisions shall constitute a waiver thereof and no termination of the contract shall prejudice, limit or extinguish the Company's rights under this clause.
- 13.1.1 Upon delivery of the goods the Customer shall hold the goods solely as bailee of the Company and the goods shall remain the property of the company until such time as the Customer has paid to the Company and the Company and the Company shall have cleared funds for the full purchase price of all goods supplied whether under the contract or otherwise. Until such time the Company shall be entitled to recover the goods or any part thereof and for the purpose of exercising such rights the Customer hereby grants a licence to the Company, its employees and

agents with appropriate transport to enter upon the Customer's premises and any other location where the goods are situated and remove the goods.

- 13.1.2 The Customer is hereby granted licence by the Company to incorporate the goods in any other products
- 13.1.3 The licence granted under section 13.1.1 shall extend to detaching the goods from any property to which they are attached or into which they have been incorporated or from any other products or goods to which they have been attached pursuant to the licence granted under sub-clause 12.1.3. hereof.
- 13.1.4 The Customer is hereby licensed to agree to sell on the goods and any products incorporating any of them on condition that the Customer shall inform its Customer of the provisions of sub-clause 13.1.1 – 13.1.3. The Customer acts as the Company's bailee in respect of any such sale and shall, immediately upon receipt of the proceeds of sale and whether or not payment has become due under clause 9 hereof, remit to the Company the full purchase price of all goods sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.

- 13.1.5 The Customer shall maintain all appropriate insurance in respect of the goods from the date or dates on which the risk therein passes to him. In the event of any loss or damage occurring while the goods remain the property of the Company the Customer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the goods lost or damaged less any part thereof which has already been paid and until such amount has been remitted shall hold such amount as trustee and agent for the Company. For the avoidance of doubt the provisions of this sub-clause do not affect the Customer's obligation under clause 9.
- 13.1.6 The licences granted under sub-clause 13.1.2, 13.2.3 and 13.1.4 shall be terminable forthwith at any time upon notice by The Company to the Customer.

- 13.2 In the case of international supply contracts property in the goods shall pass to the Customer on delivery.

14 HYDROGEN EMBRITTEMENT

- 14.1 Certain types of metal and alloy products are susceptible to hydrogen embrittlement and/or hydrogen degradation and cannot be guaranteed to be free from such embrittlement and/or degradation after submission to electro-plating or phosphating followed by de-embrittling heat treatment processes as the Customer required and at times and temperatures stipulated by the Company, in such circumstances the Company is unable to guarantee complete freedom from embrittlement and/or hydrogen degradation and the Company shall not be liable for any loss, damage, costs or expenses arising there from.

15 INTELLECTUAL PROPERTY

- 15.1 Unless otherwise agreed in writing by the Company all intellectual property rights in the goods and in any tooling and in any drawings or other documentation supplied or produced by the Company shall vest in and remain vested in the Company; the Customer agrees to execute any document the Company deems necessary to give effect to this clause.

16 TOOLING

- 16.1 All tooling purchased or produced by the Company for the contract shall be and remain the property of the Company unless otherwise agreed in writing notwithstanding that the Customer may have made payment or part payment therefor.

17 CONFIDENTIALITY

- 17.1 The Customer agrees that it and its employees and agents will keep confidential all drawings and designs supplied by the Company and will not use, copy or reproduce the same save as specifically authorised by the Company in writing.

18 TESTS

- 18.1 If the Company agrees to carry out any special tests it shall be entitled to charge there for.
- 18.2 If the Company agrees that any tests (whether special tests or the Company's standard tests) shall be carried out in the presence of the Customer or his representatives will, by prior appointment, attend at the premises where the goods are situated within 14 days after such date for the purpose of witnessing such tests and agrees that in default of such attendance the company may proceed with the tests in his absence and he shall be bound by the results thereof.

19 USE AND SAFE HANDLING

- 19.1 The Customer warrants that it will pass on to all third parties to whom it may supply the goods or any of them all information as to the use and safe handling of such goods as may have been provided to the Customer by the Company.

20 LICENCES

- 20.1 The Customer acknowledges that goods for delivery outside the United Kingdom may be subject to United Kingdom Export Control, as well as Import Controls at their destination, the Customer will be responsible for ensuring that all necessary clearances and licences are obtained prior to the dispatch dates for the Goods to be supplied and for obtaining all necessary documentation and lodging the same with the Company prior to the commencement of production.

21 LAW AND JURISDICTION

- 21.1 The proper law of all contracts with the Company shall be English Law which shall govern in all respects the construction and effect of such contracts and of these Conditions. The Customer agrees that in the event of any dispute arising out of the contract or the performance thereof he will submit to the jurisdiction of the English Courts.