

## TERMS AND CONDITIONS OF SALE

### 1. DEFINITIONS

In these conditions "The Company" means Ainscough Ltd. T/A Ainscough Metals. "The Buyer" means any company firm or individual from whom the Company receives an order which the Company has accepted verbally or in writing "the Goods" means the products materials and/or services to be supplied by the Company.

### 2. APPLICABILITY OF CONDITIONS

The Company accepts orders for the supply of Goods subject only to these conditions. The Buyer accepts that these conditions shall govern relations between himself and the Company 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. No variation or qualification of these conditions or of any quotation or order arising therefrom shall be valid unless agreed in writing between the parties.

### 3. PRICE

Unless fixed prices have been specifically agreed by the Company, notwithstanding any offer, quotation, tender price or price list all prices are subject to alteration without notice and Goods will be invoiced at prices ruling at the date of despatch.

All prices include delivery unless otherwise stated and are quoted exclusive of Value Added Tax ("VAT") and VAT will be added to all invoices at the rate applicable on the tax point date which date shall be the date of the invoice. Where before delivery or the date of the invoice, whichever is the earlier, the Goods become subject to any additional duty, VAT or any other tax or surcharges, in excess of the sum specified for such liabilities in the Company's quotation or invoice, the Buyer shall be charged and will pay such extra duty, tax or surcharge.

### 4. DELIVERY

Delivery shall be deemed to be effective when the Goods are unloaded at the delivery address nominated by the Buyer or his agent for delivery, save where the Goods are to be collected by the Buyer or his agent when the Goods are loaded onto the vehicle collecting them.

The Company reserves the right to deliver goods by instalments and in such event, instalment shall be treated as a separate contract provided that deliveries of further instalments may be withheld until the goods or materials comprised in earlier instalments have been paid for in full.

If the Buyer refuses to accept delivery of any consignment of the goods during the time agreed for delivery without valid reason the Company has the right to make an additional charge to cover the extra cost caused by the refusal.

### 5. TIME FOR DELIVERY

Any periods of time quoted or accepted by the Company for despatch, delivery or completion of the order are to be treated as estimates only, not involving the Company in any liability to the Buyer in respect of loss suffered as a result of failure to despatch, deliver or complete within such a period of time.

### 6. STORAGE

If the Company does not receive forwarding instructions sufficient to enable despatch to be made within 14 days after notification that the Goods are ready for despatch the Buyer shall be deemed to have taken delivery and the Company may (without prejudice to any of its other rights) dispose of the Goods ordered at the best price reasonably available or may arrange for storage of the Goods at the premises of the Company or elsewhere as the Company may so determine at the cost of the Buyer.

The Company's storekeepers receipt or that of any third party warehouse or a similar depository shall be deemed valid for all purposes including without limitation claiming payments under any relevant letter of credit as if it were the Buyer's receipt for a clean bill of lading or other document as is called for to evidence or effect delivery of the Goods.

### 7. CLAIMS

Notice of any claim relating to shortage of or damage to the Goods shall be made to the Company in writing within 48 hours of receipt of the Goods. In the event of loss or non-delivery of the Goods the Customer shall notify the Company in writing within 3 days of receiving the advice note.

The Company will consider claims only if the above conditions are met and the claim is signed for the Customer and accompanied by full particulars giving the invoice and Company's order number and, the copy of the delivery note in respect of the Goods which, in the case of shortage or damage to the Goods must bear an appropriately qualified signature, for example, "material received damaged, (signed)".

Allowances for claims for short weight may be made if considered appropriate by the Company provided always that the Company is given an opportunity to verify the same within 3 days of the claim being made.

The Company's liability hereunder in respect of any shortage loss or damage to the Goods shall be limited to the proportion of the price attributable to the Goods undelivered lost or damaged.

### 8. SPECIFICATION

- The Buyer shall be solely responsible for any drawings specifications or other information supplied by the Company by the Buyer its employees or agents and in conformity with which the Company is to supply the goods or is to apply any process or service in relation to goods of the Buyer notwithstanding that the Company may have examined inspected studied or commented to the Buyer upon any such drawings specifications or other information.
- The Buyer shall indemnify the Company against all actions proceedings claims costs and expenses which may be brought against or incurred by the Company by reason of its supplying the goods or applying any process or service in relation to goods of the Buyer in accordance with any such drawing specifications or other information whether or not it is alleged in such actions proceedings and claims that any patent trade mark designs copyright or other intellectual property or other exclusive right of any third party has been infringed.

### 9. VARIATIONS

- If the Company makes a variation to the goods in any way from the agreed specification at the Customer's request or pursuant to any legal requirement the Customer shall pay in addition to all other sums payable under this contract the cost of the variation insofar as the same increases the cost incurred by the Company in performing this contract.
- The Contract Price is based on costs current at the date of this Contract. If during the period between the contract date and the date of actual delivery such costs are increased to the Company, the Customer shall pay such additional sum as incurred by the Company in performing this contract.

### 10. USED MACHINERY / RACKING

- No representation or warranty is given or implied that the equipment complies with the Health & Safety at Work Act 1974 or any other Act or Acts or Regulations governing the use of that plant, machinery or equipment in a working environment. The Customer must ensure prior to use that any such piece of plant, machinery or equipment does not contravene any such relevant Act or Regulation, and the Buyer should satisfy itself that the intended location and use complies with The Provision and Use of Work Equipment Regulations 1998 (PUWER 1998) and the guidelines issued by The Storage Equipment Manufacturers Association (SEMA)
- The Buyer is wholly responsible for ensuring the equipment or racking is used in accordance with the original specification and manufacturers guidelines including structural calculations and loading.
- Any machine sold in 'existing condition' or 'as seen' will be supplied without any guarantee as to function, condition or fitness for the purpose either expressed or implied. The Customer shall carry out a risk assessment to ensure that the machine or racking is safe and without risk to health and safety and this undertaking shall have the effect of relieving the Company so far as possible of any liability thereto.

### 11. PAYMENT TERMS

Accounts are payable by the end of the month following the month in which delivery took place.

Where only part of the Goods are despatched, payment shall be made of the contract price attributable to that part.

In the event of any delay or delays in despatch or delivery which are attributable to the Buyer's actions or failure to act, the Buyer shall make payment to the Company in accordance with the above as if the Goods had been delivered at the time at which but for such delay or delays such delivery would have taken place.

Unless otherwise agreed, in writing, the contract price shall be paid in Pounds Sterling. Unless the Company's offer specifies otherwise, if the Buyer is based overseas, payment shall be made by irrevocable letter of credit established in favour of the Company at the time of placing of order by the Buyer or acceptance of the Company's offer and confirmed by a first class British clearing bank acceptable to the Company and maintained valid for cash drawings against presentation of the Company's invoice(s) until final contract payment but in any case for at least three months after scheduled completion of the contract taking into account any agreed extensions and the acceptance by the Company of the Buyer's order is conditional upon such letter of credit being received with the order.

The Buyer agrees to arrange extension of such letter of credit for such period as may be requested by the Company from time to time.

All bank charges shall be to the account of the Buyer except in the case where the Company requests extension to account for any delay on its part for reasons within its control, in which case the Company shall bear the reasonable cost of such extension.

The Company reserves the right to charge interest on late payment of four per cent per annum above the base rate quoted by Barclays Bank plc from time to time on the daily balance from the due date until payment is made.

If any payment falls into arrears the Company shall have the right to cancel or postpone performance of the contract wholly or in part and to be paid immediately for performance of the contract to date.

No claim by the Buyer under warranty or otherwise shall entitle the Buyer to any deduction, retention or withholding of any part of any sums due for payment hereunder. The Buyer shall not be entitled to any set-off of obligations within or between contracts with the Company.

### 12. RISK AND TITLE

Risk passes to the Buyer on delivery of the Goods.

Whilst risk in Goods supplied to the Buyer under the contract shall pass on delivery, legal and beneficial ownership of the Goods shall remain with the Company until such times as the Company has received payment in full for all Goods supplied to the Buyer or until such time as the Goods are sold to the Buyer's customers by way of a 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 Company

The Buyer agrees to arrange extension of such letter of credit for such period as may notwithstanding terms of payment specified herein or elsewhere payment for all Goods supplied to the Buyer shall become due immediately upon the commencement of any act or proceeding in which the Buyer's solvency is involved (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 occurrence the power of sale granted to the Buyer above shall automatically determine.

If payment for any Goods is overdue whether in whole or in part and any Goods have been delivered to the Buyer the Company may without prejudice to any of its other rights enter upon the Buyer's premises to recover and/or resell the Goods or such of them as the Company in its absolute discretion may designate as necessary to recover the amount of payment overdue and the Company's reasonable costs incurred in giving effect to its rights hereunder and for these purposes the Buyer hereby irrevocably authorises the Company to enter and take all necessary and reasonable steps upon the premises of the Buyer.

Until the Company is paid in full for all Goods supplied the buyer is and shall remain a fiduciary for the Company in respect of the Goods and if the buyer sells or allows to be sold the Goods the proceeds of sale shall be held in a separate clearly identifiable account and the beneficial interests of the Company shall attach to the proceeds of sale and the Company shall have the right to trace such proceeds of sale.

If any of the Goods are incorporated or used in other products before full payment for all Goods supplied under the contract has been made title in such products shall be and remain with the Company until 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.

### 13. ASSIGNMENT

The contract shall not be assigned by the Buyer to any third party without the prior written consent of the Company.

### 14. CANCELLATION BY THE BUYER

The Buyer may cancel or suspend the contract only with the Company's prior written consent following agreement by the Buyer to reimburse the Company in an amount to be determined by the Company.

### 15. TERMINATION BY THE COMPANY

The Company shall (without prejudice to any of its other rights hereunder) be entitled to terminate any contract forthwith by written notice to the Buyer if the Buyer shall:

- become insolvent.
- fail to pay any amounts falling due (whether under these conditions or otherwise) to the Company within 28 days of the date payment is due.
- suffer the appointment of a Receiver.
- pass a resolution for winding-up (other than for purposes of bona fide amalgamation or bona fide reconstruction) commit a breach of any term of the contract or any other contract with the Company.

### 16. COMPANY'S LIABILITY

- The Customer agrees that it will examine the Goods on delivery and that no claim for shortage will be made or allowed unless it notifies the Company in writing within 7 days of receipt of the Goods or (if later) within 3 days of the invoice date and the Customer will allow the Company an adequate opportunity to inspect and/or re-weigh.
- Any material agreed by the Company to be defective or contrary to any specification and/or description will be credited or replaced free of charge, but the Customer agrees not to make any claim for, and the company shall not be liable for labour charges expenses or other consequential damage in connection therewith.
- Save as hereinafter provided all Good sold are "non-prime" and are sold in their actual state, as seen without warranty and with all faults whether or not the goods have been inspected by the Customer prior to delivery. Save where the Company warrants in writing that the Goods comply with a recognised specification or standard, any statement, specification, description or other information provided by the Company in respect of such Goods is given in good faith, but the Company can accept no responsibility for its accuracy. Under no circumstances will the Company be under an obligation to replace or make good or entertain any claim whatsoever in respect thereof. If the Customer shall re-sell such goods the Customer shall ensure that a provision in similar form to this condition is incorporated in the resale agreement unless prior to re-selling the goods, the Customer has caused the goods or such part of the goods as the Customer re-sells to comply with a recognised specification or standard.
- Because the Company cannot check how its products are incorporated or used the Company will not be liable for any loss or claim in respect of any injury or damage or for any expenditure incurred on goods or any consequential or special loss or damage to the Customer or any of the Customer's property or to any third party or to the property of any third party by reason of any alleged defect in the goods unless;
  - The Particular detailed purpose for which the goods are required and accompanying specification were provided by the Customer to the Company prior to the contract being made and the Company warranted in writing that the goods complied with a recognised specification or standard and so were fit for that particular detailed purpose.
  - The Customer produces a certificate of an Expert acceptable to the Company to show that all technical and other requirements have been properly met by the Customer in relation to such incorporation or use and that such injury or damage is solely attributable to the alleged defect and
  - The Customer will allow the Company its servants and agents adequate opportunity to inspect and take samples of any defective material.
- Where applicable the Company will make available to the Customer any warranties given to the Company by any manufacturers and suppliers of the goods upon the Customer indemnifying the Company against all expenses charges and claims in connection therewith.
- The Customer shall indemnify the Company against all claims made against the Company and all losses, liabilities, costs and expenses consequent thereon which arise out of loss or damage to property or injury to or death of any person caused or alleged to be caused by or consequent upon the supply of a product as defined in section 1 of the Consumer Protection Act 1987 to the Customer as "Non-prime" or any third party by the Customer which comprises "non-prime" goods sold to the Customer by the Company or which has a component or components, includes or is otherwise manufactured from any "non-prime" goods supplied by the Company whether or not such claim is made pursuant to the said Act or the legislation of any member state of the European Community made pursuant to or in accordance with the directive of the Council of European Communities dated 25th July 1985 (no. B5/374/EEC).

### 17. LIMITATIONS OF LIABILITY

The Company shall not be liable for any expenditure loss (including without limitation economic indirect and consequential loss) damage or injury (other than personal injury arising out of negligence for which we must accept liability in accordance with the Unfair Contract Terms act 1977 where you are a UK Customer for UK supply) arising out of any use or dealing with the Goods howsoever such expenditure loss damage or injury shall arise and whether from any defect in the Goods or otherwise.

The Buyer shall indemnify the Company against all and any claims costs actions or demands whatsoever and howsoever arising made by any third party (including the Buyer's employees) whether direct or indirect including without limitation those relating to the use of the Goods and those arising as a result of the operation of the Consumer Protection Act 1987.

### 18. FORCE MAJEURE

In the event of the Company being delayed in or prevented from performing its obligations hereunder owing to any cause whatsoever beyond the Company's control including without limitation act of God, war, strikes, lockouts, trade disputes, difficulty in obtaining workmen or materials, breakdown of equipment, or any other cause, the Company will not be liable for any loss damage or expenses incurred and shall be at liberty to cancel or suspend the contract without incurring any liability arising therefrom, and the Customer shall not be entitled to terminate the contract.

### 19. LAW AND INTERPRETATION

This 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. The headings of each provision are intended to be for convenience only and do not affect the interpretation thereof.

The contract shall be deemed to be a contract made in England and shall be construed according to the law of England. Any dispute shall be referred to an English court which shall have sole jurisdiction.