

# **BRUNEL STEEL SERVICES CONDITIONS OF SALE**

## **1. DEFINITION**

- 1.1 Buyer means the person who buys or agrees to buy the Goods from the Seller.
- 1.2 Conditions means the terms and conditions set out in this document and any special terms and conditions agreed in writing by the seller
- 1.3 Delivery Date means the date specified by the Seller when the Goods are to be delivered.
- 1.4 Goods means the articles which the Buyer agrees to buy from the Seller.
- 1.5 Price means the price for the Goods excluding carriage, packing, and VAT.
- 1.6 Seller means Capital Coated Steel Limited

## **2. CONDITIONS APPLICABLE**

- 2.1 These Conditions shall apply to all contracts for the sale of Goods by the seller to the Buyer to the exclusion of all other terms and conditions which the Buyer may purport to apply under any purchase order confirmation of order or similar document.
- 2.2 All orders for goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Conditions.
- 2.4 Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the seller.

## **3. THE PRICE AND PAYMENT**

- 3.1 The price of the Goods shall be the seller's quoted price which shall be binding on the seller provided that the Buyer shall accept the Seller's quotation within 3 days. The Seller by giving notice to the Buyer at anytime up to 7 days before delivery may increase the Price of the Goods to reflect any increase in the cost of the seller which is due to factors occurring after the making of the contract of sale which are beyond the reasonable control of the seller (including without limitation, foreign exchange fluctuations, taxes and duties, and the cost of labour, materials and other manufacturing costs) provided that the Buyer may cancel the contract within 7 days of any such notice from the Seller. The Price is exclusive of VAT which shall be due at the rate ruling at the date of the VAT invoice.

3.2 Payment of the Price and VAT shall be due on the last working day of the month following the month in which the Goods are delivered unless otherwise stipulated in the Seller's written quotation. Time for payment shall be of the essence.

3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from day to day until the date of payment at a rate of 3% above National Westminster Bank Plc's base rate from time to time in force and shall accrue at such a rate after as well as before any judgement.

3.4 If the Buyer fails to make payment on the due date then without prejudice to any of the Seller's other rights the seller may:

3.4.1 suspend or cancel deliveries of any article due to the Buyer; and/or

3.4.2 appropriate any payment made by the Buyer to such of the Goods (or Goods supplied under any other contract with the Buyer) as the Seller in its sole discretion may think fit.

3.5 Payments shall be made in Sterling unless the Seller's written quotation specifies otherwise. Quotations in currency other than Sterling are based on the rate of exchange at the time of quoting and unless otherwise stated in the quotation will be subject to revision up or down if any different rate of exchange is ruling at the date the order acknowledgement is despatched.

#### **4. THE GOODS**

4.1 The quantity and description of the Goods shall be as set out in the Seller's quotation.

4.2 The Buyer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased provided that:

4.2.1 such a discrepancy in quantity shall not exceed 10%

4.2.2 the Price shall be adjusted pro-rata to the discrepancy.

#### **5. WARRANTIES AND LIABILITY**

No condition is made or implied nor is any warranty given or to be implied as to the quality condition or fitness of the Goods or that they will be suitable for any particular purpose or for use under any specific conditions notwithstanding that such purpose or conditions may be known or made known to the Seller and any such conditions implied by statute custom of the trade or otherwise are hereby excluded. The Buyer must satisfy itself that the Goods are suitable for any product or application for which they are to be used before the Goods are incorporated in such product or application.

#### **6. DELIVERY OF THE GOODS**

6.1 Unless otherwise agreed delivery of the Goods shall be made to the Buyer's address on the delivery date. The Buyer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery.

6.2 The Seller may deliver the Goods by separate instalments in accordance with the agreed delivery schedule. Each separate instalment shall be invoiced and paid for in accordance with the provisions of these conditions. The failure of the Seller to deliver any one or more of the said instalments on the due date shall not entitle the Buyer to treat the contract as repudiated. The failure of the Buyer to pay for any one or more of the said instalments on the due date shall entitle the seller (at the sole option of the Seller);

6.2.1 without notice to suspend further deliveries of the Goods pending payment by the Buyer; and/or

6.2.2 to treat the contract as repudiated by the Buyer.

6.3 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all. Dates of delivery are approximate only and shall under no circumstances be essential terms of any contract. A delay in delivery including delivery later than the date or dates in the Seller's written quotation shall not constitute a breach of contract and shall not entitle the Buyer to avoid the contract or to any other remedy unless the Seller has guaranteed the date of delivery in a written warranty which expressly modifies the provisions of the Conditions. In particular, the Seller is not responsible for any loss or damage or expense caused by delay in Deliveries or failure to deliver as a result of strikes, lock outs, penalty clauses, fire, the elements, war, civil commotion, industrial disputes, shortages of material or fuel, notwithstanding that the Seller has taken all reasonable steps to procure the same, shortage of labour, breakdown or partial failure of plant or machinery, late receipt of the Buyer's specifications or other necessary information, acts, orders, or regulations of governments, decisions or directives of the Commission of the European Union, delay on the part of any subcontractor or supplier or any cause whatsoever beyond the reasonable control of the Seller and in such circumstances, notwithstanding any warranty given by the Seller modifying the provisions herein the time for Delivery of the goods shall be extended for a reasonable period having regard to the cause of the delay.

6.4 If the Seller so agrees the Goods may be collected from the Seller's premises by the Buyer. In such event, when the Buyer is notified that the Goods are ready for collection, the Buyer shall collect the Goods without delay. If the Goods are not collected by the Buyer within 3 days of being so notified the Seller may despatch the Goods itself at the Buyer's expense and risk or store them at the expense and risk of the Buyer

6.5 The Seller reserves the right to charge the Buyer any costs, charges or expenses incurred by the Seller as a result of vehicle or wagon detention or demurrage of ships in consequence of any act or omission of the Buyer, its servants or agents or as a result of special requirements or stipulations of the Buyer not provided for in the contract.

6.6 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) the Buyer shall be bound to accept delivery and to pay for the Goods in full provided that delivery shall be tendered at any time within three months of the Delivery Date.

## **7. ACCEPTANCE OF THE GOODS**

7.1 The Buyer shall inspect the Goods on delivery and shall within 3 days of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or sample. The Buyer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions the Goods shall be conclusively presumed to be in accordance with the contract and free from any defect or damage which would be apparent on a reasonable examination of the Goods and the Buyer shall be deemed to have accepted the Goods.

7.2 The Buyer shall notify the Seller of any non-delivery of the whole consignment of Goods within 3 days of the date of dispatch followed by a complete claim in writing within 7 days thereof. Notwithstanding the receipt by the Seller of any such notice, a clear signature on the carrier's delivery advice sheet shall be deemed to signify receipt of the quantity of Goods indicated on the advice sheet unless the said sheet is endorsed "not examined".

7.3 If the Goods are not in accordance with the contract for any reason the Buyer's sole remedy shall be limited to the Seller making good any shortage by replacing such Goods or, if the seller shall elect, by refunding a proportional part of the Price.

7.4 The Seller's liability to the Buyer, whether for any breach of contract or otherwise shall not in any event exceed the Price and the seller shall be under no liability for any direct loss and/or expense or indirect loss and/or expense (including loss of profit) suffered by the Buyer or liability to third parties incurred by the Buyer.

7.5 All warranties and conditions whether implied by statute or otherwise are excluded from the contract of sale of the Goods provided that nothing in these conditions shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller or affect the statutory rights of a Buyer dealing as a consumer.

## **8. TITLE AND RISK**

8.1 The Goods shall be at the Buyer's risk as from delivery.

8.2 In spite of delivery having been made property in the Goods shall not pass from the Seller until:

8.2.1 the Buyer shall have paid the Price in full plus VAT;

8.2.2 no other sums whatever shall be due from the Buyer to the Seller

8.3 Until property in the Goods passes to the Buyer in accordance with clause 8.2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the Goods (at no cost to the Seller) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property.

8.4 Notwithstanding that the Goods (or any of them) remain the property of the Seller, the Buyer may sell or use the Goods in the ordinary course of the Buyer's business for market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be identified at all material times as the seller's money.

8.5 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding the property in any of the Goods has not passed from the Seller.

8.6 Until such time as property in the Goods passes from the Seller, the Buyer shall upon request deliver up such Goods as have not ceased to be in existence or re-sold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 8.4 shall cease.

8.7 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

8.8 The Buyer shall insure and keep insured the Goods for the full Price against "all risks" to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

8.9 The Buyer shall deliver promptly the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 part XII as amended. Without prejudice to the other rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall become due and payable forthwith.

## **9. REMEDIES OF THE BUYER**

9.1 Where the Buyer rejects any Goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the contract of sale.

9.2 Where the Buyer accepts or has been deemed to accept any Goods then the Seller shall have no liability whatever to the Buyer in respect of those Goods.

9.3 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expenses (including loss of profit) suffered by the Buyer arising out of a breach of contract by the Seller, but such Goods, if returned to the Seller and accepted by it as defective, at the request of the Buyer and if practicable will be replaced as originally ordered.

9.4 In the event of any breach of contract by the Seller the remedies of the Buyer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.

## **10. INSOLVENCY OR OTHER DEFAULT OF THE BUYER**

If the Buyer fails to make payment for the Goods in accordance with these Condition of Sale or commits any other breach thereof or if distress or execution should be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or commits any act of bankruptcy or if any petition in bankruptcy is served against the Buyer or the Buyer is unable to pay its debts as they fall due or if being a limited company any resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law, all sums in respect of the Goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have:

10.1 suspend all future delivery of Goods to the Buyer and/or terminate the contract without liability on its part; and/or

10.2 exercise any of its rights pursuant to clause 8.

## **11. SET OFF AND COUNTER CLAIM**

11.1 The Buyer may not withhold payment of any invoice or any amount due to the Seller by reason of any right of set off or counter claim which the Buyer may have or allege to have or for any reason whatever.

11.2 The seller shall be entitled to a general lien on all goods of the Buyer in the seller's possession (including goods of the Buyer which have been paid for) for the unpaid Price of all Goods sold to the Buyer by the Seller under any contract.

## **12. GENERAL**

12.1 These conditions and any contract incorporating the same are subject to the law of England and Wales. If any dispute or difference shall arise between the parties as to the meaning of these Conditions or any matter or thing arising out of or connected with these Conditions then it should be referred to the determination of an arbitrator to be appointed by agreement of the parties or (in default of agreement within 21 days after the service

upon one party of a written request to concur in such appointment) by the President for the time being of the Law Society.

12.2 Any notice required to be served pursuant to these Conditions shall be in writing and served by first class post or by hand on the Seller at Capital Coated Steel Limited Lewis Road Cardiff CF24 5EB or such other address as the Seller from time to time may notify to the Buyer, and on the Buyer at the Buyer's registered office or principal place of business.

12.3 No waiver or forbearance by the Seller (whether express or implied) in enforcing any of its rights under these Conditions shall prejudice its rights to do so in the future.

12.4 The Seller may licence or sub-contract all or any part of its rights and obligations under these Conditions without the Buyer's consent.

12.5 The Seller may cancel any contract at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall promptly repay to the Buyer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.

12.6 All headings are for ease of reference only and shall not affect the construction of these Conditions.

12.7 Any provision in these Conditions which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed to be severable and shall not affect any other provision of these Conditions.