

# TERMS AND CONDITIONS OF SALE

## GENERAL

The placing of an order with Ayrshire Metals Ltd (hereinafter called "the Company") is deemed to be made subject to these conditions of sale. No variation or modification of, or substitution for, the following Terms and Conditions contained in any offer or purported acceptance by the customer shall form any term of the sale unless expressly accepted by the Company in writing. A binding contract shall not arise unless and until the Company shall have given written confirmation of acceptance of the customer's order, or if the receipt by the customer of these Terms and Conditions shall for any reason be deemed to be a counter offer the acceptance by the customer of any goods or services from the Company shall be a binding acceptance by the customer of these Terms and Conditions contained in such counter offer. Unless otherwise agreed in writing only these Terms shall apply and shall prevail over any terms of the customer. Goods shall mean goods delivered or to be delivered by the Company to the customer whether or not the same have been manufactured by the Company. The Company reserves the right, until all outstanding sums due from the customer to the Company on any account are paid in full, to suspend completion of any contract without prejudice to any other provision of these Terms and Conditions of Sale, particularly delivery and cancellations. In the event of such suspension, the Company shall have no liability whatsoever or howsoever arising for any loss or damage which the customer or any third party may suffer as a result of such suspension. The order is conditional upon the customer having a credit rating acceptable to the Company, and the Company may, at its discretion, refuse to carry out any work or any further work if the customer fails to achieve a satisfactory rating.

## ACCEPTANCE

All quotations are subject to written confirmation by the Company at the time of ordering unless within two weeks from the date of quotation the Company receives the customer's acceptance of such quotation on these terms.

## DELIVERY

All stipulations as to delivery and completion of work are subject to modification in the event of strikes, fire, breakdown of machinery, non-arrival or delay in arrival of raw materials, war or any other act, event or default interfering with the manufacture, despatch or delivery of the goods and beyond the control of the Company. Each instalment of goods delivered or deliverable under the contract shall be deemed to be sold under a separate contract, and failure by the Company to deliver any such instalment shall not entitle the customer to repudiate the contract with regard to any instalments still to be delivered. The Company shall not be liable for any shortage of delivery unless the Customer has notified the Company in writing within three working days of receipt of any goods and the Company has been afforded a reasonable opportunity of inspecting such goods before the goods have been used, processed or resold by the Customer.

## DELIVERY DATES

Any dates for delivery of goods or for performance of work to be done by the Company are approximate business estimates only and are not the subject of any condition, guarantee, warranty or representation. The Company hereby expressly excludes any liability arising (in contract or tort or otherwise howsoever) for consequential loss or damage (including but not limited to economic loss, loss of profits or loss of contracts) arising from delay in delivery of goods or the performance of the work to be done by the Company. Nor shall any such delay entitle the customer to cancel any order, refuse to accept delivery, or repudiate any contract for work to be done. Where the customer, after the delivery date, refuses or is unable to accept delivery or to effect collection of the goods, the Company shall be entitled at any time to invoice the customer with the full price which the customer shall then be liable to pay. The Company shall be entitled to make a charge for the storage of the goods after the delivery date or the right to dispose of all or part of the goods to a third party and to recover any shortfall against the purchase price from the customer.

## PRICE VARIATION

Unless otherwise stated, all prices quoted are based upon the prices and costs of raw materials, labour, transport and overhead expenses current at the date of quotation and may be varied by the Company to correspond with any increase in such prices or costs which may occur at any time before the order, or any portion of it, is completed. Any alteration by the customer in design, weight, quantities or specifications and any suspension of work following on the customer's instructions, or the customer's failure to give instructions, will involve adjustment to the price if the cost of manufacture and/or delivery are thereby increased. In such cases, the price to be paid by the customer shall instead of the quoted price by that ruling at the date or revised date of delivery of the goods.

## IMPORT DUTY AND TARIFF VARIATION

If, at any time prior to delivery, the materials required for the performance of this contract become subject to any safeguard import duty, tariff, levy or similar governmental charge amounting to 25% or more of the material cost, Ayrshire Metals Ltd reserves the right to:

- Adjust the contract price to reflect the additional cost in full; and
- If the parties cannot agree the adjusted price within [7] days of notification, cancel the order without further liability to either party.

## INFRINGEMENT OF PATENTS ETC

The customer shall indemnify and keep the Company indemnified against all damages, penalties, costs, claims and liability in respect of the infringement of any patent, right or registered design, copyright, design right or trademark resulting directly or indirectly from the carrying out of work in accordance with the customer's specifications or instructions expressed or implied.

## TERMS OF PAYMENT

Prices quoted are net. Accounts are due for payment not later than the end of the calendar month following the month of invoice. The Company reserves the right to charge interest from day to day on overdue accounts without further notice at the rate of 2% per annum above the Royal Bank of Scotland base lending rate. When deliveries are made over a period, each invoice will be treated as a separate account and be payable accordingly.

## WARRANTY

The warranty and undertakings contained in the following provisions of this clause are given by the Company in lieu of and to the exclusion of any other representations, guarantees, conditions or warranties whatsoever including (without limitation) as to the quality of the goods or services supplied.

- The Company undertakes to use sound material and good workmanship at all times. If within one month from the date of receipt of any goods by the customer, the customer claims that any goods are defective, the customer shall give to the Company full opportunity to inspect and test such goods at the customer's works. If the Company agrees that the goods were defective at the time of delivery to the customer in either material or workmanship the Company will (at its option) either:
  - Invite the customer forthwith to return the goods at the cost of the Company to the Company's works whereupon the Company will repair or replace the goods as it, in its discretion, shall think fit. Any such repaired or replacement goods shall be delivered free of charge to the same point of delivery as the original goods or such place of equivalent distance as the customer will reasonably request, or
  - Permit the customer itself to repair the goods and will reimburse the customer for agreed direct costs incurred in carrying out such repair work.
- Unless otherwise expressly agreed in writing, where within the terms of sub-clause (a) of this clause the Company undertakes to repair any goods, the Company shall be entitled to repair such goods by any method which in the Company's judgement is a satisfactory method of repair.
- No claim shall be made by the customer for expenditure incurred by the customer on goods which are subsequently replaced or repaired by the Company.
- The Company hereby also expressly excludes:
  - Any liability (arising in contract or tort or otherwise howsoever) for consequential loss or damage caused by or arising out of the use of the goods or occurring in respect of the goods howsoever arising; and
  - Any liability (arising in contract or tort or otherwise howsoever) for loss or damage arising from any defects resulting from negligent or improper use or operation, storage or handling of the goods, including without prejudice to the foregoing the use or operation of the goods other than in accordance with the Company's technical literature instructions, and the treatment or use of the goods in a manner other than that for which they were manufactured.
- In the case of goods or parts thereof not of the Company's manufacture proving defective, the customer shall be entitled only to the benefit of any guarantee, condition or warranty which the Company shall have received in respect thereof and only to the extent that the Company can enforce the same.
- In the case of goods damaged in transit prior to delivery, provided that:
  - The Company is satisfied that the goods were so damaged.

- The transport contractor is advised of such in writing within three days of delivery, and
  - The Company is advised of such damage in writing within ten days of delivery.
- The Company will at its option either repair or replace the goods and the provision of sub-clauses.
- (a), (a) (i), (b) and (c) of this clause shall apply mutatis mutandis.
- The Company shall have no liability whatsoever to the customer for any loss or damage incurred by the customer or any third party due to the manufacture and/or supply of goods by the Company made to the customer's own stated requirements and specifications.

## SAFETY

The Company hereby gives notice to the customer that the Company has available information concerning the conditions necessary to ensure that the goods supplied hereunder will be safe and without risk to persons or property when properly used. If the customer is not already in possession of such information and requires any advice in connection with the safe use of the goods at work the customer should immediately contact the Company for the appropriate information.

## PASSING OF RISK

The risk in the goods shall pass to the customer at the point of delivery. This will either be at the customer's premises or such other place agreed between the Company and the customer. In the case of goods collected by the customer or his agent from the Company's premises, delivery shall take place at the point of collection. Unless otherwise agreed in writing the stated price is an ex-works price end unless the customer collects the goods at the company's premises, the cost of delivering the goods will be an extra charge payable by the customer.

## PROPERTY

- Notwithstanding delivery or collection of the goods the property in the goods shall not pass from the Company until the customer shall have paid the price for those goods plus VAT in full and no other sums whatever shall be due from the customer to the Company.
- Until property in the goods passes to the customer the customer shall hold the goods or any other item in which the goods are attached or incorporated and each of them on a fiduciary basis as bailee for the Company. The customer shall store the goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the company's property.
- Notwithstanding that the goods (or any of them) remain the property of the Company the customer may sell or use the goods in the ordinary course of the customer's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the customer on the customer's own behalf and the customer shall deal as principal when making such sales or dealings. Until property in the goods passes from the customer the entire proceeds or sale or otherwise for the goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money.
- Until such time as property in the goods passes from the Company the customer shall upon request deliver up such of the goods as have not ceased to be in existence or re-sold. If the customer fails to do so the Company may enter upon any premises owned or occupied or controlled (whether in whole or in part) by the customer where the goods or any part thereof are situated and repossess the goods or any part thereof. On the making of such request any rights of re-sales of the customer shall automatically cease.
- The customer 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 Company. Without prejudice to any other rights of the Company if the seller does so all sums whatever owing by the customer to the Company shall forthwith become due and payable.
- The customer shall insure and keep insured the goods for the full price against all risks to the reasonable satisfaction of the Company until the date that the property in the goods passes from the Company and shall whenever requested by the Company produce a copy of the policy of insurance.
- The Company may at any time notwithstanding that payment in full has not been received for the goods, waive its reservation of title thereto or to any part thereof by notice in writing to the customer whereupon property in such goods shall forthwith pass to the customer.

## DISCHARGE OF CONTRACT

Without prejudice to any other provision in these Terms and Conditions of Sale in the event that:

- A Receiver is appointed over the whole or any part of the assets of the customer or,
- A Resolution is passed or a petition presented for the liquidation of the customer or
- The customer suffers any execution or distress over any of its assets or undertaking, enters or offers to enter into any composition arrangement with any of its creditors or ceases or threatens to cease to carry on business.

The Company may elect either to discharge the Contract of the sale of the goods hereunder or not to deliver the goods except against payment in cash of the purchase price of the goods in full.

## CANCELLATION

No order may be cancelled without the Company's consent. The Company will only consent to the cancellation of an order on payment by the customer of all costs and expenses incurred by the Company at the date of cancellation, including a sum equal to the loss of profit on the order or part of order cancelled. Such sum or sums shall immediately become due as a debt payable to the Company on cancellation of the order or part of an order.

## INDEMNITY

- The customer shall indemnify and keep the Company indemnified against all losses, damages (including consequential losses or damages) or penalties incurred or sustained by the Company or for which the Company may be liable arising (in contract or tort or otherwise howsoever) out of the supply or use of goods hereunder (including without prejudice to the foregoing for death or injury to persons or property), and from and against all actions, suits, claims, demands, costs, charges or expenses arising in connection therewith.
- The customer will also indemnify the Company against all and any costs and charges and expenses incurred in pursuing and obtaining payment of any monies due to the Company.

## COPYRIGHT

All drawings, plans, specifications and other written material prepared by the Company shall remain the property of the Company which reserves all rights vested in it by way of letters, patent, registered designs, copyright or registered trademarks or trade secrets in any such material; and must not be copied, disclosed to any third party or otherwise used without the Company's written permission and where submitted to the customer must be returned to the Company on request.

## SET-OFF

The customer may not withhold payment of any invoice or any other amount due to the Company by reason of any right of set-off or counterclaim which the customer may have or allege to have or for any reasons whatsoever and the Company shall also be entitled to a general lien on all goods of the customer in the customer's possession (including goods of the customer which have been paid for) for the unpaid price of all goods sold to the customer by the Company under this or any other contract.

## HEADINGS

The headings in these terms being for convenience only shall not affect the construction hereof.

## RULING LAW

These Terms and Conditions shall be governed by and constructed in all respects in accordance with the law of England and for the benefit of the Company, both the Company and the customer hereby both irrevocably submit to the exclusive jurisdiction of the English courts.

## NOTICES

Any notice, demand or other written communication required or permitted to be given to the customer hereunder shall be deemed to have been validly given if served on the customer personally or sent to it by registered first class pre-paid post to or left at the last known business address of the customer or its last known registered office. Any such notice, demand or other communication sent by post shall be conclusively deemed to have been served 48 hours after the time of posting or at the time of delivery if delivered by hand.

## SEPARATE AND SEVERABLE

Each clause and sub-clause in these Terms and Conditions is separate and severable and enforceable accordingly.