

1. Definitions

In these conditions unless the context requires otherwise:

- 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 of sale 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, insurance and VAT; and
- 1.6 'Seller' means Abbey Stainless Steels Company Ltd of Beeley Wood Works, Beeley Wood Lane, Sheffield, South Yorkshire S6 1ND.

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 including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document. These conditions constitute the entire understanding between the Buyer and the Seller with respect to the subject matter caused by the contract of sale and supersede all previous agreements and understandings between the parties.
- 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 Dispatch and delivery of the Goods by the Seller to the Buyer 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. Price and payment

- 3.1 The Price shall be the Seller's quoted price. The Price is exclusive of VAT which shall be due at the rate prevailing on the date of the Seller's invoice.
- 3.2 The Seller reserves the right to correct stenographic or clerical errors contained in any quotation.
- 3.3 Payment of the Price and VAT shall be due net in cash within 30 days of the date of the invoice. Time for payment shall be of the essence.
- 3.4 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 8% above the Bank of England base rate from time to time in force and shall accrue at such a rate after as well as before any judgement.

4. The Goods

- 4.1 The Goods shall be supplied in accordance with the description contained in the Seller's specification and within the normal limits of industrial quality.
- 4.2 The Seller may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality or fitness for purpose of the Goods.
- 4.3 Any contractual description of the Goods by the Seller relates to the identity of the Goods but only if it relates to a central characteristic of the Goods or to a substantial ingredient in their identity.

5. Warranties and liability

The Seller warrants that the Goods supplied will at the time of delivery correspond to the description given by the Seller. All other warranties, conditions or terms relating to fitness for purpose, quality or condition of the Goods, whether express or implied by statute or common law or otherwise are excluded to the fullest extent permitted by law.

6. Test certificates

6.1 The Seller shall comply with the specification and testing of the Goods confirmed in writing to the Buyer.

6.2 The Seller shall provide test certificates in respect of the Goods as notified by the Buyer, and confirmed in writing by the Seller.

6.3 The Seller shall not be obliged to carry out any tests to the Goods other than those specified in such certificates.

6.4 Any and all test certificates supplied by the Seller shall be conclusive as to the results of the testing of a sample of the Goods only and the Seller gives no warranty that

6.4.1 the sample tested is typical or representative of the whole of the Goods;

6.4.2 if the test was repeated in respect of the whole of the Goods the results would be the same in respect of the whole or any particular part of the Goods.

7. Delivery of Goods

7.1 Delivery of the Goods shall be made to the Buyer's address on the Delivery Date.

7.2 The Seller shall not be liable for any loss or damage whatsoever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.

7.3 Notwithstanding that the Seller may have delayed or failed to deliver the Goods (or any of them) promptly 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 3 months of the Delivery Date.

7.4 The Buyer shall make all arrangements to take delivery of the Goods whenever they are tendered for delivery.

7.5 If for any reason the Buyer is unable to accept delivery of the Goods when the Goods are due and ready for delivery the Supplier may arrange storage of the Goods at the Buyer's risk and the Buyer shall be liable to the Supplier for the reasonable costs, including insurance, of such storage. This provision is without prejudice to any other right that the Supplier may have in respect of the Buyer's failure to take delivery of the Goods or pay for them in accordance with the contract.

8. Delivery at Seller's address

8.1 The Goods shall be delivered to the Buyer at the Seller's address. The risk in the Goods shall pass to the Buyer upon such delivery taking place.

8.2 The Seller shall arrange for carriage of the Goods to the Buyer's address. The costs of carriage and any insurance which the Buyer reasonably directs the Seller to incur shall be reimbursed by the Buyer without any set-off or other withholding whatever and shall be due on the date for payment of the Price. The carrier shall be deemed to be the Buyer's agent.

9. Acceptance of the Goods

The Buyer shall be deemed to have accepted the Goods 48 hours after delivery to the Buyer.

10. Damages or Loss in Transit

The Buyer must notify to the Seller any loss or damage to the Goods within 48 hours of receipt and the Goods shall be held for inspection to enable a claim to be made on the carrier.

11. Title and risk

- 11.1 The Goods shall be at the Buyer's risk as from delivery.
- 11.2 In spite of delivery having been made property in the Goods shall not pass from the Seller until:
- 11.2.1 The Buyer shall have paid the Price plus VAT in full; and
- 11.2.2 no other sums whatever shall be due from the Buyer to the Seller.
- 11.3 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 at full 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 at all material times identified as the Seller's money.
- 11.4 The Seller shall be entitled to recover the Price (plus VAT) notwithstanding that property in any of the Goods has not passed from the Seller.
- 11.5 Until such time as property in the Goods passes from the Seller the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold 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 11.3 shall cease.
- 11.6 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.
- 11.7 The Buyer shall insure and keep insured the Goods to 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 shall whenever requested by the Seller produce a copy of the policy of insurance. 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 forthwith become due and payable.

12. Rejection of Goods

If the Buyer properly rejects any of the Goods which are not in accordance with the contract the Buyer shall nonetheless pay the full Price for such Goods unless the Buyer promptly gives notice of rejection to the Seller and at the Buyer's cost returns such Goods to the Seller before that date when payment of the Price is due.

13. Return of Goods

- 13.1 No Goods delivered to the Buyer which are in accordance with the contract will be accepted for return without the prior written approval of the Seller in accordance with the Seller's returns authorisation procedure and on terms to be determined at the absolute discretion of the Seller.
- 13.2 If the Seller agrees to accept any such Goods for return the Buyer shall be liable to return such Goods carriage-paid to the Seller. Such Goods must be returned by the Buyer carriage-paid to the Seller.
- 13.3 Goods returned without the prior written approval of the Seller may at the Seller's absolute discretion be returned to the Buyer or stored at the Buyer's cost without prejudice to any rights or remedies the Seller may have.

14. Seller's liability for indirect loss

14.1 The Seller shall be under no liability whatever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.

14.2 In the event of any breach of this 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.

14.3 In the event that the Buyer declines to accept the Goods in breach of this contract the Buyer shall pay to the Seller as and by way of agreed liquidated damages an amount equal to the Price of the Goods less the net proceeds received by the Seller on reselling the Goods after deducting the costs and expenses of resale.

15. Remedies of Buyer

15.1 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.

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

15.3 The Seller shall not be liable to the Buyer for late delivery or short delivery of the Goods.

15.4 The Buyer shall inspect the Goods on delivery and shall within 48 hours of delivery notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with 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.

15.5 The Buyer shall notify the Seller of any non-delivery of a whole consignment of the Goods within 14 days of the date of dispatch (as stated on the invoice). Notwithstanding the receipt by the Seller of any such notice a clear signature on a carrier's delivery advice sheet shall be deemed to signify receipt of the quantity of cartons indicated on the advice sheet.

15.6 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 proportionate part of the Price.

15.7 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 of indirect loss and/or expense suffered by the Buyer or liability to third parties incurred by the Buyer.

15.8 All warranties and conditions whether implied by statute or otherwise are excluded from this contract Provided that nothing in this contract 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.

16. Law of England & Wales to apply and Courts of England & Wales to have exclusive jurisdiction

16.1 This contract is subject to the law of England and Wales.

16.2 The parties submit to the exclusive jurisdiction of the Courts of England and Wales and irrevocably agree that proceedings issued out of the said Courts may without prejudice to the rules of service of such Courts be served on them by delivering such proceedings in an envelope addressed to the party to be served at the address for such party set out in this contract.

16.3 If any dispute or difference shall arise between the parties as to the meaning of this contract or any matter or thing arising out of [or connected with] this contract then it shall be referred to the determination of an arbitrator to be appointed by agreement of the parties or (in default of agreement within 21 days of the service upon one party of a written request to concur in such appointment) by the President for the time being of the Chartered Institute of Arbitrators.

17. Set-off and counterclaim

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

18. Third Party Rights

The provisions of the Contracts (Rights of Third Parties Act) 1999 shall not apply to this contract and a person who is not a party to this contract shall have no right under that Act to enforce any term of the contract.

19. Force majeure clause

19.1 Neither party shall be liable for any default due to any act of God, war, civil disturbance, malicious damage, strike, lockout, industrial action, fire, flood, drought, extreme weather conditions, compliance with any law or governmental order, rule, regulation, direction or other circumstance beyond the reasonable control of either party ('Force Majeure Event').

19.2 Each party shall give notice forthwith to the other upon becoming aware of a Force Majeure Event, the notice to specify details of the circumstances giving rise to the Force Majeure Event.