

---

Lucy Hill

**TERMS and CONDITIONS of BUSINESS of STEEL CITY MARKETING LIMITED**

In these General Conditions Steel City Marketing Limited is referred to as "the Company", the person or other legal entity from the Company is selling is referred to as "the Buyer" and the goods, materials equipment, or services (as applicable) sold by the Company to the Buyer is referred to as "the Product". All sales are made and all orders accepted are subject to the following Conditions.

**1. VARIATION OF CONDITIONS**

- (a) These Conditions override any other terms, conditions or warranties that the Buyer may seek to impose
- (b) No amendment or change shall be made to these Conditions except by agreement in writing signed by an authorised officer of each party.
- (c) Acceptance of the Product by or on behalf of the Buyer shall be conclusive evidence that these Conditions are accepted by the Buyer and that they apply to the contract. If the Buyer does not accept these Conditions or any part of them, it or has returned the Product tendered forthwith.

**2. QUOTATIONS**

- (a) All quotations (unless a contrary intention appears on the face thereof) are open for acceptance for a period of ~~twenty~~ **ten** days from the date thereof. Any acceptance received late may be accepted by the Company in its discretion in which ~~it shall~~ **it shall** be binding upon the Buyer.
- (b) Clerical errors and/or omissions in the Company's quotation acknowledgement or invoice shall be rectified by the Company as soon as discovered and such errors and omissions shall not be binding upon the Company nor permit the Buyer to vary the ~~contract~~ **contract** or any of its terms.

**3. PRODUCT AVAILABILITY**

- (a) All offers to supply products from stock are subject to the products being available at the time of receipt by the Company of the Buyer's order.
- (b) Where the Product is not in stock at the date of receipt of the Buyer's order then this contract shall not be binding upon the Company unless and until the product has been safely delivered to the Company's premises or otherwise accepted by the Company as being under its control. Any increase occurring after the date hereof in the rate of insurance or other charge, tax, levy, duty or imposition charged to the Company relating to the Product shall be reimbursed to the Company by the Buyer.

**4. PRICES**

- (a) Where the Product is sold by reference to the Company's published price list, the price payable for the Product shall be the ~~current~~ **current** price as published in the price list current at the date of despatch of the Product from the Company's works.
- (b) In other cases the price stated in the contract is based on the cost to the Company of materials, fuel and power, ~~transported~~ **transported** labour at the date of acceptance of the order or quotation (whichever is earlier). If at the date of despatch of the Product from the Company's works there has been any increase in all or any of such costs, the price payable for the Product may at the request of the Company be increased accordingly.
- (c) Where the price for the Product is varied in accordance with this condition the price as varied shall be binding on the Buyer and the Buyer shall not give either party any option of cancellation.
- (d) There shall be added to the price for the Product any value added tax and any other tax or duty relating to the Product (whether initially charged on or payable by the Company to the Buyer) and (where appropriate) the freight and other charges as specified in the relevant carriage tariff current at the date of despatch.
- (e) The Product is sold 'ex works' unless otherwise stated.

**5. TERMS OF PAYMENT**

- (a) Subject to the following provisions of this Condition unless otherwise agreed in writing, the price will be due and payable by the Company shall be entitled to invoice the Buyer for the price of the Product on or at any time after the date which the Product has been notified by the Company to the Buyer as being ready for collection or dispatch (in the case of sales ~~exworks~~ **exworks**) whether notification has been made verbally or in writing or by electronic means, unless the Buyer fails to ~~refuse~~ **refuse** delivery of the Product, in which case the Company shall be entitled to invoice the Buyer for the price at any time after the Buyer has been notified that the Product is ready for collection, or the Company has tendered delivery of the Product.
- (b) The Company reserves the right at its option to require either payment in part or in full for the Product or the provision of such security or guarantees from the Buyer or from other parties on behalf of the Buyer for the Product prior to commencing work on the contract and reserves the right to withhold manufacture or delivery of the Product until such payment or security is received or guarantees executed.
- (c) (Subject to Condition 5b) unless otherwise agreed by the Company in writing the terms of payment shall be ~~90 days from the date of invoice~~ **90 days from the date of invoice** notwithstanding that delivery may not have taken place and the property in the Product has not passed to the Buyer.
- (d) If the Company (in its absolute discretion) provides to the Buyer a fixed credit limit and the Buyer reaches and or exceeds each limit then the Company shall be entitled to invoice the Buyer for such amount as it sees fit and payment shall be due in accordance with the terms of this clause 5.
- (e) The time of payment of the price shall be of the essence of the contract.
- (f) Where the Product is delivered by instalments the Company may invoice each instalment separately and the Buyer shall ~~pay~~ **pay** invoices in accordance with these Conditions.
- (g) No right of setoff shall exist in respect of any claims by the Buyer against the Company unless and until such claims are accepted in full by a director or officer on behalf of the Company in writing and the Buyer shall not withhold all or any part of any sum which has become due for payment under the contract.
- (h) If the Buyer fails to make any payment due to the Company (whether under the contract or otherwise) on the due date ~~without~~ **without** prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
  - cancel the contract so far as any of the Product remains to be delivered under it or suspend any further delivery of the Product;
  - charge the Buyer interest at the rate equivalent to that set for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998;
  - calculated on a daily basis from the date of the Company's invoice until cleared funds are received;
  - compounded on the first day of each calendar month and;
  - before and after any judgement (unless the Court orders otherwise) appropriate any payment made by the Buyer to such of the ~~debts~~ **debts** (or the goods supplied under any other contract between the Company and the Buyer) as the Company may think fit (including any purported appropriation by the Buyer).

**6. DELIVERY BY INSTALMENTS**

In all cases where the contract provides for delivery by instalments or part deliveries each instalment or part delivery shall be deemed to be a separate contract and cancellation of any one instalment or part delivery shall not avoid or affect ~~access~~ **access** to the other instalments or part deliveries.

**7. NON DELIVERY AND DELAY**

- (a) Dates for delivery are approximate and unless the parties otherwise agree in writing time shall not be of the essence of the contract.
- (b) The Company shall not be liable for any direct or indirect loss arising from non-delivery or delay in delivery of any of the Product as a result of any cause beyond the Company's reasonable control. The Buyer shall have no right to cancel any order or to refuse delivery of any consignment on the grounds of delay or non-delivery resulting from such a cause.
- (c) Where a delay in delivery or the non-delivery is due to a cause within the Company's reasonable control the Company's liability and the Buyer's exclusive remedy shall be limited to the right to cancel the contract to the extent only of the Product ~~not~~ **not** delivered.
- (d) Failure by the Company to deliver any one or more of the instalments of the contract shall not entitle the Buyer to ~~cancel~~ **cancel** the contract as a whole as repudiated or breached.

**8. STORAGE**

- (a) The Buyer shall give the Company instructions for delivery of the Product not less than seven days before delivery ~~is made~~ **is made** and in all cases such notice must be reasonable.
- (b) If the Buyer does not take delivery of the Product at the appointed place and time the Company shall be entitled to store the Product on the Buyer's behalf and all charges for storage, insurance and demurrage thereby arising shall be payable by the Buyer.
- (c) The Company shall be entitled to invoice the Product in accordance with condition 5 hereof when the Buyer has not taken delivery of the Product at the appointed place and time.

**9. PROPERTY AND RISK**

- (a) The ownership of the Product shall remain with the Company, which reserves the right to dispose of the Product, ~~until~~ **until** in full for the Product has been received by it in accordance with the terms of this contract. Until that time the Buyer shall hold the Product as bailee and shall store it in such a way that it can be identified as the Company's property and shall keep it separate from the Buyer's own property and the property of other persons.
- (b) Although the Product shall remain the Company's property until the Buyer has paid for it in full the risk in the Product shall pass to the Buyer when the Product is loaded on to the Buyer's carrier's vehicle or when delivered to the Buyer's ~~order~~ **order** however is the sooner. The Buyer shall insure the Product from the time of delivery against loss or damage accordingly and in the event of such loss or damage shall hold the proceeds of ~~insurance~~ **insurance** on behalf of the Company as trustee for the Company.
- (c) The Buyer's right to possession of the Product shall cease if:
  - (i) The Buyer has not paid for the Product in full in accordance with these Conditions or
  - (ii) The Buyer is declared bankrupt or makes any proposal to his creditors for a composition or other voluntary arrangement;
  - (iii) A Receiver Liquidator or Administrator is appointed in respect of the Buyer's business.
- (d) On cessation of the Buyer's right to possession of the Product in accordance with this clause the Buyer shall at its own expense make the Product available to the Company and allow the Company to ~~possess~~ **possess** it.
- (e) If any of the Product is incorporated in or used as material for other goods before payment, the property in the ~~whole~~ **whole** such goods shall be and remain with the Company until payment has been made or the other goods sold by way of a ~~discount~~ **discount** at full market value, and all the Company's rights in the Product shall extend to those other goods.
- (f) Until payment in full is made by the Buyer to the Company in respect of any indebtedness arising other than from a ~~failure~~ **failure** by the Buyer for the Product the subject matter of this order, ownership of the Product shall remain with the Company.
- (g) The Buyer shall, upon delivery of the Product, retain the proceeds of sale of the Product or any item incorporated in the Product in a separate account. Such proceeds of sale shall be and shall remain the property of the Company until ~~payment~~ **payment** in full is made.
- (h) The Buyer hereby grants the Company its agents and employees an irrevocable licence to enter any premises where the Product is stored in order to repossess or inspect the Product.
- (i) Notwithstanding the foregoing the Company may at its election and in its absolute discretion by notice in writing to the Buyer transfer the property in the Product to it.

**10. DEFECTS**

- (a) Any defects in the Product howsoever arising must be notified in writing to the Company by the buyer within 14 days of receipt.
- (b) In the event of such notice being received and the defects complained of being confirmed by the Company or by an independent expert the Company shall at its option and in its absolute discretion either rectify the defects free of charge or ~~replace~~ **replace** the defective Product free of charge or allow to the Buyer a credit in the amount of the defective Products.
- (c) Where the Product is reported to be defective it must if required by the Company be retained by the Buyer for inspection by the Company.
- (d) Save as hereinbefore provided the Company shall be under no liability to the buyer in respect of any defects in the ~~Product~~ **Product**.

**11. EXCLUSIONS AND LIMITATION OF DAMAGE**

- (a) The Customer agrees with the Company that if the Customer shall suffer loss or damage as a result of any breach of any of the terms of the contract by the Company or its servants or agents or as a result of the negligence of the Company or its ~~agents~~ **agents** or agents then the liability of the Company in respect of such loss or damage shall be limited to the contract price for the Product
  - (b) The limitation in the amount of the liability of the Company as referred to in subclause (a) shall subsist indefinitely notwithstanding the termination of the contract. The Buyer shall be responsible for ~~obtaining~~ **obtaining** any insurance cover and paying all premiums to afford protection in respect of any loss or damage which he may suffer as a result of any breach failure or negligence upon the part of the Company or its servants or agents ~~entered~~ **entered** to in subclause (a) (c) The limitation of liability contained in subclause (a) shall extend and apply not only to the ~~contract~~ **contract** but also to its servants or agents ~~under~~ **under** the contract.
  - (d) In no circumstances whatsoever shall the Company be liable to the buyer for loss or damage howsoever arising unless ~~the~~ **the** Buyer has followed the Company's and/or the manufacturer's instructions (as the case may be) at all times.
  - (e) Notwithstanding the foregoing the Company may at its election and in its absolute discretion by notice in writing to the Buyer transfer the property in the Product to it.
- 11.1. ACCEPTANCE OF LIMITATION OF LIABILITY BY THE BUYER
- (a) The Buyer agrees and accepts that the limitation of liability contained in the preceding clauses of this Condition is fair and reasonable because of (amongst other things) the following circumstances:
    - that the potential losses which could or might be caused as a result of any breach or negligence as referred to in this clause are greatly in excess and wholly disproportionate to the amount which is being charged by the Company to the Buyer ~~in~~ **in** respect of the provision by the Company of the Product.
    - that the Company has no knowledge or information as to the value of any contracts to be entered into by the Buyer which involve the Product in any way;
    - that the Company is anxious to provide as low a level as is reasonably possible for the benefit of the Buyer and all the Company's customers its charges in respect of goods provided by it
    - that the Company is unable to obtain adequate insurance cover in respect of the potential losses which could or might ~~arise~~ **arise** from any breach or negligence as referred to in this condition
  - (b) The Buyer confirms that it has read and fully understands the terms of this Condition and accepts the limitation of ~~liability~~ **liability** contained in this condition
  - (c) No condition or warranty or other undertaking is given whether express or implied (save in so far as the same by statute ~~may~~ **may** not be excluded) by custom common law, statute or otherwise in relation to the quality or workmanship of the Product ~~or~~ **or** performance and delivery of the order nor in relation to the suitability of any materials supplied for a particular application whether notified by the Buyer or not save as is hereinbefore set out. Any such condition, warranty or undertaking is hereby excluded for all purposes. In particular the Company shall be liable for any consequential or indirect loss howsoever arising.
  - (d) In no circumstances whatsoever shall the Company be liable to the buyer for loss or damage howsoever arising unless ~~the~~ **the** Buyer has followed the Company's and/or the manufacturer's instructions (as the case may be) at all times.

**12. INDEMNITY**

The Buyer shall indemnify the Company in respect of all damage or injury occurring to any person or property or any loss ~~accidental~~ **accidental** thereon and against all actions suits claims demands charges or expenses in connection therewith for which the ~~Company~~ **Company** become liable in respect of the Product the subject matter of this contract save in the event that such damage or injury shall have been occasioned by the negligence of the Company's servants or agents.

**13. BUYER'S MATERIALS**

Where material or other property is supplied to the Company by the Buyer or on behalf of the Buyer (whether owned by the Buyer) whether to be held or to be worked upon by the Company for the purposes of this contract the Company accepts ~~responsibility~~ **responsibility** for imperfect work caused by defects in, or the unsuitability of or any material so supplied.

**14. REJECTION OF ORDERS**

The Company reserves the right to reject an order on giving written notice thereof to the Buyer within seven days of the date of the order. In the event of such rejection no liability shall accrue to the Company.

**15. DRAWINGS AND INFORMATION**

The Company is entitled to assume that all drawings, descriptions, specifications and other information supplied by the ~~buyer~~ **buyer** to the Company, whether written or verbal, are in all respects complete, accurate and entirely suitable for the Buyer's ~~requirements~~ **requirements**.

**16. INSTALLATION**

Where the Company agrees to install and/or affix the Product for the Buyer then:

- (a) The Company shall be liable for the installation of the Product whether direct or consequential and howsoever caused to the Buyer the Buyer's customer or to any third party during or as a result of or in connection with the ~~installation~~ **installation** save where such loss or damage was caused by the negligence of the Company's servants or agents in or about the installation.
- (b) The Buyer shall indemnify the Company against any loss or damage suffered by the Company (including any liability ~~which~~ **which** the Company may incur towards any third party) during or as a result of or in connection with the installation save where ~~such~~ **such** damage was caused by the negligence of the Company's servants or agents in or about the installation.
- (c) Notwithstanding that the Company has agreed to install the Product for the Buyer the Product shall nevertheless be ~~carried~~ **carried** as delivered to the Buyer when the same is collected by the Buyer from the Company's premises or delivered to the Buyer ~~in~~ **in** accordance with the latter's instructions and/or as directed by the Company in writing.
- (d) In any such case the Company may at its option subcontract the work of installing and/or affixing the Product to a Third Party and in such instance the Third Party's ~~contract~~ **contract** conditions (if any) shall apply and bind the Buyer.

**17. CONSEQUENTIAL LOSS**

The term "consequential loss" includes claims for breach of contract in respect of losses arising directly and naturally ~~as~~ **as** result of such breach.

**18. LOSS OR DAMAGE IN TRANSIT**

- (a) Save in cases where the Company is responsible for the delivery of the Product it shall not be liable for any damage ~~to~~ **to** or loss in transit or in respect of any claim consequential thereon.

**19. PATENTS**

- (a) The Buyer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered ~~right~~ **right** copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Buyer's instructions whether express or implied.
- (b) The Buyer shall indemnify the Company and its subcontractors against all claims, damages, costs, penalties and expenses incurred by the Company or its ~~sub~~ **sub**contractors or to which the Company may become liable if any work done in accordance with the Buyer's ~~instructions~~ **instructions** or other information provided by the Buyer involves an infringement of a registered design, trademark, patent or other intellectual property right or ~~causes~~ **causes** any defect in or failure of the Product.

**20. PACKING**

- (a) Unless otherwise specified, packing cases and packing materials will be charged extra, but where stated to be ~~returnable~~ **returnable** be credited in full on return to the Company.
- (b) In cases where the Company is responsible for the delivery of the Product the Buyer shall notify the Company in writing of any shortage, damage, or loss in transit within 3 days of the date of receipt.
- (c) In cases where notice is given under (b) the Company's liability shall be limited to the cost of the Product so damaged lost or in short supply. The Company shall not be liable for any consequential loss save in cases where the Buyer has given notice in writing to the Company at the time of placing the order of the nature and extent of any ~~claim~~ **claim** to arise from loss or damage in transit and the Company has accepted such liability in writing.
- (d) In cases where the Company is responsible for delivery of the Product the Buyer shall be responsible for providing ~~labour~~ **labour** for the purpose of unloading and such unloading shall be at the Buyer's risk. In the event of unloading being undertaken by the Company's employees either (a) pursuant to the Buyer's instructions or (b) in the absence of instructions from the Buyer, such unloading shall again be at the Buyer's risk.
- (e) Company's works carriage paid in good condition, within one month of receipt by the Buyer.
- (f) The Company uses its best endeavours to ensure, where necessary, suitability of packing before despatch, but no claim ~~will~~ **will** be accepted by the Company for breakage or damage in transit on the ground of alleged unsuitability of packing.

**21. PROCESSING OF PRODUCTS**

Where the Company agrees to process the Product for the Buyer the Company may at its option subcontract such processing work to a Third Party and in such instance the Third Party's contract conditions (if any) shall ~~apply~~ **apply** and bind the Buyer in circumstances where he has been given notice thereof prior to the sub-contract work being performed.

**22. QUANTITY**

- (a) The Company shall be entitled to fulfil any contract by the delivery of 10% more or less than the contract quantity ~~at~~ **at** and the price payable by the Buyer shall be adjusted accordingly. The Company may at its option make up the balance ~~of~~ **of** the balance thereof no later than three months following the despatch of the last delivery.
- (c) The Company will use its best endeavours to deliver the Product ordered by the Buyer but reserves the right without ~~the~~ **the** Buyer prior notice to supply alternative products provided they are of a quality and standard equal to the Product ~~ordered~~ **ordered**.

**23. INDULGENCE**

- (a) The Company's rights shall not be prejudiced by any indulgence or forbearance extended to the Buyer and no waiver ~~by~~ **by** the Company of any specific breach of the Buyer shall operate as a waiver of any other breach.
- (b) In the event that it shall be determined that any of these conditions shall be invalid or unenforceable for any reason ~~other~~ **other** it is hereby declared and confirmed that such determination shall not affect any other provisions of these conditions ~~of~~ **of** which shall remain in full force and effect.
- (c) No statement or representation has been made to the Buyer by the Company or its servants or agents upon which the ~~Buyer~~ **Buyer** (other than in the documents enclosed with any Quotation or acknowledgement of any order) then the Buyer must ~~submit~~ **submit** a statement or representation in a document to be attached to or endorsed on its order and in any such case the Company may confirm reject or clarify the point and submit a quotation. In entering into the contract the Buyer acknowledges that it or he does not rely on and waives any claim ~~in~~ **in** respect of any such statements or representations that are not so confirmed in writing.
- (d) Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents ~~in~~ **in** the storage, assembly, erection, application or use of the Product which is not confirmed in writing by the Company in ~~accord~~ **accord** with Condition 24 is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is ~~not~~ **not** confirmed in writing.
- (e) No Contract may be cancelled by the Buyer except with the written agreement signed by a director of the Company and ~~states~~ **states** that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the ~~total~~ **total** all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- (f) The Company reserves the right to subcontract the fulfilment of the contract or any part of it.
- (g) The Contract is between the Company and the Buyer and is not assignable by the Buyer without the consent of the Company.
- (h) Nothing in the conditions or in any course of dealing between the Company and the Buyer or any other person or put in reliance on by the Buyer shall entitle the Buyer to enforce any term of the contract or these Conditions pursuant to the Contracts (Rights of Third Parties) Act 1999.

**30. ENGLISH LAW**

These conditions and any contract made in accordance therewith shall be construed and take effect in accordance with ~~English~~ **English** law and any such contract shall be deemed to have been made at Sheffield in England.