

DEFINITIONS

Company: Steel Dynamics Limited

Buyer: the person, firm or company who purchases the Goods from the Company.

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating these conditions.

Delivery Point: the place where delivery of the Goods is to take place under condition 4.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

- 1.1 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

2. APPLICATION OF TERMS

- 2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.
- 2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by the Managing Director/ of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.

- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation is valid for a period of 5 days only from its date, provided that the Company has not previously withdrawn it. A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise a quotation at any time prior to the Company's acceptance of the Buyer's order.
- 2.8 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Company.

3. DESCRIPTION

- 3.1 The quantity and description of the Goods shall be as set out in the Company's quotation or acknowledgement of order.
- 3.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.3 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.4 Subject to clause 3.8 below, the quantity, quality and description of and any specification for the Goods shall be those set out in the Buyer's order (if accepted in Writing by the Company in accordance with clause 2.5).
- 3.5 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.

- 3.6 No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.
- 3.7 All quantities and sizes quoted will be subject to industry standards tolerances or if agreed in writing the relevant National or International standards. The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or EU requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 3.8 The Company reserves the right to supply Goods which may vary in weight by up to 10% from the amount stated in the Contract. Where the Company under-delivers Goods by an amount not exceeding 10% by weight, the provisions of Sub-section (1) of Section 30 of the Sale of Goods Act 1979 shall not apply and the delivery of such lesser amount of Goods shall be deemed to be delivery under the Contract and shall be paid for by the Buyer at the rate set out in the Contract. Where the Company delivers Goods by an amount no greater than 10% by weight of the amount set out in the Contract, the provisions of Sub-sections (2) and (3) of Section 30 of the Sale of Goods Act 1979 shall not apply and the delivery of such greater amount shall be deemed to be delivery under the Contract and paid for by the Buyer at the rate set out in the Contract. In the event of the Company delivering an amount greater than 10% by weight in excess of the quantity set out in the Contract, the Buyer shall have the option of paying for such excess at the rate set out in the Contract or at its option, returning such additional Goods to the Seller (in the same condition as delivered to the Buyer) Provided Always that such Goods must be returned no later than 14 days from the date of delivery.
- 3.9 The Company reserves the right to supply Goods which may vary in dimension by up to 10% from the amount stated in the Contract. Where the Company under delivers Goods by an amount not exceeding 10% by dimension the provisions of sub-section (1) of Section 30 of the Sale of Goods Act 1979 shall not apply and the delivery of such lesser amount of Goods shall be deemed to be delivery under the Contract and shall be paid for by the Buyer at the rate set out in the Contract. Where the Company delivers goods by an amount no greater than 10% by dimension of the amount set out in the Contract the provisions of sub-sections (2) and (3) of Section 30 of the Sale of Goods Act 1979 shall not apply and the delivery of such greater amount shall be deemed to be delivery under the Contract and paid for by the Buyer at the rate set out in the Contract. In the event that the Company delivering an amount greater than 10% by dimension in excess of the quantity set out in the Contract, the Buyer shall have the option of paying for such excess at the rate set out in the Contract or at its option, returning such additional Goods to the Company (in the same condition as delivered to the Buyer) Provided Always that such Goods must be returned no later than 14 days from the date of delivery.

4. DELIVERY

- 4.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Buyer's place of business.
- 4.2 The Buyer shall take delivery of the Goods within 3 days of the Company giving it notice that the Goods are ready for delivery.
- 4.3 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 4.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 4.5 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - (b) the Goods shall be deemed to have been delivered; and
 - (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 4.6 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for unloading the Goods
- 4.7 If the Company delivers to the Buyer a quantity of Goods of up to 10% more or less than the quantity accepted by the Company, the Buyer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata Contract rate.
- 4.8 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.

- 4.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

5. NON-DELIVERY

- 5.1 The quantity of any consignment of Goods as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 5.2 The Company shall not be liable for any non-delivery of Goods (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 3 days of the date when the Goods would in the ordinary course of events have been received.
- 5.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.

6. RISK/TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of delivery.
- 6.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.

- 6.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Buyer's business.; and
 - (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 6.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - (c) the Buyer encumbers or in any way charges any of the Goods.
- 6.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

6.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

6.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 6 shall remain in effect.

7. PRICE

7.1 The Company's prices shall exclude VAT which the Buyer shall be additionally liable to pay to the Company and, unless otherwise agreed in writing by the Company, are the prices ruling at the date of despatch of the goods.

7.2 The Company reserves the right to make a charge for carriage, pallets, cases, packaging and other related costs, all of which amounts the Buyer shall pay when it is due to pay for the Goods.

7.3 The Company's prices may be varied at any time by the Company without notice.

8. PAYMENT

8.1 Unless the Buyer has an approved credit account with the company, all goods must be paid for prior to delivery. Any Buyer wishing to open a credit account with the Company must submit a completed credit account application form for consideration by the Company. The Company may give credit entirely at its discretion and may refuse or withdraw credit without specifying any reason.

8.2 Subject to condition 8.5, payment of the price for the Goods and all other charges is due in pounds sterling [on the last working day of the month following the month in which the Goods are delivered or deemed to be delivered] unless otherwise agreed in writing.

8.3 Time for payment shall be of the essence.

8.4 No payment shall be deemed to have been received until the Company has received cleared funds.

8.5 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

- 8.6 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.
- 8.7 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 8.7.1 cancel the contract or suspend any further deliveries to the Buyer;
- 8.7.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer); and
- 8.7.3 charge the Buyer interest (both before and after any judgment) on any amount due under the Contract which remains unpaid, at the rate of 3 per cent per annum above National Westminster Bank base rate from time to time, accruing on a daily basis, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 8.8 Payment to the Company shall not in any circumstances be dependent upon payment to the Buyer from any third party.

9. QUALITY

- 9.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

The Company warrants that (subject to the other provisions of these conditions) material supplied meets the specification described. The company does not warrant material supplied is fit for purpose

- 9.2 The Company shall not be liable for a breach of [the warranty **OR** any of the warranties] in condition 9.2 unless:
- (a) the Buyer gives written notice of the defect to the Company, and, if the defect is as a result of damage in transit to the carrier, within 3 days of the time when the Buyer discovers or ought to have discovered the defect; and
 - (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by

the Company) returns such Goods to the Company's place of business at the [Company's] cost for the examination to take place there.

- 9.3 The Company shall not be liable for a breach of [the warranty **OR** any of the warranties] in condition 9.2 if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or
 - (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
 - (c) the Buyer alters or repairs such Goods without the written consent of the Company.
- 9.4 Subject to condition 9.3 and condition 9.4, if any of the Goods do not conform with [the warranty **OR** any of the warranties] in condition 9.2 the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the [Company's] expense, return the Goods or the part of such Goods which is defective to the Company.
- 9.5 If the Company complies with condition 9.5 it shall have no further liability for a breach of [the warranty **OR** any of the warranties] in condition 9.2 in respect of such Goods.

10. LIMITATION OF LIABILITY

- 10.1 Subject to condition 4, condition 5 and condition 9, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (a) any breach of these conditions;
 - (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

- 10.3 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation.
- 10.4 Subject to condition 10.2 and condition 10.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - (b) the Company shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 10.5 Subject as expressly provided in these Conditions and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 10.6 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 10.7 Nothing in these Conditions is intended to exclude or limit the liability of the Company to the Buyer for the following matters:-
- 10.7.1 death or personal injury caused by the Company's negligence;
 - 10.7.2 failure to give good title to the Goods.

However, save for these matters the Company shall have no liability of any nature whatsoever to the Buyer whether for breach of contract, any act or omission (including negligence), breach of any statutory duty, breach of any warranty, condition or other term implied by law, misrepresentation (unless fraudulent) or in any other manner whatsoever. Under no circumstances shall the Company be liable to the Buyer for any loss of profits, loss of contracts, loss of goodwill, administration and management expenses, or any consequential loss or damage of any nature even if any of these matters were reasonably foreseeable.

11. EXPORT TERMS

- 11.1 In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
- 11.2 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 11 shall (subject to any special terms agreed in writing between the Buyer and the Company) apply notwithstanding any other provision of these Conditions.
- 11.3 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 11.4 Unless otherwise agreed in Writing between the Buyer and the Company, the Goods shall be delivered fob the air or sea port of shipment and the Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 11.5 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 11.6 Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Buyer at Buyer's expense in favour of the Company and confirmed by a recognised European Bank acceptable to the Company or, if the Company has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Company of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Company at such branch of National Westminster Bank in England as may be specified in the bill of exchange.
- 11.7 The Buyer undertakes not to offer the Goods for resale in any country notified by the Company to the Buyer at or before the time the Buyer's order is placed, or to sell the Goods to any person if the Buyer knows or has reason to believe that that person intends to resell the Goods in any such country.

12. ASSIGNMENT

- 12.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 12.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 180 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

14. GENERAL

- 14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any

subsequent breach or default and shall in no way affect the other terms of the Contract.

- 14.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

15. COMMUNICATIONS

- 15.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
 - (b) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.