

## STEEL PLATE AND SECTIONS LIMITED ("SPS")

### CONDITIONS OF SALE (FOR GOODS AND SERVICES)

#### 1. INTERPRETATION

- 1.1 In these conditions of sale (unless the context otherwise requires) the following words shall have the following meanings:

"**Conditions**" means the conditions set out below and overleaf.

"**Contract**" means any contract between SPS and the Customer for the sale and purchase of any Works.

"**Customer**" means the company, firm, body or person purchasing the Works.

"**Customer's Property**" means any dies, tools, patterns, drawings, specifications, designs, packagings and any other equipment, goods, materials or information supplied by or on behalf of the Customer to SPS in connection with the Works.

"**Goods**" means any goods agreed in the Contract to be provided by SPS to the Customer (including but not limited to any part or parts of them, any raw materials, finished or semi-finished materials, machinery, parts, spares, commodities and any materials, articles and commodities supplied in connection with the Services).

"**Services**" means any work and/or services (or any part of them) agreed to be provided by SPS to the Customer.

"**Specification**" means the specification set out in SPS's quotation or such other specification as may be agreed in writing between the parties from time to time.

"**Works**" means the Goods and/or the Services (as appropriate).

- 1.2 In these Conditions any reference to any statute or statutory provision will (unless the context otherwise requires) be construed as a reference to that statute or statutory provision as may be amended, consolidated, modified, extended, re-enacted or replaced from time to time.

- 1.3 In these Conditions the headings are for reference only and will not affect the interpretation of these Conditions.

#### 2. QUOTATIONS

- 2.1 Any quotation is given on the basis that no contract will come into existence otherwise than in accordance with the provisions of clauses 3.5 and 3.6.

- 2.2 Unless otherwise agreed in writing any quotation is valid only for a period of 45 days from its date of issue provided that SPS has not previously withdrawn it by written or oral notice to the Customer.

- 2.3 Any quotation is based on the instructions and information provided by the Customer and SPS reserves the right to amend the quotation to cover any increase in cost which may arise as a result of additional or incomplete instructions or information.

### **3 APPLICATION OF TERMS**

- 3.1 (Subject to clause 3.4) these Conditions are the only conditions on which SPS is prepared to deal with the Customer and they will apply to all Contracts to the exclusion of any other terms and conditions including but not limited to those which the Customer purports to apply.
- 3.2 No terms or conditions endorsed upon, delivered with, referred to or contained in any purchase order or other similar document delivered to or sent by the Customer to SPS will form part of the Contract.
- 3.3 Any reference overleaf to the Customer's purchase order or other similar document will not be deemed to imply that any terms or conditions endorsed upon, delivered with, referred to or contained in such purchase order or other similar document will have effect to the exclusion or amendment of these Conditions.
- 3.4 Any variation to these Conditions and any representation about the Works will only be effective if it is agreed in writing, contains a specific reference to these Conditions and is signed by an authorised signatory of both parties.
- 3.5 Each purchase order for Works issued by the Customer will be deemed to be an offer by the Customer to purchase Works subject to these Conditions.
- 3.6 No purchase order placed by the Customer will be deemed to be accepted by SPS until a written acknowledgement of order is issued by SPS or (if earlier) SPS supplies the Works to the Customer.
- 3.7 The Customer must ensure that the terms of its order and any applicable specification are complete and accurate.
- 3.8 All drawings, descriptive matter, specifications, technical data, advertising and other similar information issued by SPS or contained in SPS's catalogues, samples, price lists, brochures, trade literature or other similar published materials are issued or published only for the purpose of giving an approximate idea of the Works described in them and will not form part of the Contract.
- 3.9 Any purchase order which has been accepted by SPS in accordance with clause 3.5 and 3.6 may only be cancelled or varied by the Customer with the prior written consent of SPS and on terms that the Customer will indemnify SPS in full against all losses (including but not limited to loss of profit), costs, damages, charges and expenses incurred (directly or indirectly) by SPS as a result of such cancellation or variation.
- 3.10 SPS reserves the right to correct any clerical or typographical errors made by it or any of its employees at any time.

### **4 DELIVERY**

- 4.1 Any times specified or agreed by SPS for the delivery of the Works are given in good faith but are an estimate only. If no time is specified or agreed by SPS delivery will take place within a reasonable time. Unless otherwise agreed in writing time for the delivery of the Works will not be of the essence of the Contract.
- 4.2 SPS will use its reasonable endeavours to deliver the Works within the times set out in clause 4.1 but SPS will not be liable for the consequences of any delay or failure to

deliver if the duration of the delay is not substantial or if the delay or failure is due to any circumstances beyond SPS's reasonable control or of an unexpected or exceptional nature.

- 4.3 (Subject to the provisions of clause 4.4) delivery will be deemed to take place when the Works are delivered to the Customer at the place stated in SPS acknowledgement of order or such other place as the parties may agree except that delivery to a carrier for the purpose of transmission to the Customer will be deemed to be delivery to the Customer and sections 32(2) and (3) of the Sale of Goods Act 1979 will not apply.
- 4.4 If SPS agrees to permit the Customer to collect the Works from SPS's place of business then delivery will be deemed to take place when SPS notifies the Customer that the Works are ready for collection and unless otherwise agreed in writing the Customer will collect the Works within 7 days of the date of issue of such notice.
- 4.5 SPS will use its reasonable endeavours to ensure that the Works will be packed so as to be adequately protected against damage in normal conditions of transit of usual duration. SPS will make such arrangements for the carriage and insurance of the Works as it thinks appropriate but the Customer will indemnify SPS against any costs or expenses that SPS incurs as a result of such carriage and insurance (including but not limited to export and/or import duties and any costs of packing, loading and/or unloading) such costs and/or expenses to be paid by the Customer when it is due to pay for the Works.
- 4.6 SPS may deliver the Works in instalments. Deliveries of further instalments may be withheld until the Works comprised in earlier instalments have been paid for in full. Default by SPS (howsoever caused) in respect of one or more instalments will not entitle the Customer to terminate the relevant Contract as a whole.
- 4.7 In the event of any delay in the delivery of any Goods and/or the performance of any Services which are attributable to the Customers actions or failure to act then:
  - (a) delivery of the Goods and/or performance of the Services will be deemed to have taken place at the time at which but for such delay or delays such delivery or performance would have taken place and any extra costs incurred as a result of such delay or delays will be added to the Contract price and will be payable by the Customer; and
  - (b) SPS may sell such Goods 28 days after such delay and deduct any monies payable to SPS by the Customer from the sale proceeds and account to the Customer for any excess or charge the Customer for any shortfall.
- 4.8 Where the Works are to be supplied from stock such supply is subject to the availability of the stock at the date of delivery.
- 4.9 On delivery to the Customer all Works should be examined. SPS will not be liable for any shortages in or non-delivery of the Works (even if caused by SPS's negligence) unless the same is notified in writing by the Customer to SPS (together with all relevant details) within 7 days of the actual or anticipated date of delivery (as appropriate). Subject to such notice being provided SPS will, if it is reasonably satisfied that any Works have not been delivered as a result of SPS's fault (in its sole discretion) either arrange for delivery as soon as reasonably possible or give credit (at the pro rata Contract price) to the Customer for such Works. Any shortages in or non-delivery of part of the Works will not affect the Contract in respect of the other parts of the Works.

- 4.10 If SPS complies with clause 4.9 it will (subject to the provision of clause 8.2) have no further liability (in contract, tort (including but not limited to negligence) or otherwise) for such shortages or non delivery.
- 4.11 The Customer will provide (at its own expense) at the place where delivery of the Works is to take place adequate and appropriate equipment and manual labour for loading or off loading (as appropriate) the Works.

## **5 RISK AND OWNERSHIP**

- 5.1 Unless otherwise agreed in writing the Works are at the risk of the Customer from the time of delivery or deemed delivery to the Customer (as appropriate) and loading and off loading (as appropriate) will be at the Customer's risk. Section 20(2) of the Sale of Goods Act 1979 will not apply.
- 5.2 (Notwithstanding that risk in the Works will pass to the Customer in accordance with the provisions of clause 5.1) ownership of the Works (both legal and equitable) will only pass to the Customer when SPS has received in full (in cash or cleared funds) all monies due to it from the Customer whether in respect of the Works or otherwise or ownership is properly vested in some other person by the operation of any statute.
- 5.3 Until ownership of the Works has passed to the Customer under clause 5.2, the Customer will:
- (a) hold the Works on a fiduciary basis as SPS's bailee;
  - (b) keep the Works free from any charge, lien or other encumbrance;
  - (c) store the Works (at no cost to SPS) separately from all other materials of the Customer or any third party in such a way that they remain readily identifiable as SPS's property;
  - (d) not destroy, deface or obscure any identifying mark on the Works or their packaging;
  - (e) maintain the Works in a satisfactory condition, insured on SPS behalf for their full price against all usual risks to the reasonable satisfaction of SPS and on request produce such policy of insurance to SPS;
  - (f) hold all proceeds of the insurance referred to in clause 5.3(e) on trust for SPS and not mix it with any other money or pay the proceeds into any overdrawn bank account; and
  - (g) not attach the Works to any real property without SPS's consent (such consent not to be unreasonably withheld or delayed).
- 5.4 The Customer may resell, use or otherwise dispose of the Works before ownership has passed to it only if any such sale, use or disposition will be effected in the ordinary course of the Customer's business and will be a sale, use or disposition of SPS's property on the Customer's own behalf and the Customer will deal as principal.
- 5.5 The Customer grants to SPS, its agents and employees an irrevocable licence at any time to enter any premises where the Works are or may be stored in order to inspect

them, or, (where ownership in the Works has not passed from SPS in accordance with the provision of clause 5.2 to recover them.

5.6 SPS will be entitled to recover payment for the Works notwithstanding that ownership of any of the Works has not passed from SPS.

5.7 The Works will be deemed sold or used in the order delivered to the Customer.

## **6 PRICE AND PAYMENT**

6.1 Where the Works are sold by reference to SPS's published price list, the price payable for the Works will be the price as published in the price list current at the date of delivery of the Works.

6.2 Where the Works are not sold by reference to SPS's published price list the price stated in the Contract is based on the cost to SPS of raw materials, fuel, power, transport, taxes, duties, labour and all other costs at the date of SPS's quotation or acknowledgement of order (whichever is earlier). If at the date of delivery or deemed delivery of the Works there has been any increase in all or any of such costs, the price payable for the Works may at the request of SPS be increased accordingly.

6.3 Quotations given in a currency other than sterling are based on the rate of exchange at the time of quoting and (unless otherwise agreed in writing between the parties) the price may be subject to revision if any different rate of exchange is ruling at the date of invoice.

6.4 (Unless otherwise agreed in writing) the price for the Works is exclusive of any value added tax (and any other tax or duty relating to the manufacture, transportation, sale or delivery of the Works) and any costs or charges in relation to export and/or import, packaging, loading, unloading, carriage and insurance. Such costs and expenses will be paid by the Customer when it is due to pay for the Works.

6.5 Where SPS agrees (in its discretion) to bring forward the date of delivery of the Works at the Customers request any overtime or other additional costs reasonably incurred by SPS shall be charged to the Customer in addition to the Contract price.

6.6 SPS may invoice the Customer for the Works at any time after the delivery of the Works or the delivery of any instalment (as appropriate). If any delivery is postponed at the request or by the default of the Customer then SPS may submit its invoice of any time after the Works are ready for delivery or would have been ready in the ordinary course but for the request or default on the part of the Customer.

6.7 Customers who have been granted by SPS (in its sole discretion) a credit account facility will pay the price within 30 days of the end of the month in which the Works are delivered or deemed to be delivered in accordance with these Conditions. SPS may (in its sole discretion) amend the terms of or withdraw such credit account facility at any time without notice with immediate effect and on such withdrawal all amounts due or accruing to SPS under the Contract will become immediately payable despite any other provision of these Conditions.

6.8 Customers who have not been granted a credit account facility will pay the price at the same time as delivery of the Works.

6.9 No payment will be deemed to have been received until SPS has received cleared funds.

- 6.10 Time for payment will be of the essence of the Contract and the Customer will indemnify SPS against all expenses and legal costs incurred by SPS in recovering overdue amounts.
- 6.11 All payments payable to SPS under the Contract will become due immediately on termination of this Contract despite any other provision of these Conditions.
- 6.12 The Customer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Customer has a valid court order requiring an amount equal to such deduction to be paid by SPS to the Customer.
- 6.13 If the Customer fails to pay SPS any sum due pursuant to the Contract:
- (a) the Customer will be liable to pay interest to SPS on such sum from the due date for payment at an annual rate of 4% above the base lending rate of HSBC plc from time to time accruing on a daily basis until payment is made in full (whether before or after any judgement). SPS reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998; and
  - (b) SPS may treat the Contract as repudiated by the Customer or suspend any future performance of the Contract until all overdue sums have been paid.

## **7 WARRANTIES**

- 7.1 Where SPS is not the manufacturer of the Goods or performer of the Services SPS will use all reasonable endeavours to transfer to the Customer the benefit of any warranty or guarantee given to SPS.
- 7.2 (Subject to clause 7.1) SPS warrants that:
- (a) on delivery of the Goods and for a period of 12 months from the date of delivery the Goods will comply with the Specification; and
  - (b) the Services will be performed with reasonable skill and care by properly qualified and experienced persons.
- 7.3 SPS will not be liable for any breach of any of the warranties in clause 7.2 unless:
- (a) the Customer gives written notice of the defect to SPS within 60 days of the date when the Customer discovers or ought reasonably to have discovered the defect;
  - (b) (if the defect is as a result of damage in transit) the Customer gives written notice of the defect to the carrier in the manner and within the appropriate time limit as set out in the carriers terms of business; and
  - (c) SPS is given a reasonable opportunity to examine such Works and the Customer (if requested to do so by SPS) returns such Works to SPS's place of business (at the Customer's cost) for the examination to take place there.
- 7.4 SPS will not be liable for a breach of any of the warranties in clause 7.2 where and to the extent that:

- (a) the defect arises from the Customer's Property or as a result of the Customer's negligence;
  - (b) the defect arises as a result of fair wear and tear, misuse, wilful damage, or abnormal working conditions;
  - (c) the defect arises as a result of any parts, materials or equipment not manufactured or workmanship not performed by SPS;
  - (d) the Customer makes any further use of such Works after giving written notice of the defect;
  - (e) the defect arises because the Customer has failed to follow SPS's instructions (whether oral or in writing) as to the storage, assembly, installation, commissioning, use, processing, handling or maintenance of the Works or (if there are none) good trade practice;
  - (f) the defect arises as a result of any alternation or repair of the Works not made by SPS and without the written consent of SPS;
  - (g) the total price for the Works has not been paid by the due date; or
  - (h) the Contract states that the Works are sold in their actual state without warranty.
- 7.5 (Subject to clauses 7.3 and 7.4) if any of the Works do not conform with any of the warranties set out in clause 7.2 SPS will at its option and cost repair or replace such Goods (or the defective part), re-perform such Services or refund the price of such Works at the pro rata Contract rate.
- 7.6 If SPS complies with clause 7.5 it will (subject to the provisions of clause 8.2) have no further liability (in contract, tort (including but not limited to negligence) or otherwise) for breach of any of the warranties in clause 7.2 in respect of such Works.
- 7.7 Any Goods replaced by SPS in accordance with the provisions of clause 7.5 will belong to SPS and any repaired or replacement Goods will be guaranteed on these terms for the unexpired portion of the 12 month period.
- 7.8 The Customer warrants to SPS that it will pass on to all third parties to whom it may supply the Works all information and instructions as to the use and safe handling of the Works as may have been passed on to the customer by SPS.

## **8 LIMITATION OF LIABILITY**

- 8.1 All warranties, conditions and other terms implied by statute or common law (except for the conditions implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.
- 8.2 Nothing in these Conditions excludes or limits the liability of SPS for fraudulent misrepresentation or for any death or personal injury caused by SPS's negligence.

THE CUSTOMER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF CLAUSES 8.3 AND 8.4

- 8.3 (Subject to clause 8.1 and 8.2) SPS will not be liable to the Customer in contract, tort (including but not limited to negligence), misrepresentation or otherwise for any economic loss of any kind (including but not limited to loss of profit, business, contracts, revenue or anticipated savings), any damage to the Customer's reputation or goodwill, any product recall costs or any other special, indirect or consequential loss or damage (even if SPS has been advised of such loss or damage) arising out of or in connection with the Contract.
- 8.4 (Subject to the provisions of clause 8.1, 8.2 and 8.3) SPS's total liability in contract, tort (including but not limited to negligence), misrepresentation or otherwise arising out of or in connection with this Contract will be limited to £250,000.

## **9 THE CUSTOMER'S PROPERTY**

- 9.1 While SPS will take reasonable care of the Customer's Property whilst it is in SPS's possession, control or custody the Customer's Property will (unless otherwise agreed in writing) remain at the Customer's risk and all replacements and alterations of and repairs to the Customer's Property will be the Customer's responsibility.
- 9.2 SPS will not be liable for any loss or damage to the Customer's Property unless such loss or damage arises as a direct result of SPS's negligence. Where SPS is liable under this clause 9.2 SPS's liability to the Customer will be limited to the actual cost of the replacement or repair of the loss or damage to the Customer's Property.
- 9.3 The Customer will ensure that the Customer's Property is in good condition and suitable for use by SPS in the performance of the Contract and while SPS will use reasonable endeavours to verify any relevant aspects of the Customer's Property no responsibility is accepted by SPS for its accuracy.
- 9.4 Any defect in the Works which is due in whole or in part to the Customer's Property will not entitle the Customer to terminate the Contract, reject the Works, make any deductions from the Contract price or claim damages in respect of such defect.
- 9.5 The Customer will keep SPS indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding awarded against or incurred by SPS as a result of or in connection with the use by SPS of the Customer's Property.
- 9.6 SPS (without prejudice to any other remedy it may have) has a general lien on all of the Customer's Property in its possession (for any reason) in respect of all sums owed to SPS by the Customer.

## **10 TOLERANCES AND TESTS**

- 10.1 Unless otherwise agreed in writing gauges, weights, chemical composition and analysis, quantities and sizes will, so far as possible, be adhered to but reasonable excesses and deficiencies will be accepted by the Customer, who will not be entitled to reject any Works on the ground that they are not precisely as specified.
- 10.2 Unless otherwise agreed in writing, all tests, test pieces and inspections required by the Customer and agreed by SPS will be charged extra. All tests and inspections will take place under SPS's standard testing arrangements, and such tests will be final (except in the case of manifest error). All tests are subject to analytical tolerances.

- 10.3 The Customer may attend (at its own cost) all tests provided that it notifies SPS in writing of its intention to do so. The Customer will then be given not less than 5 day's prior notice of the proposed date and time of any test and, if the Customer fails to attend, the test will proceed in its absence although it will be deemed to have been made in its presence.

## **11 PACKING CASES AND PACKING MATERIALS**

Unless otherwise agreed in writing packing cases and packing materials will be charged extra but, where stated to be returnable, will be credited in full on return to SPS's place of business (carriage paid) in good condition, within one month of receipt by the Customer. Where not returnable, the Customer will dispose of all packing in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.

## **12 CONFIDENTIALITY**

- 12.1 The Customer will keep confidential all technical data, commercial information, know-how, specifications, inventions, processes, initiatives and other information which is of a confidential nature and which has been disclosed to the Customer by SPS or its agents and any other confidential information concerning SPS's business or its products which the Customer may obtain ("**Confidential Information**").
- 12.2 The Customer will restrict disclosure of the Confidential Information to such of its employees, agents or subcontractors as need to know the same and will ensure that such employees, agents or subcontractors are subject to equivalent obligations of confidentiality as bind the Customer.
- 12.3 The Customer will not without the prior written consent of SPS publish or disclose the Confidential Information to any third party or make any use of the Confidential Information except to the extent necessary to implement the Contract.

## **13 INTELLECTUAL PROPERTY**

- 13.1 The Customer will keep SPS indemnified in full against all liability, loss, damage, injury, claim, action, demand, expense or proceeding in respect of any infringement or alleged infringement of any patent, registered design, unregistered design, design copyright, trade mark or other industrial or intellectual property rights resulting from any use by SPS of the Customer's Property or any compliance by SPS with the Customer's instructions, whether express or implied.
- 13.2 (Unless otherwise agreed in writing) ownership in all intellectual property rights subsisting in, resulting from or relating to the Works or any associated plans, descriptions, blue prints, designs, technical information, drawings, documents or specifications (except where these relate solely to the Customer's Property) will vest in or be assigned to SPS. If the Customer in any way acquires any such rights it will promptly inform SPS and take such steps as SPS may reasonably require to assign such rights or vest such title in SPS.
- 13.3 Nothing in these Conditions will be construed as any representation or warranty by SPS that the design, manufacture, use or sale of the Works is not an infringement of any third party intellectual property rights.

## **14 TERMINATION**

14.1 SPS may terminate the Contract immediately if:

- (a) the Customer fails to pay the price on the due date;
- (b) the Customer is in breach of any term of the Contract and has failed to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
- (c) there is a material change in the ownership or control of the Customer; or
- (d) the Customer enters into any composition or arrangement with its creditors or is wound up or becomes insolvent or has a receiver or administrative receiver appointed or suffers the appointment or the presentation of a petition for the appointment of an administration or any equivalent or analogous event occurs.

14.2 The termination of the Contract (howsoever arising) will be without prejudice to any rights and remedies which may have accrued to either party.

14.3 Any Conditions which impliedly have effect after termination or expiry will continue to be enforceable notwithstanding termination or expiry.

## **15 EXPORT SALES**

15.1 Where the Works are supplied for export from the United Kingdom the provisions of this clause 15 will (subject to any special terms agreed in writing between the parties) apply despite any other provision of these Conditions.

15.2 The Uniform Laws on International Sales Act 1967 will not apply.

15.3 Unless otherwise agreed in writing the currency will be pounds sterling. The Customer will establish and maintain in favour of SPS an irrevocable and confirmed letter of credit in English with a UK clearing bank payable on drafts drawn at sight on presentation to the bank by SPS of a certified copy of SPS's invoice. All bank charges and other expenses in relation to the letter of credit will be borne by the Customer.

15.4 Unless otherwise agreed in writing Works will be sold FOB (as defined in INCOTERMS 2000 Edition).

15.5 The Customer will be responsible for complying with any legislation or regulation governing the export of the Works from the United Kingdom and the importation of the Works into the country of destination and for payment of any relevant duties or taxes.

## **16 LIEN**

SPS will have in respect of unpaid debts due to it from the Customer a general lien on all property of the Customer which is in SPS's possession for whatever reason and whether worked upon or not.

## **17 ASSIGNMENT AND SUBCONTRACTING**

17.1 The Customer will not without the prior written consent of SPS assign or transfer the Contract or any part of it to any other person.

17.2 SPS may without the prior written consent of the Customer assign, transfer or subcontract the Contract or any part of it to any other person.

**18 GENERAL**

18.1 Each right or remedy of SPS under these Conditions is without prejudice to any other right or remedy which SPS may have under these Conditions or otherwise.

18.2 Any notice or document shall be deemed served, if delivered at the time of delivery, if posted, 48 hours after posting and if sent by facsimile transmission, at the time of transmission.

18.3 The illegality, invalidity or unenforceability of any provision of these Conditions will not affect the legality, validity or unenforceability of any other provisions of these Conditions.

18.4 Failure or delay by either party in exercising any right or remedy provided by the Contract or by law will not be construed as a waiver of such right or remedy or a waiver of any other right or remedy.

18.5 A person who is not a party to the Contract will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause 18.5 does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

18.6 The Customer agrees that it will have no remedy in respect of any untrue statement innocently or negligently made by or on behalf of SPS prior to the Contract upon which the Customer relied in entering into the Contract whether such statement was made orally or in writing.

18.7 The Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.