

General Conditions of Sale

1 : Definitions and Interpretation

(1) In these Conditions:

“Contract” means the contract for the sale and purchase of the Goods (in which these Conditions apply).

“Goods” means the goods (including any instalment of the Goods or any parts for them) which the Seller is to supply pursuant to or in connection with the Buyer’s purchase order and the Contract.

“We”, “Us”, “Our” shall refer to Firth Steels Limited “You”, “Your”, “Yours” shall refer to the Buyer.

(2) Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

2 : Acceptance and amendment

(1) These General Conditions shall (unless or except to the extent that We otherwise agree in writing) apply to all tenders, offers, quotations, acceptances, agreements and deliveries relating to the sale of goods by Us and You shall be deemed to assent thereto.

(2) No other conditions or modifications of these Conditions shall be binding on Us unless We agree thereto in writing and We shall not be deemed to accept such other conditions nor to waive any of these Conditions by failing to object to provisions contained in any purchase order or other communication from You.

(3) No representative, agent or salesman who is not one of our directors has any authority to amend or waive any of these Conditions or other provisions of the Contract.

3 : Specifications

(1) Any advice or recommendation given by Us or Our employees or agents to You or Your employees or agents as to the storage, application or use of the Goods which We do not confirm in writing is followed or acted upon entirely at Your own risk, and accordingly We shall not be liable for any such advice or recommendation which is not so confirmed.

(2) All descriptions, specifications, drawings, weights, dimensions, capacities, prices, performance ratings and other data quoted or submitted by Us or included in any sales literature, quotation, price list, acknowledgement of order, invoice or other document or information issued by Us are to be deemed approximate only (except where stated in writing to be exact or expressly made of the essence) and subject thereto none of such items or any part thereof shall form part of the Contract (other than as approximations).

(3) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acknowledgement of order, invoice or other document or information issued by Us shall be subject to correction without any liability on Our part.

(4) We reserve the right to make any changes in the specification of Goods which are required to conform with any applicable safety or other legal requirements or which do not materially affect their quality or performance.

4 : Orders

You may not cancel any order which we have accepted without first obtaining our written consent on terms that You shall indemnify Us 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 Us as a result of cancellation.

5 : Prices

(1) Unless otherwise agreed in writing or stated on Our quotation or acknowledgement of order the price payable by You for each delivery of Goods shall be Our ex-works list price ruling at date of despatch.

(2) Until an order has become binding on Us all prices are subject to change without prior notice.

(3) Your order shall not be binding on Us until We have sent you a written acceptance of your order.

(4) After an order has become binding on Us, all prices will have VAT added at appropriate rate and are subject to increase to reflect any increases in costs to Us (including without limitation costs of materials, labour, transport and services, and fluctuations in currency exchange rates and any tax, duty, fee or charge imposed by any government or other authority) prior to delivery, any change in delivery dates, quantities or specifications for the Goods which You request or any delay caused by Your instructions or your failure to give Us adequate or correct information or instructions.

(5) Again unless otherwise agreed in writing or stated on Our quotation or acknowledgement of order, packaging, delivery and transport charges and insurance are not included in the price and will be charged extra at Our then current rates for same.

6 : Payment

(1) Unless otherwise agreed in writing or stated on Our quotation or acknowledgement of order, the net invoice amount shall become due for payment by You at the end of the month following the month in which the invoice is dated or (if earlier) upon the occurrence of any circumstances whereunder, pursuant to the Contract or these Conditions, payment falls immediately due. The time of payment shall be of the essence of the Contract.

(2) We reserve the right at any time before proceeding or proceeding further with an order to demand full or partial payment of monies due and payable under the Contract and under any other contract between Us and You.

(3) If You default in any payment We may in addition to exercising the right contained in Condition 6(2) above suspend work, delay or withhold delivery or cancel the Contract or suspend work, delay or withhold delivery under or cancel any other contract between Us and You and retain any progress payments or payments on account already received under the Contract or under any other contract between Us and You.

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6 : Payment (Continued)

(4) Interest at annual rate of three per cent above the base rate from time to time of Lloyds Bank PLC is payable on all overdue monies charged on a compound basis.

(5) We shall have a lien on all undelivered goods which You agree to purchase from Us for all monies due to Us from You under any contract between Us and You and You shall have no right of set-off in respect of such monies.

(6) All rights and remedies afforded to Us in these Conditions for non-payment shall be in addition and without prejudice to all other rights and remedies available to Us under the Contract or at law.

(7) If credit facilities have been previously agreed between Us and You, then We reserve the right to withdraw these at any time and without prior notice.

7 : Delivery

(1) Time of delivery is not of the essence of the Contract and any time or date specified by Us as the time at which or the date on which the Goods will be delivered is given and intended as an estimate only and We shall not be liable for any loss, damage or expense howsoever arising from delay in delivery.

(2) We reserve the right to make delivery by instalments, unless otherwise expressly agreed in writing. The period during which delivery by instalments may be made and the quantity of Goods delivered in each instalment shall be in Our discretion.

(3) Where Goods are delivered in instalments, each delivery shall constitute a separate contract (in which these Conditions apply (*mutatis mutandis*)) and Our failure to deliver any one or more of the instalments or any claim by You in respect of any one or more instalments shall not entitle You to treat the Contract as repudiated.

(4) Delivery will be made in packaging reasonably suitable for the type of product at our discretion. Subject thereto delivery of more or less than the quantity or weight of the Goods due for delivery or the inclusion therewith of goods of a different description not included in the Contract shall not entitle You to reject the Goods delivered, and where We deliver more or less than the quantity or weight ordered We may charge pro rata for the quantity or weight supplied and You shall treat such delivery as full performance by Us of Our duty to deliver. Our certificate shall be accepted as conclusive proof of quantity or weight of Goods delivered. You shall have the right to check quantity/weight at Our point of loading/weighbridge.

(5) Notwithstanding any express agreement as to the date of delivery We shall be entitled to postpone or cancel delivery in whole or in part when We are delayed in or prevented from making or obtaining any Goods or materials or parts or components or services therefor or making delivery of Goods by strikes, lockouts, grade disputes or labour troubles or any cause beyond our reasonable control including, but without limitation, act of God, your actions or those of Your agents, embargo or other governmental act or request, fire, accident, war, riot, delay in transportation or inability to obtain adequate labour or manufacturing facilities. During any of the foregoing events Our

obligations shall be suspended until such events cease or until we cancel delivery (as the case may be) and We shall not be required to obtain elsewhere in the market goods with which to replace or permit Us to produce Goods delivery of which has been postponed or cancelled as a result of any of the said events.

In the event of cancellation, We shall be paid pro rata for Goods delivered or work done to the date of cancellation.

(6) If You fail to take delivery of Goods or fail to give Us adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond Our reasonable control or by reason of our faults) then, without prejudice to any other right or remedy available to Us (including its right to payment) We may:-

(i) store the Goods until actual delivery and charge You for the reasonable costs (including insurance) of storage, and (ii) sell the goods, after notification of said Sale has been forwarded to You, at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to You for the excess over the price under the Contract or charge You for any shortfall below the price under the Contract and You shall indemnify Us immediately in full against all losses, damages, charges and expenses incurred by Us as a result of Your said failure to take delivery or give adequate delivery instructions to the extent that Our said losses, damages, charges and expenses are not covered by any payments made or monies obtained under (i) or (ii) above.

(7) You shall be solely responsible for the proper unloading of the Goods. If, to assist You remove the Goods from point of delivery, We or Our sub-contractor do any loading or unloading of goods free of charge, no liability whatsoever shall thereby be incurred by Us or Our subcontractor and you shall indemnify Us in respect thereof.

(8) Save unless otherwise agreed in writing the packaging in which Goods are delivered to You shall be returned at Your expense to us or as We direct.

8 : Your Obligations and Claims on Delivery

(1) You will:-

(i) carefully using Your own skill and judgement on which You must rely examine all the Goods on taking delivery carrying out such visual or scientific testing necessary to verify that the Goods are of merchantable quality and fit for Your intended purpose.

(ii) notify Us (and separately, any carrier for Us) in writing within 3 days of taking delivery of the Goods within 10 days of any date of arrival notified to You by Us or Our agent when none of the anticipated delivery has been delivered, of any error in quality, quantity or description of the Goods or that they were mixed with others not included in the contract or of any damage to Goods revealed by such examination and not caused since You took delivery.

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8 : Your Obligations and Claims on Delivery (Continued)

(iii) Submit a detailed written report to Us of such non-delivery, error in quality, description, quantity or failure to Us within 5 days of service of the notice by You under clause 8(1)(ii) above.

(2) Failure to make any notification in accordance with paragraph (ii) or (iii) of Condition 8(1) above which examination under (I) above should have enabled You to make or Your submitting the Goods to any further process whatsoever including without limitation mixing or combining the Goods with any other products shall constitute Your waiver of all claims based on or relating to facts which such examination should have revealed.

9 : Risk

(1) Risk of damage to or loss of the Goods shall pass to You:-

(i) in the case of Goods to be delivered at Your premises, at the time when We notify You that the Goods are available for collection; or

(ii) in the case of Goods to be delivered otherwise than at Your premises, at the time of delivery (except where the Goods are sold f.o.b.) or, if You wrongfully fail to take delivery of the Goods, the time when We tendered delivery of the Goods. Delivery to a carrier or to any person firm or company on Your behalf shall constitute delivery to You.

(2) Where goods are sold f.o.b. all risk of damage or loss in transit shall pass to You when the Goods are placed on board ship, and We shall be under no obligation to give to You the notice specified in Section 32(3) Sale of Goods Act, 1979.

10 : Title to Goods

(1) Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to You until We have received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Us to You for which payment is then due, together with any interest or other sums payable under the relevant contract in respect of the Goods and such other goods.

(2) Until such time as the property in the Goods passes to You, You shall hold the Goods as Our fiduciary agent and bailee and shall keep the Goods separate from your other goods and those of third parties and properly stored, protected, insured and identified as Our property. Until that time You shall be entitled to resell or use the Goods in the ordinary course of Your business, but shall account to Us for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds and shall keep all such proceeds separate from any of Your monies or other property or of third parties and, in the case of tangible proceeds, properly stored, protected and insured.

(3) Until such time as the property in the Goods passes to You (and provided the Goods are still in existence and have not been

resold) We shall be entitled at any time to require You to deliver up the Goods to Us and, if you fail to do so, forthwith to enter upon any of Your premises or any third party where the Goods are stored and repossess the Goods.

(4) You shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain Our property but if You do so all monies which You owe to Us shall (without prejudice to any of Our other rights or remedies) forthwith become due and payable.

11 : Limitation of Liability

(1) Except in the case of death or personal injury Our liability in respect of arising out of or connected with the Goods including without limitation for or arising out of or connected with any defect in, failure of and suitability or unfitness for any purpose of, or any failure to be of merchantable quality or to accord with any description, sample or representation or their packaging or any inaccuracy, and completeness of, or misleading matter in, any technical, promotional or other literature supplied in connection therewith shall be hereby expressly limited to the price of the Goods delivered ex-works and where such liability arises out of or in connection with any failure on Our part or on the part of Our Agents to exercise reasonable care and skill Our liability shall be hereby expressly limited to the price of the goods delivered ex-works provided that nothing in these conditions shall make Us liable to you in excess of £3,000,000 (three million pounds sterling) (in respect of which liability We shall maintain a comprehensive operation of liability policy). Notwithstanding any of the foregoing We shall be under no liability whatever (as defined in clause 12(3) below) in respect of the Goods where it can be shown that you failed to provide all information necessary for Us to carry out the contract with due skill and care.

(2) All conditions, warranties or other terms whether implied (by statute course of dealing terms of the trade or otherwise) or express, statutory or otherwise, are hereby excluded and You shall not be entitled to reject any or all of the Goods supplied in connection herewith as a result of such matters. You must rely on Your own skill and judgement in relation to the Goods.

(3) In these Conditions the phrase "Liability Whatever" shall include (but without prejudice to the generality of the expression) liability (howsoever arising or caused) whether in or for tort (including negligence), misrepresentation, contract (even in the case of fundamental breach or breach of fundamental term), liability for breach of statutory duty or otherwise (even where (in each and every case) We and/or Our agents, employees or officers have been negligent) including liability in each and every case for direct or indirect or consequential loss (including loss of profit of contract or loss of production) damage, cost or expense of any kind (even where We and/or Our agents, employees, servants or officers have been negligent) in connection therewith.

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11 : Limitation of Liability (Continued)

Notwithstanding any of the foregoing, to the extent that loss or damage is recoverable by You from Us, the amount so recoverable is hereby limited to an amount up to but not exceeding the price of the Goods ex-works provided that We shall have the option of replacing the Goods at Our discretion or refunding to You the price of the Goods (or a proportionate part of the price) provided that nothing in these Conditions shall make us liable to You in excess of £3,000,000 (Three million Pounds Sterling) (in respect of which liability We shall maintain a comprehensive operations liability policy).

(4) You are advised to review Your own insurance position or alternatively to negotiate with Us with a view to Our accepting greater liability to be covered by insurance in consideration for an increase in the contract price.

(5) We, when requested by You, may at Our option obtain insurance in the joint names of Us and You covering on a claims made basis loss occasioned through the provision of the Goods and, on confirmation of being given in the Order Confirmation, effect such insurance under an open or general policy. The cost of such joint insurance shall be borne solely by You. We are not acting as Your agent for such insurance and We shall have no "Liability Whatever" if for any reason the insurers dispute their liability under any such policy of insurance.

(6) You hereby warrant and agree to ascertain Yourself without relying on Our knowledge that the Goods are fit for the purpose for which they are supplied.

(7) You hereby warrant that these Conditions of Sale satisfy the requirement of reasonableness imposed by the Unfair Contract Terms Act 1977 as amended.

12 : Trademarks, Patents and Other Industrial Rights

(1) If any claim is made against You alleging that Goods infringe any patent rights, registered designs, copyright or other industrial property rights of another then:-

(i) You shall forthwith notify Us with full particulars, and

(ii) We or Our suppliers or licensors (as case may be) shall be at liberty at Our expense to conduct all negotiations and/or litigation in respect thereof and (if necessary) in Your name; and

(iii) except pursuant to a final award, You shall not pay or accept any such claim or compromise any proceedings without Our consent (which shall not be unreasonably withheld or delayed) and if as a result of such negotiations or litigation You shall be unable to use the Goods substantially for the purpose for which they were bought We shall (except where Condition 13 below applies) take them back and refund the price thereof and such refund shall be in full satisfaction of all claims by You against Us.

(2) You shall indemnify Us against all actions costs (including cost of defending legal proceedings) claims proceedings and demands in respect of any infringement or alleged infringement by Us of patent rights registered design copyright, design rights or other industrial rights attributable to Us complying with any special instructions from You or Your requirements relating to the Goods.

13 : Your Insolvency

(1) This Condition applies if:

(i) You make any voluntary arrangement with Your creditors or (being an individual or firm) become bankrupt or (being a company) become subject to an administration order or go into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

(ii) an encumbrancer takes possession, or a receiver is appointed, of any of Your property or assets; or

(iii) You cease, or threaten to cease, to carry on business; or

(iv) We reasonably apprehend that any of the events mentioned above is about to occur in relation to You and notify You accordingly.

(2) If this Condition applies then, without prejudice to any other right or remedy available to Us We shall be entitled to suspend work, delay or withhold delivery under or cancel the Contract without any liability to You, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

14 : Notices

Any notice given hereunder must be in writing and may be effected by personal delivery, fax or by registered mail postage and (subject in each case, to proof that such notice was properly addressed and despatched) if effected by fax shall be deemed to be received on the day of sending and if effected by post shall be deemed to be received 48 hours after the date of posting.

15 : No Assignment

The Contract shall be personal to You and shall not nor shall any rights under it be assigned by You without Our written consent.

16: No Waiver

No waiver by Us of any breach of the Contract by You shall be considered as a waiver of any subsequent breach of the same or any other provision.

17 : Governing Law

The Contract (and these Conditions) shall be governed by and construed in accordance with the laws of England.

18 : Invalidity

If any provision of the Contract (or of these Conditions) is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract (or of these Conditions) and the remainder of the provision in question shall not be affected thereby.