

GENERAL CONDITIONS OF SALE

1. GENERAL

- (a) In these conditions:
- (i) "Seller" means Marcar Steel & Engineering Ltd."
 - (ii) "Buyer" means the person with whom the Seller accepts the contract for the purchase of the goods, or in the case of a duly authorised agent, the principal named as such by the person to whom the Seller issued the acceptance.
 - (iii) "goods" means the goods described overleaf.
 - (iv) the "contract" means the contract for the purchase of the goods between the Buyer and the Seller
- (b) Unless otherwise agreed in writing by the Seller, all goods are supplied on the following conditions to the exclusion of any terms or conditions stipulated by the Buyer and any representations, warranties or communications not expressly incorporated herein or in the Seller's acceptance of order.
- (c) No order will result in a binding contract of sale unless and until the Seller has accepted it in writing (including by means of its order acceptance form). For the avoidance of doubt, any offer made or quotation sent by the Seller (whether orally or in writing or by cable, telex or otherwise) shall not be binding unless this results in an order subsequently accepted by the Seller in writing.
- (d) Any Government imposts, taxes and other charges, increases in freight rates and duties or changes in rates of exchange, unknown to the Seller when making the contract shall be for Buyer account. Goods which have been sold for shipment to a designated foreign country shall be deemed to have been sold directly to and for exclusive consumption in that country. Otherwise an additional amount up to the amount of the purchase price may be charged.
- (e) Any variation of the terms and conditions of the contract will become binding only if confirmed in writing by the Seller.

2. COMMITMENT TO DELIVERY

Without prejudice to clause 3, delivery shall be Ex Works and shall take place at the Seller's place of business and shall be subject to the Incoterms currently in force. War or mobilization shall give the Seller the right to withdraw from the contract. The same shall apply to civil commotion, riots, breakdowns, interruptions of traffic and other events affecting the works or mill where the Seller intended to place the respective order or affecting the despatch of the goods or releasing the works, on the strength of their terms of delivery, from the obligation of making deliver to the Seller. The Seller shall not be committed in this case to place the order elsewhere nor to use any other transport route than that provided for by the Seller. If any delay in delivery of the goods results from any of the aforementioned causes the Buyer shall not be entitled to cancel the contract, nor shall the Buyer be entitled to any compensation for the resultant delay.

The Seller will give the Buyer notice when the goods are ready for collection. The Buyer will then take delivery of the goods within 14 days of the service of the notice and time for performance of the Buyer's obligation to take delivery shall be of the essence.

3. TIME OF DELIVERY

The time for delivery indicated by the Seller is approximate only and time shall not be of the essence of the contract.

4. DIMENSIONS AND WEIGHTS

These shall be subject to the usual allowances. The weights determined at the Seller's works shall be invoiced.

5. DESPATCH

Where the goods are packed or protected as specified in the contract or in the event of no such specification the goods are delivered without any or sufficient packing or protection the Seller shall not be liable for any deterioration of the goods during carriage.

6. INSURANCE

Unless otherwise agreed, deliveries c.i.f. shall be insured on f.p.a. terms.

7. CONSULAR INVOICES

The Incoterms currently in force shall be applicable, according to which fees be borne by the Buyer.

8. PAYMENT

The Seller shall be entitled to invoice the Buyer for the price of the goods on or at any time after delivery of the goods unless the Buyer wrongfully fails to take delivery of the goods, in which event the Seller shall be entitled to invoice the Buyer for the price at any time after the Seller has tendered delivery of the goods. The terms of payment shall be within (30) days of the date of the Seller's invoice notwithstanding that delivery may not have taken place.

In case of default in payment, also for partial deliveries the Seller shall have the right to withdraw from all delivery contracts pending or to claim additional guarantees. The Seller shall moreover have the right of subsequently claiming guarantee if it appears advisable to it to do so. The Buyer shall not have the right to retain the purchase price on account of other claims or to offset the latter against the purchase price. The Buyer shall be liable for the damage (e.g. loss in interest or by exchange) inflicted upon the Seller through non-observance of the agreed conditions of payment by the Buyer.

The Seller shall be entitled, without prejudice to its other rights and remedies, either to terminate wholly or, in part any or every contract between itself and the Buyer or to suspend any further deliveries under any or every such contract in any of the following events:-

- (a) If any debt is due and payable by the Buyer to the Seller but is unpaid.
- (b) If the Buyer has failed to provide any Letter of Credit, Bill of Exchange, or any other security required by the contract provided that in such event the aforesaid rights of termination or suspension shall apply only in regard to the particular contract in respect of which the Buyer shall have so failed.
- (c) If the Buyer has failed to take delivery of any goods under any contract between him and the Seller otherwise than in accordance with the Buyer's contractual rights.
- (d) If the Buyer becomes insolvent or being a body corporate has passed a resolution for voluntary winding-up except where solely for the purpose of reconstruction or has suffered an Order of the Court for its winding-up to be made or has had a receiver, Administrative Receiver or Administrator appointed or shall be deemed to be unable to pay its debts or shall seek any relief under or pursuant to any bankruptcy insolvency or reorganisation statute or proceeding in accordance with the laws of any jurisdiction or being an individual or partnership has suspended payment of his or their debts in whole or in part or have proposed or entered into composition or arrangement with his or their creditors or have had a bankruptcy order made against them.

The Seller shall be entitled to exercise its aforesaid rights or termination or suspension at any time during which the event or default giving rise thereto has not ceased or been remedied and in the event of any such suspension the Seller shall be entitled as a conditions of resuming delivery under any contract between it and the Buyer to require prepayment of or such security as it may require for the payment of the price of any further delivery.

The Seller's rights shall not be prejudices or restricted by any indulgence or forbearance extended to the Buyer and no waiver by the Seller in respect of any breach shall operate as a waiver in respect of any subsequent breach.

9. RESERVATIONS OF OWNERSHIP

Regardless of when any documents of the title are made available to Buyer, all risk of loss or damage shall pass to Buyer on delivery of the goods to Buyer of his agent.

- (a) Notwithstanding that the goods are at the risk of the Buyer the goods shall remain the Seller's sole and absolute property as legal and equitable owner until all sums due to the Seller from the Buyer in respect of the goods and all other goods sold or supplied by the Seller to the Buyer have been paid for in full.
- (b) The Buyer acknowledges that so long as the Buyer is in possession of any property of the Seller the Buyer shall hold such property as the bailee of the Seller and shall keep such property separately stored and/or marked so as to be clearly identifiable as property of the Seller and shall be kept free of any lien, charge or encumbrance.
- (c) Until full payment has been made Buyer shall not be entitled to dispose of any property in the goods (by sale or otherwise) to the holding company of the Buyer or to any subsidiary of the Buyer of such holding company.
- (d) The Seller shall be entitled to enter on the premises to inspect the goods and if the Buyer shall fail to make due payment for them to take and reclaim the goods.
- (e) The Buyer shall not be deemed to be the agent of the Seller for any purpose and shall indemnify the Seller against any liability that the Seller may incur to third parties (whether in contract, tort or otherwise, and including all the expenses of the Seller attributable thereto) in connection with the goods, other than liability which would have arisen if the proceeding paragraphs of this condition had not formed part of the contract of sale.

The following provisions shall not apply where the Buyer is a company incorporated in the UK:

- (f) If the goods are mixed with, or incorporated or processed by the Buyer into other articles, such articles shall be separately stored and marked so as to be identifiable as being made from or with the goods of the Seller and shall thereupon become the property of the Seller until such payment as aforesaid has been made.
- (g) The Buyer may resell the goods to third parties in the normal course of business and the proceeds of any such resale shall belong to the Seller to the extent that any payments referred to in paragraph (a) above remain owing by the Buyer, and the Buyer shall be under a fiduciary duty to account to the Seller for such proceeds. The Buyer shall pay all such proceeds of sale into a separate trust account pending accounting to the Seller therefor.

10. LIENS

Without prejudice to any other remedies the Seller may have, the Seller shall have special and general liens on all the Buyer's goods and property in the Seller's possession (whether worked on by the Seller or not) in respect of monies owing to the Seller from the Buyer. In the event that any monies due from the Buyer to the Seller are not paid in full within 7 days from the date upon which the Seller first gives notice to the Buyer of the exercise of its liens, the Seller shall be entitled to dispose of such goods and property as it thinks fit and to apply any such proceeds received towards the satisfaction of such monies and the costs incurred by the Seller in relation to the exercise of its liens and the said disposal.

11. INSPECTION AND COMPLAINTS

If an inspection or testing of the goods has been agreed upon, this shall take place at the Seller's works before despatch. Once the goods have left the works, they shall be deemed to have been properly delivered in every respect. This also applies if the Buyer fails to inspect or test the goods at the agreed date or if he waives inspection or testing of the goods or if the goods are to be supplied in commercial quantity in which case an inspection is unusual. The only claims for which the Seller accepts responsibility are claims by the Buyer that the goods do not conform with the description or requirements shown overleaf and the word "claim" as shown shall be construed accordingly. Claims shall be advised in writing within one week after the receipt of the goods.

The Seller's liability shall in all respects be limited at the Seller's option either to reimbursement of the purchase price or, to replacement of the goods in which case the defective goods shall be returned to the Seller free or arrive at a cash settlement. The Seller shall not be liable for any other damages, especially those resulting from or during further processing of the goods. Complaints shall not give the purchaser the right to modify the conditions of payment or to delay payments due.

The Seller shall not be liable for any defects in the quality or state of the goods which would be apparent on a reasonable examination unless the Buyer shall have given to the Seller within 7 days after receipt of the goods a written notice specifying the matters complained of and shall thereafter afford the Seller a reasonable opportunity of inspecting the goods before they have been used or processed.

The Seller shall not be liable for loss of profit, damage to plant, or for any expenditure incurred on goods supplied or any consequential or special loss or damage sustained by the Buyer by reason of any breach of contract or negligence by the Seller. Any condition, warranty or statement as to the quality of the goods or their fitness for any purpose, whether expressed or implied by statute, custom of the trade or otherwise, is hereby excluded unless given expressly in writing by the Seller. Nothing in this clause shall exclude Seller's liability for death or personal injury due to Seller's negligence.

- 12. Without prejudice to any other remedies the Seller may have in respect of overdue payment the Seller reserves the right to charge interest (as well before as after any judgement) at the rate of 3% per annum above the base rate from time to time in force of Midland Bank Plc on the outstanding indebtedness from the date on which payment becomes due, such interest accruing on a daily basis and being payable without the deduction of tax and also to charge the Buyer for all costs and expenses in recovering such overdue amounts from the Buyer.

- 13. The Buyer shall indemnify the Seller against all claims, demands, damages, penalties, costs and expenses for which the Seller may become liable by reason of the infringement or alleged infringement of letters patent or registered designs arising out of its performance of the contract in accordance with the Buyer's specifications.

14. PLACE OF JURISDICTION

London shall be agreed upon as place of jurisdiction for all rights and duties arising from the contract. The Seller however reserves the right of taking legal proceedings at any reasonable place of jurisdiction. All legal relations between the Buyer and the Seller are subject to English law.

15. GENERAL

- (a) Any notice required or permitted to be given by either party to the other under these conditions shall be in writing and may be given either personally or by first class post or facsimile transmission addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Where given by first class post such notice will be deemed to have been served 48 hours after posting and proof that the envelope containing the notice was properly addressed and sent prepaid shall be sufficient evidence of service. Notice given in person or by facsimile transmission shall be deemed to be served immediately.
- (b) No waiver by the Seller of any breach of the contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (c) If any provision 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 these conditions and the remainder of the provision in question shall not be affected thereby.
- (d) The Seller shall be entitled to sub-contract the performance of the whole or any part of the contract without prior notice to the Buyer and in entering into the contract the Seller contracts for and on behalf of itself and its sub-contractors
- (e) The Buyer shall not be entitled to assign or otherwise transfer the contract or any of its rights or obligations thereunder without the prior consent in writing of the Seller.