



METALEX
EXPERTS IN METAL

Metalex Products Limited Terms & Conditions of Sale

1. DEFINITIONS

"The Seller" means Metalex Products Ltd or any of its subsidiaries.

"The Purchaser" means the person firm or company to be supplied with the Goods by the Seller;

"Goods" means the goods materials and/or other items to be supplied pursuant to the Contract;

"The Contract" means the contract for sale and purchase of the Goods made between the Seller and the Purchaser to which these Conditions apply.

2. SCOPE

These conditions apply to all sales of Goods by the Seller and shall prevail over and apply to the exclusion of any inconsistent terms or conditions contained or referred to in the Purchaser's order or in correspondence or elsewhere implied by trade custom practice or course of dealing unless specifically agreed to in writing by the Seller. Purported provisions to the contrary are hereby excluded or extinguished.

3. QUOTATIONS

A quotation or tender by the Seller does not constitute an offer and the Seller reserves the right to withdraw or amend the same at any time prior to the Seller's acceptance of the Purchaser's order.

4. PRICES

(a) The prices payable for the Goods shall be those charged by the Seller at the time of despatch. The Seller shall have the right at any time to revise the price to take account of increases in costs including (without limitation) costs of any goods or materials, carriage, labour or overheads the increase or imposition of any tax duty or other levy and any variation in exchange rate. Unless otherwise stated the price is exclusive of value added tax.

(b) If the price exceeds £15,000 then it is a condition precedent to the Contract that the Contract be signed on behalf of the Seller by two of its Directors. In the event that the said Contract is not so signed it shall be void and of no effect and neither party shall have any claim whatsoever against the other.

(c) Any special packaging requested by the Purchaser shall be the subject of additional charge.

5. TERMS OF PAYMENT

All prices are quoted nett. Unless specifically stated overleaf payment of invoices shall be made without any deduction or set-off in cash so as to be received

by the Seller within thirty days of the date thereof. In the event that the payment is not made by the Customer on or before the due date for payment any and all other invoices submitted by the Seller to the Purchaser shall immediately become due and payable. Interest shall be payable on the amount outstanding at the rate of two per cent per month to run from the due date for payment thereof until receipt by the Seller of the full amount whether or not after judgement.

6. DELIVERY

(a) Time for delivery is given as accurately as possible but is not guaranteed. The Purchaser shall have no right to damages or to

cancel the order for failure for any cause to meet any delivery time stated.

(b) If the Purchaser refuses or fails to take delivery of Goods tendered in accordance with the Contract the Seller shall be entitled to immediate payment in full for the Goods so tendered. The Seller shall be entitled to store at risk of the Purchaser any Goods which the Purchaser refuses or of which he fails to take delivery and the Purchaser shall in addition to the price pay all costs of such storage and any additional costs or carriage incurred as a result of such refusal or failure. Refusal by the Purchaser to take delivery will relieve the Seller from the obligation to make further deliveries without prejudice to the Seller's right to recover damages for such refusal. The Seller shall be entitled after the expiration of 28 days from the date on which the price becomes payable to dispose of the Goods in such manner as it may determine.

(c) Subject to the provisions of paragraph (e) of this Condition (where applicable) the Goods shall unless delivered by the Seller's own transport or by a carrier on behalf of the Seller be deemed to have been delivered and the risks therein to have passed to the Purchaser upon their transfer to a carrier named by the Purchaser or 2 days after the Seller notifies the Purchaser that the Goods are available for collection whichever is the earlier.

(d) Where the Goods are to be delivered by the Seller's own transport or by a carrier on behalf of the Seller the risk therein shall pass to the Purchaser upon delivery.

(e) In any case where Goods are sold C.I.F. or F.O.B. or on the basis of any other international trade term the meaning of such term contained in INCOTERMS (1990 edition) shall apply as if expressly incorporated herein except insofar as any part of the same may be inconsistent with any of the provisions contained in these Conditions.

(f) Where the Goods are sold F.O.B. the Seller shall be under no obligation to give to the Purchaser the notice specified in section 32(3) of the Sale of Goods Act 1979.

7. TITLE

(a) Title to the Goods or any part thereof shall pass to the Purchaser only upon the happening of any one of the following events:

(i) the Purchaser has paid to the Seller all sums due from it to the Seller under the Contract and under all other contracts between the Seller and the Purchaser including any sums due under contracts made after this Contract whether the same are immediately payable;

(ii) when the Seller serves on the Purchaser notice in writing specifying that title in the Goods or such part thereof has passed.

(b) The Seller may recover the Goods in respect of which title has not passed to the Purchaser at any time and the Purchaser hereby licences the Seller, its officers, employees and agents to enter upon any premises of the Purchaser for the purpose either of satisfying itself that condition 7(c) below is being complied with by the Purchaser or of recovering any Goods in respect of which title has not passed to the Purchaser. This right shall continue to subsist notwithstanding the termination of the Contract through the happening of any of the events specified in condition 17 or otherwise and without prejudice to any accrued rights of the Seller thereunder.

(c) The Purchaser shall ensure that Goods in respect of which title has not passed are stored separately from other goods and that they are clearly identifiable as belonging to the Purchaser. If the Goods are combined by the Purchaser with other items or materials or utilised

Units 11-13 Holton Road
Holton Heath Trading Park
Poole, Dorset
BH21 7SD
01202 877142

Parsonage Business Park
Parsonage Way
Horsham
RH12 4AL
01403 273213

Unit 8, Basepoint Chepstow,
Riverside Court,
Beaufort Park Way,
Chepstow, NP16 5UH
01934 411811

Units 12-13
Gravelly Industrial Park
Birmingham
B24 8HZ
0121 326 6888



Certificate No. FS 87733

or consumed in the production of other items or materials the Seller shall retain title to the Goods if they remain capable of removal or separation from the resulting items. Until title to the Goods has passed to the Purchaser pursuant to this condition it shall possess the Goods as a bailee of the Seller on the terms of this Contract. If the Company so requires the Purchaser will return the Goods in good condition and will meet any cost of the Seller incurred in recovering or repairing the Goods in the event of the Purchaser's failure to comply with this sub-condition.

(d) Without prejudice to the foregoing sub-conditions and in the event that the Purchaser shall in the course of its business dispose of the Goods to a customer being a bona fide Purchaser without notice of the Seller's rights then the Purchaser shall not have a fiduciary duty to the Seller to account to the Seller for the proceeds (which shall be kept separate and identifiable from the Purchaser's own monies) but may retain therefrom any excess of such proceeds over the amount outstanding under this or any other contract between them.

8. EXPORT SALES

Notwithstanding Condition 5 hereof in the case of export sales the price of the Goods shall be secured by an irrevocable letter of credit satisfactory to the Seller established by the Purchaser in favour of the Seller immediately upon receipt of the Seller's acknowledgement of order and confirmed by a United Kingdom bank acceptance to the Seller. A letter of credit shall be for the full contract price inclusive of any tax or duty payable by the Purchaser and the Seller shall be entitled to payment on presentation to such United Kingdom bank of the documents specified by the Seller on the acknowledgement of order.

9. INSPECTION

If any testing and/or inspection is required by the Purchaser it shall be carried out at the Seller's works or such other place or places as the Seller may appoint.

10. VARIATIONS

(a) When goods are ordered by reference to quantity the Seller reserves the right to under or over deliver the quantity by 10% and the Purchaser shall pay for the quantity delivered.

(b) All weights per foot or per piece and dimensions quoted are approximate only and subject to recognised tolerances and the Seller reserves the right to charge the price applicable for the theoretical weight of the Goods.

11. ADVICE ?

(a) All technical advice data or information given by the Seller its employees or agents in respect of the Goods is made in good faith on the basis of test data and field experience and are provided for general guidance only. No such information advice or data shall form any part of this Contract.

(b) The Purchaser shall be solely responsible for ensuring that all drawings, information, and recommendations given to the Seller either directly or indirectly by the Purchaser or by the Purchaser's agents, employees, consultants or advisers are accurate, correct and suitable. Examination or consideration by the Seller of such drawings, information, advice or recommendations shall in no way limit the Purchaser's responsibility hereunder unless the Seller specifically agrees in writing to accept responsibility.

12. THIRD PARTY RIGHTS

(a) The Purchaser shall indemnify the Seller against any and all claims costs demands and expenses incurred or made against the Seller as a direct result of the carrying out of any work required to be done on or to the Goods in accordance with the requirements or specifications of the Purchaser involving any infringement or claims of infringement of any intellectual or industrial property right vested in any third party.

(b) In any case where the Goods are or are capable of becoming the subject of any industrial or intellectual property rights of any third party the Seller shall be obliged to transfer to the Purchaser only such title as it may have to the Goods.

13. INSURANCE

In any case where the Purchaser wishes the Seller to insure any specific consignment of Goods the Purchaser must so advise the Seller in writing within a reasonable time prior to delivery quoting the full value to be insured. The premium chargeable for such insurance shall be paid by the Purchaser.

14. LIABILITY

(a) The Seller shall not be liable to the Purchaser for

(i) subject to condition 10(a) and (b) any discrepancy in quantity or weight delivered unless the Purchaser notifies the Seller of any claim for short delivery within 96 hours of receipt of the Goods;

(ii) damage to or loss of the Goods or any part thereof in transit (where the Goods are carried by the Seller's own transport or by a carrier on behalf of the Seller) or non-delivery unless the Purchaser shall notify the Seller of any such claim within 96 hours of receipt of the Goods or the scheduled date for delivery whichever shall be the earlier.

(iii) defects in the Goods caused by any act neglect or default of the Purchaser or of any third party;

(iv) other defects in the Goods unless notified to the Seller within 96 hours of receipt of the Goods by the Purchaser or where the defect would not be apparent on reasonable inspection within 1 month of delivery.

(b) In the event of any shortage or non-delivery and or defect in respect of which the Seller accepts liability the sole obligation of the Seller shall be at its option to make good any such shortage non-delivery and/or as appropriate replace or repair any Goods found to be damaged or defective. In no circumstances shall the Seller's aggregate liability to the Purchaser whether for negligence breach of contract misrepresentation or otherwise exceed the cost of the defective damaged or undelivered goods determined by net price invoiced to the Purchaser in respect of any occurrence or series of occurrences.

(c) Subject to the foregoing all conditions warranties and representations expressed or implied by statute common law or otherwise in relation to the Goods are hereby excluded and the Seller shall be under no liability to the Purchaser for any loss damage or injury direct or indirect resulting from defective material faulty workmanship or otherwise howsoever arising and whether or not caused by the negligence of the Seller its employees or agents SAVE THAT the Seller accept liability for death of personal injury caused by the negligence of the Seller.

(d) The Seller's prices are determined on the basis of the limits of liability set out in this Condition. The Purchaser may by written notice to the Seller request the Seller to agree a higher limit of liability

provided insurance cover can be obtained therefor. The Seller shall effect insurance up to such limit and the Purchaser shall pay upon demand the amount of any and all premiums. In no case shall the Purchaser be entitled to recover from the Seller more than the amount received from the insurers.

15. LICENCES AND CONSENTS

If any licence or consent of any government or other authority shall be required for the acquisition or use of the Goods by the Purchaser the Purchaser shall obtain the same as its own expense and if necessary or so required produce evidence of the same to the Seller on demand.

16. FORCE MAJEURE

(a) The Seller shall not be liable to the Purchaser for any loss or damage which may be suffered by the Purchaser as a direct or indirect result of the supply of the Goods by the Seller being prevented hindered delayed or rendered uneconomic by reason of any Force Majeure Circumstances.

(b) In the Condition "Force Majeure Circumstances" shall mean any Act of God riot strike lock out trade dispute or labour disturbance accident breakdown of plant or machinery fire flood difficult or increased expense in obtaining workmen materials or transport or other circumstances whatsoever outside the reasonable control of the Seller affecting the provision of the Goods or of raw materials therefore by the Seller's normal source of supply or of the manufacture of the Goods by the Seller's normal means or the delivery of the Goods by the Seller's normal route or means of delivery.

(c) If due to Force Majeure circumstances the Seller has insufficient stock to meet all its commitments the Seller may apportion available stocks between its customers at the sole discretion.

17. INSOLVENCY

If the Purchaser shall become bankrupt or under the provisions of Section 123 of the insolvency Act 1986 is deemed to be unable to pay its debts or compounds with creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Purchaser (other than for a voluntary winding up for the purposes of reconstruction or amalgamation or if a Receiver or Manager is appointed of all or any part of its assets or undertaking the Seller shall be entitled to cancel the Contract in whole or in part by notice in writing without prejudice to any right or remedy accrued or accruing to the Seller.

18. CONSUMER PROTECTION ACT 1987 ("THE ACT")

In the circumstances where the Seller Supplies Goods to the Purchaser for incorporation with or use ancillary to any composite products to be produced, manufactured, processed or supplied by the Purchaser then;

(a) the Purchaser shall forthwith on demand produce for inspection by the Seller copies of all written instructions, information and warnings to be supplied by the purchaser in relation to the said composite products provided nevertheless that such inspection or right to inspect shall not of itself constitute acceptance or approval on the part of the Seller or such instructions information or warnings and.

(b) the Purchaser shall indemnify, reimburse and compensate the Seller for all losses and damaged (including costs, expenses and charges for legal actions in which the Seller may be involved) that the

Seller may incur in the event that any claim or claims are made against the Seller pursuant to the Act relating to the said composite products of the Purchaser or products in circumstances in which, the Goods supplied by the Seller.

(i) were not the defective part of the said composite products, or
(ii) were only rendered the defective part or became a defective product by reason of actions or omissions of the Purchaser, or
(iii) were only rendered the defective part or became a defective product by reason of instructions or warnings given by the Purchaser or other supplier of the said composite products or products, or
(iv) were manufactured in accordance with the Purchaser's drawings and specification.

(c) for the purposes of the condition only the word defective shall be interpreted in accordance with the definition of "defect" contained in Part 1 of the Act.

The Purchaser hereby acknowledges that it is under a duty to pass on to its customers (where appropriate) all instructions, information and warnings supplied to it by the Seller with the Gods.

19. WAIVER

The failure by either party to the Contract to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

20. NOTICES

Any notice hereunder shall be in permanent readable form and shall be deemed properly addressed if addressed to the party concerned at its principal place of business or last known address. Any such notice shall be taken to be received by the addresses two working days following the date of dispatch of the notice by post or when the notice is sent by hand or given by facsimile or other electronic medium simultaneously with the delivery or transmission.

21. HEADINGS

The headings in these conditions are inserted for convenience only and shall not affect their construction.

22. LAW

The Contract shall in all respects be governed by and construed and interpreted in accordance with the laws of England and the parties hereby submit to the non-exclusive jurisdiction of the English courts.

23. DIVISIBILITY

(a) The Company reserves the right to make deliveries/and or services by instalments and to render a separate invoice in respect of each such instalment.

(b) If the Company exercises its right to make deliveries/and or services in accordance with sub-paragraph (a) above, then any delay in the provision of such deliveries/and or services, or failure to deliver any further instalment or instalments, shall not entitle the Buyer to reject the Contract or the delivery/service of any other instalment or to withhold payment in respect of any instalment previously delivered/serviced.