

## **Terms and Conditions of Sale**

Of

### **Orion Metal Trade Limited**

Blades Enterprise Centre, John Street, Sheffield, S2 4SW

The following terms and conditions are the sole terms on which Orion Metal Trade Limited ("the Company") sells products and services to you ("the Buyer") and shall be to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any document) and prior agreements or arrangements between the parties.

#### **1. APPLICATION OF TERMS**

- 1.1 Each order for products by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy products subject to these terms and conditions.
- 1.2 No order placed by the Buyer shall be deemed to be accepted by the Company until an acknowledgment of order is issued by the Company or (if earlier) the Company delivers the products to the Buyer.

#### **2. PRICE AND PAYMENT**

- 2.1 The price payable for the products shall be the price as stated on the list maintained by the Company from time to time or such other price as agreed between the parties in writing.
- 2.2 Unless expressly stated otherwise the price payable for the products shall be exclusive of VAT (if applicable), and carriage or freight unless expressly stated otherwise.
- 2.3 The Buyer shall pay the full amount invoiced to it by the Company in the agreed currency within the agreed timeframe from date of invoice.

#### **3. DELIVERY**

- 3.1 Delivery of the products shall take place at the delivery point identified in the purchase order or failing that as agreed in writing between the parties.
- 3.2 If the purchase order states that the Buyer will collect the products from a specified point the products will be deemed to have been delivered once they are made available for collection from that specified point.
- 3.3 Any dates specified by the Company for delivery of the products are intended to be an estimate and time shall not be of the essence in relation to the same. If no dates are so specified, delivery shall be within a reasonable time.
- 3.4 If for any reason the Buyer fails to accept delivery of any of the products when they are ready for delivery, or the Company or its agents are unable to deliver the products due to the acts or omissions of the Buyer, its employees or agents:
  - 3.4.1 Risk in the products shall pass to the Buyer;
  - 3.4.2 The products shall be deemed to have been delivered; and
  - 3.4.3 The Company may store the products until delivery, whereupon the Buyer shall be liable for all related costs and expenses.

#### **4 NON DELIVERY**

- 4.1 The quantity of any consignment of products as recorded by the Company on despatch from the Company's place of business or that of its agents or suppliers shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary
- 4.2 Any liability of the Company for non-delivery of the products shall be limited to replacing the products within a reasonable time of issuing a credit note at the pro rata contract rate against any invoice raised for such products.

## **5 TITLE AND RISK**

- 5.1 The products shall be at the risk of the Consumer from the time of delivery.
- 5.2 Ownership of the products shall not pass to the Buyer until the Company has received in full (in cleared funds) all sums due to them in respect of the products.
- 5.3 Until ownership of the products has passed to the Buyer, the Buyer shall:
  - 5.3.1 Hold the products on a fiduciary basis as the Company's bailee;
  - 5.3.2 Store the products (at no cost to the Company) separately from all other goods of the Customers or any third party in such a way that they remain readily identifiable as the Company's property;
  - 5.3.3 Not destroy, deface or obscure any identifying marks or packaging on or relating to the products; and
  - 5.3.4 Maintain the products in a satisfactory condition and keep them insured on the Company's behalf for their full price against all risks
- 5.4 The Company shall be entitled to recover payment of the products notwithstanding that ownership of any of the products has not passed
- 5.5 The Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the products are or may be stored in order to inspect them, or, where the Buyer has failed to pay all sums due and i) becomes insolvent; or ii) takes any steps in connection with any voluntary arrangement or any other arrangement for the benefit of creditors, or iii) has a receiver appointed in respect of the whole or any part of the Buyer's assets, to recover them.

## **6 DAMAGE IN TRANSIT**

- 6.1 Where the products are to be delivered in accordance to condition 3.1 the Buyer shall upon serving notice within 48 hours of delivery notify the Company of any damage to the products who shall (in their absolute discretion) decide if such damage is attributable to the actions and /or omissions of the Buyer, its employees or agents post delivery.
- 6.2 Where the products are to be collected by the Buyer in accordance with condition 3.2 the Buyer shall ensure that at the point of collection they shall inspect the products and shall be satisfied as to the condition of the same.
- 6.3 If any products are found to be damaged under conditions 6.1 and 6.2 the Company shall in their absolute discretion either i) replace the damage products, or ii) supply a credit note to an amount representative of the damaged products.

## **7 LIABILITY & WARRANTIES**

- 7.1 All warranties, conditions and other terms implied by statute or common law (including those relating to fitness for purpose, use and quality) are, to the fullest extent permitted by

law, excluded from any contract arising from the Buyer's orders that is made between the Buyer and the Company.

7.2 Subject to condition 7.1

7.2.1 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 any contract arising from the Buyer's orders shall be limited to the repayment of the price paid for the products supplied under the specific purchase order; and

7.2.2 The Company shall not be liable to the Buyer for any indirect or consequential loss, damage or expenses (including loss of profits, business or goodwill) howsoever arising.

7.3 Notwithstanding the foregoing nothing in these terms and conditions is intended to limit the Company's liability to the Buyer for any death or personal injury resulting from the Company's negligence.

## 8 GENERAL

8.1 Severability. Any of the terms and conditions held to be invalid shall be severed but the remaining provisions shall continue to operate in full force and effect.

8.2 Third party rights. A person who is not a party to this agreement shall not be entitled to enforce any term pursuant to the Contracts (Rights of Third Parties) Act 1999.

8.3 Force majeure. Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party.

8.4 Representations. The Buyer acknowledges that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into these terms and conditions or the purchase orders provided by the Company from time to time.

8.5 Waiver. No forbearance or delay by the Company in enforcing its rights shall prejudice or restrict the rights of the Company and no waiver of any such rights or of any breach of any terms shall be deemed to be a waiver of any other right or of any later breach.

8.6 Agency, Partnership. Nothing in this agreement shall be held, implied or deemed to constitute partnership, joint venture, agency or other relationship between the parties

8.7 Notices. All notices shall be in writing and shall be deemed to be effective immediately upon personal delivery or by fax where a successful fax transmission sheet is obtained or e mail. In all cases the notices must be addressed according to the correct contact details provided by the parties from time to time.

## 9 GOVERNING LAW & JURISDICTION

This agreement and any dispute arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with English law and the parties hereto submit to the exclusive jurisdiction of the English courts.