



CONDITIONS OF SALE: CLEVELAND STEEL AND TUBES LIMITED

Orders and acceptance of contracts

1. These conditions of sale ("Conditions") represent the only basis upon which Cleveland Steel and Tubes Limited ("Cleveland Steel") is prepared to enter into a contract with the Buyer and, together with the details set out in Cleveland Steel's quotation and (if relevant) sales order acknowledgement, form the entire agreement between Cleveland Steel and the Buyer in relation to all goods and services supplied by Cleveland Steel to or on behalf of the Buyer. No changes to these Conditions will bind Cleveland Steel unless specifically agreed to in writing by a director of Cleveland Steel.
2. Cleveland Steel's quotation is an offer by Cleveland Steel to the Buyer to enter into a contract to supply goods or services to or on behalf of the Buyer subject to these Conditions and subject also to the goods still being available upon the date of receipt by Cleveland Steel of the Buyer's order.
3. The Buyer will be deemed to have accepted Cleveland Steel's offer upon actual receipt by Cleveland Steel of the Buyer's order (whether received orally or in writing), unless the circumstances described in Condition 5 apply.
4. Following receipt of the Buyer's order (whether received orally or in writing), Cleveland Steel will issue a sales order acknowledgement to the Buyer.
5. If any term contained or referred to in the Buyer's order conflicts with any term in the sales order acknowledgement or these Conditions, such term will not be binding on Cleveland Steel and Cleveland Steel's sales order acknowledgement will be deemed to be a counter-offer to the Buyer. In the circumstances described in this Condition 5, the Buyer will be deemed to have accepted Cleveland Steel's counter-offer if it has not notified Cleveland Steel in writing of its objection to any of its terms prior to delivery of the goods to the Buyer or, if earlier, within [2] working days of the date of the sales order acknowledgement.
6. Once accepted, an order may not be cancelled by the Buyer without Cleveland Steel's prior written agreement.

Prices and payment

7. The price payable by the Buyer for goods or services supplied by Cleveland Steel or by a third party on the Buyer's behalf is the price in Cleveland Steel's sales order acknowledgement and is payable, at the latest, on the date set for payment in Cleveland Steel's invoice. All prices are quoted ex-works and net of VAT or applicable duty unless otherwise stated in the sales order acknowledgement.
8. Cleveland Steel may require the Buyer to pay the whole or any part of the value of the goods in advance of delivery, or give other security in a form satisfactory to Cleveland Steel. Any such deposit or other security will be forfeit to Cleveland Steel in the event that the Buyer fails to take delivery of the goods the subject of the Buyer's order. This right is without prejudice to any rights Cleveland Steel may have to claim damages from the Buyer in respect of any such failure by the Buyer to take delivery of the goods.
9. Cleveland Steel may issue an invoice for the price of the goods or services provided to the Buyer either:
 - (a) on or at any time after the date the goods are loaded onto transport for delivery to the Buyer or the services are performed (as the case may be); or
 - (b) if the circumstances in Condition 8 apply, at any time after Cleveland Steel issues the relevant sales order acknowledgement.
10. The Buyer shall pay interest to Cleveland Steel at the rate prescribed pursuant to the Interest on Late Payment (Commercial Debts) Act 1998 from time to time on all monies not received on or before the due date for payment.
11. The Buyer may not withhold the price or any part of the price on the basis that Cleveland Steel is in breach of contract nor may the Buyer retain any sum which otherwise might be due to Cleveland Steel nor assert any credit, set-off (whether legal or equitable) or counterclaim to justify withholding payment, in whole or in part, of any sum due to Cleveland Steel.

Delivery

12. Any time or date given by Cleveland Steel to the Buyer as to when goods will be delivered or services performed is an estimate only and Cleveland Steel shall be entitled to a reasonable extension of time if the estimated date is not met.
13. Delivery shall be deemed to occur when:
- a) goods are loaded on to the Buyer's or any third party carrier's transport at Cleveland Steel's premises; or
 - b) if Cleveland Steel has agreed in writing that it will deliver the goods to premises notified to Cleveland Steel by the Buyer, when they are unloaded from Cleveland Steel's transport at such premises.
14. If the Buyer fails to take delivery of any goods which Cleveland Steel has agreed to deliver to the premises notified by the Buyer, or fails to collect or procure the collection of any goods from Cleveland Steel's premises on the date they are made available for collection or fails to give Cleveland Steel adequate instructions as to its delivery requirements reasonably in advance of the required delivery date which results in late delivery then, without prejudice to any other right or remedy of Cleveland Steel, Cleveland Steel may:
- a) store the goods until actual delivery and charge the Buyer for the reasonable costs of storage and insurance; or
 - b) sell the goods at the best price readily obtainable and either
 - (i) account to the Buyer for the excess over the price set out in the contract (provided that Cleveland Steel has received payment for the goods in question) or
 - (ii) charge the Buyer for any shortfall below the contract price;

and the Buyer hereby indemnifies and undertakes to keep indemnified and hold harmless Cleveland Steel in full on demand from and against all losses, damages, costs and expenses incurred by Cleveland Steel as a result of any failure by the Buyer to take delivery or give adequate delivery instructions.

Cancellation and Termination

15. Cleveland Steel shall be entitled to terminate any contract with the Buyer immediately if:
- a) the Buyer breaches any material provision of the contract; or
 - b) the Buyer threatens or ceases to carry on business, has a receiver appointed over any of the Buyer's assets, becomes subject to an administration order or winding-up order, enters into any composition or arrangement with its creditors or (being an individual) is made bankrupt.
 - c) the Buyer fails to pay any invoice on the due date;

and upon termination, all amounts invoiced to the Buyer by Cleveland Steel shall (notwithstanding the payment terms set out in such invoices) become immediately due and payable.

16. Cleveland Steel shall be entitled to postpone or cancel delivery in whole or in part of any goods or the performance of any services if it is delayed by any cause beyond Cleveland Steel's reasonable control. In the event of any such cancellation, the Buyer shall pay Cleveland Steel pro rata for goods delivered or services performed to the date of cancellation.

Ownership and Risk

17. Title to goods shall not pass to the Buyer until Cleveland Steel has received in cleared funds payment in full of the price of the goods and all other goods or services sold by Cleveland Steel to the Buyer for which payment is then due, together with any interest or other sums payable. Risk in the materials passes to the Buyer on delivery. Cleveland Steel shall be entitled at any time prior the passing of title to the Buyer to require the Buyer to deliver up the materials to Cleveland Steel and, if the Buyer fails to do so, immediately to enter upon any premises of the Buyer or any third party where the materials are stored and repossess the materials.
18. Notwithstanding that goods remain the property of Cleveland Steel, the Buyer may advertise for sale, sell or use the goods in the ordinary course of business at a full market value for the account of Cleveland Steel. Any such sale or dealing shall be a sale or use of Cleveland Steel's property by the Buyer on Cleveland Steel's behalf. Until property in the goods passes from Cleveland Steel the entire proceeds of sale or otherwise of the goods shall be held in trust for Cleveland Steel.
19. Cleveland Steel shall be entitled to recover the price payable in respect of goods notwithstanding that property in any of the goods has not passed from Cleveland Steel.

Warranties and Liability

20. Unless expressly stated otherwise in Cleveland Steel's quotation, all goods are specifically sold as non-prime in their actual state as seen and with all faults whether or not the Buyer has taken the opportunity to inspect the goods prior to delivery.
21. Cleveland Steel shall be allowed the normal commercial tolerances in relation to weight, dimensions and quantity of goods, and reasonable excesses or deficiencies shall be taken into account in determining any adjustments to the price to be paid by the Buyer.
22. Cleveland Steel shall not be liable for defects in the quality or state of the goods or any discrepancies in weight, size or quantity of the goods unless the Buyer gives written notice to Cleveland Steel within fourteen days of delivery of the goods or (if earlier) prior to their use or re-sale specifying the matters complained of and affording Cleveland Steel a reasonable opportunity to inspect the goods in issue prior to their use or resale.
23. The Buyer acknowledges that it may, at any time prior to the formation of the contract, request Cleveland Steel to offer to it a higher level of liability than that set out in Condition 24 (a) provided that:
- (i) There is insurance available to Cleveland Steel in relation to the contract in question to cover the Buyer's potential losses;
 - (ii) the Buyer agrees to pay such premium on Cleveland Steel's normal selling price as is quoted by Cleveland Steel in the order confirmation to accommodate Cleveland Steel's increased insurance costs
 - (iii) that no such increased liability limit will apply unless recorded in writing by Cleveland Steel on the order confirmation; and
 - (iv) that the Buyer has fully and truthfully disclosed to Cleveland Steel in writing all material circumstances required by Cleveland Steel's insurers in relation to the potential losses which might accrue to the Buyer if Cleveland Steel were to be in breach of its obligations under the relevant contract. By this Condition 23, Cleveland Steel makes no warranty that it is able to offer insurance in relation to any potential losses of the Buyer either at all or upon terms which are more competitive than those terms which the Buyer might itself obtain in the insurance market.
24. The entire liability of Cleveland Steel to the Buyer under the terms of any contract for the sale of goods or the supply of services, or under statute in tort (including negligence) or otherwise shall be limited to:
- a) repayment or allowance to the Buyer of the invoice price and any transport costs between Cleveland Steel's depot and the place of delivery borne by the Buyer; or
 - b) (if agreed in writing at the time of making the contract between the Cleveland Steel and the Buyer pursuant to Condition 23) the Buyer's losses up to a maximum of the sum stated in the order confirmation.
- This undertaking is given and accepted by the Buyer in place of any other legal remedy. Refund of transport costs shall be limited to locations on the UK mainland only.
25. Cleveland Steel shall not, unless the circumstances in Condition 23 apply, be liable for any increased costs or expenses, loss of profit, business, contracts, revenues, anticipated savings or any special, indirect or consequential damage of any nature sustained by the Buyer by reason of any breach of the contract by Cleveland Steel, whether or not advised of the possibility of such losses by the Buyer.
26. Nothing in these Conditions will apply so as to exclude any liability Cleveland Steel may have to the Buyer in respect of:
- a) death or personal injury to any person caused by Cleveland Steel's negligence; or
 - b) breach of the implied terms as to title and quiet possession implied by S12 of the Sale of Goods Act 1979 or S2 of the Supply of Goods and Services Act 1982

Works and Services carried out by the Cleveland Steel

27. Where the contract provides for tests or inspections of the goods by or on behalf of the Buyer before delivery at Cleveland Steel's depot, if upon reasonable notice the Buyer does not inspect or test the goods or if having inspected or tested the goods at Cleveland Steel's depot the Buyer does not within 7 days notify Cleveland Steel in writing of any claim that the goods are not in conformity with the contract, specifying the matters complained of, then the Buyer shall be conclusively deemed to have accepted the goods as being in conformity with the contract and shall not be entitled to reject the goods on the grounds of anything within the scope of the test or inspection.
28. If Cleveland Steel, at the Buyer's request, carries out, whether before or after sale, any work on any goods or modifies them in any way (including but not limited to painting, cutting, welding, blasting, or cleaning the goods) those goods are sold or deemed to be sold in their actual state after such work or modification is completed, as seen and with all faults. Such goods are sold without warranty as to their condition or description either before or after such work or modification and it is not a term of the contract that the goods comply with any such condition or description. Such goods are sold without warranty as to whether they were suitable for such work or modification or as to the effect of such work or modification on the condition or description of the goods whether at the time of sale or later and it is not a term of the contract that they were suitable or have not been affected by such work or modification.

Works and Services carried out by Third Parties

29. When tests, inspections or other services ("Services") are to be performed on the materials by any person other than Cleveland Steel before delivery, the Buyer and Cleveland Steel agree that Cleveland Steel acts as agent for the Buyer with full authority in arranging for the Services to be performed.
30. Provided that Cleveland Steel has exercised reasonable care and skill in selecting a third party to carry out the Services on behalf of the Buyer, Cleveland Steel shall have no liability whatsoever to the Buyer or any third party in respect of the Services and the Buyer will indemnify Cleveland Steel in respect of any claims or counterclaims arising either from the performance of the Services or asserted by the third party.

Miscellaneous

31. The rights of Cleveland Steel or the Buyer shall not be prejudiced or restricted by any indulgence or forbearance extended by either party to the other and no waiver by either party in respect of any breach shall operate as a waiver in respect of any subsequent breach.
32. The contract and the Conditions shall be governed by and construed in accordance with the laws of England and, subject to Condition 34, the Buyer hereby submits to the exclusive jurisdiction of the English Courts in respect of any claims under this contract, in tort or otherwise.
33. If any provision of these Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, such provision or requirement will be enforced only to the extent that it is not in violation of such law or is not otherwise unenforceable and all other provisions and requirements of these Conditions shall remain in full force and effect.
34. Any dispute (whether under any contract, in tort or otherwise) arising between the Buyer and Cleveland Steel shall be referred to a single arbitrator to be agreed between Cleveland Steel and the Buyer or, in the absence of an agreement, to be nominated by the President for the time being of The Law Society. The arbitrator shall have discretion as to costs.