

## **United Performance Metals, UK – Terms and Conditions of Sale**

### **1. DEFINITIONS AND INTERPRETATION**

1.1 In these Conditions (unless the context otherwise requires):

'**Buyer**' means the person, firm or company with whom the Seller makes the Contract

'**Contract**' means the agreement between the Buyer and the Seller for the supply of Goods, incorporating these Conditions and any Quotation or other documentation

'**CFR**' has the same meaning as is given to that term by the Incoterms 2010

'**Ex Works**' has the same meaning as is given to that term by the Incoterms 2010

'**Goods**' means the Goods (or any instalment or part of them) to be supplied under the Contract

'**Incoterms 2010**' means the official rules for the interpretation of trade terms of the International Chamber of Commerce published in 2010

'**Price**' means the net amount shown on the Quotation, or where no such document exists, on the invoice, to be paid by the Buyer to the Seller and shall, unless otherwise agreed be Ex Works and shall exclude value added tax or any other relevant tax arising on the sale which will be charged by the Seller and will be payable by the Buyer at the appropriate rate

'**Quotation**' means the offer and/or pro-forma invoice and/or quotation set out overleaf and on any continuation sheets referred to therein

'**Seller**' means the party who makes the Contract with the Buyer for the supply of the Goods in return for the Price

'**UK**' means United Kingdom.

1.2 Words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.

1.3 The headings in these Conditions are intended for reference only and shall not affect their construction.

1.4 The words "include" and "including" are to be construed as if they were immediately followed by the words "without limitation".

### **2. GENERAL/ORDERS**

2.1 The Contract shall be subject to these Conditions to the exclusion of any other terms and conditions on the Buyer's order form, or other document or communication from the Buyer.

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract whether as a result of such document being referred to in the Contract or otherwise.

2.3 All Goods sold by the Seller are subject to these Conditions and no amendment or addition to any of these Conditions shall be deemed to have been accepted unless agreed in writing and signed by a director of the Seller. No representative, agent or sales person has the Seller's authority to vary, amend or waive any of these Conditions. No statement, description, information, warranty, condition or recommendation contained in any catalogue, price list, advertisement or communication or made verbally by any of the Seller's agents or employees shall enlarge, vary or override in any way any of these Conditions.

2.4 The placing of an order for the Goods or the acceptance of a Quotation by the Buyer shall be deemed to be an offer by the Buyer to buy the Goods subject to these Conditions, and must be in writing and accompanied by sufficient information (in the Seller's judgment) to enable the Seller to proceed with the order straightaway in default of which the Seller may increase the Price to cover any increase in cost which it incurs as a result of delay due to insufficient information.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Seller until it has been accepted in writing by the Seller or the Seller delivers the Goods to the Buyer, whichever is the earlier.

2.6 Any Quotation is valid for a period of 7 days provided that the Seller has not previously withdrawn it and subject to confirmation of the availability of the relevant stock at the date of receipt of the Buyer's order by the Seller.

2.7 Save as provided in conditions 4, 11.2, 14 and 19 a Contract may not be cancelled except by agreement in writing of both parties and upon the payment to the Seller of such amount as may be necessary to indemnify the Seller against all loss resulting from the said cancellation.

2.8 All Prices are subject to adjustment to take account of any variation in the Seller's costs including (but not limited to) variations in wages, the cost of materials, exchange rate fluctuations, alteration of duties and other costs since the date of the Seller's Quotation or (if no Quotation is issued) the Buyer's order.

The Seller accordingly reserves the right to adjust the invoice Price by the amount of any increase or decrease in such costs after the Price is quoted and the invoice so adjusted shall be payable as if the Price set out therein were the original contract Price.

### **3. PAYMENT**

3.1 Unless otherwise stated on the Quotation, the Buyer shall make payment of the Price in U.S. Dollars on the later of the date(s) specified in the Contract or within 30 days of the date of the Seller's invoice.

3.2 Payment shall be due whether or not property in the Goods has passed by virtue of condition 12.

3.3 The Buyer shall not be entitled to make any deduction from any payment or exercise any right of set-off, lien or any other similar right or claim.

3.4 The time of payment shall be of the essence of the Contract.

3.5 Interest will be charged on all late payments at the yearly rate of 5% over the then current base rate of HSBC Bank PLC, calculated on a daily basis.

3.6 If the Goods are delivered in instalments the Seller shall be entitled to invoice each instalment as and when it has been delivered and payment shall be due in respect of each instalment which has been delivered notwithstanding non-delivery of other instalments or other default by the Seller.

3.7 If, under the terms of the Contract, the Price shall be payable by instalments or the Buyer has agreed to take specified quantities of Goods at specified times, the whole of the balance of the Price shall become due straightaway if:

(a) the Buyer defaults in the payment of any due instalment; or

(b) the Buyer fails to give delivery instructions in respect of any outstanding quantity of Goods.

### **4. SECURITY FOR PAYMENT**

If before the Goods are dispatched there arise reasonable grounds for the Seller to believe that the Buyer will not be able to fulfil its payment obligations the Seller shall have the right to demand from him security, in the form determined at the Seller's sole discretion. If such security is not received within the period specified by the Seller (such period not to be unreasonable) the Seller may terminate the Contract without further liability on its part but the Buyer shall be liable to the Seller in respect of any losses (including loss of profit) incurred by the Seller as a consequence of such termination.

### **5. PACKING**

The Seller shall use its reasonable care and skill in packing Goods and subject to condition 17.1 below, shall not be liable for any special, indirect, or consequential loss or for any loss of profits, business, income, business interruption, interest, loss of contracts, anticipated savings, goodwill, or third party claims caused by packing. The Seller reserves the right to charge for packing where packing is considered necessary by the Seller.

### **6. PERMISSABLE VARIATIONS IN QUANTITY**

Warehouse and mill shipments can vary in quantity in line with general practice, custom and specifications used by producing mills. The Seller shall not be liable for any variation plus or minus 10% between the quantity of Goods supplied and the quantity ordered. Any claim for a variation of quantity in excess of plus or minus 10% ('**Shortage**') must be notified by the Buyer to the Seller in writing within 14 days of delivery.

### **7. DELIVERY**

7.1 The Seller shall use its reasonable endeavours to meet the delivery date set out in the Contract. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in the delivery of the Goods however caused.

7.2 Time of delivery shall not be of the essence of the Contract.

7.3 Where the Goods are handed to a carrier for carriage to the Buyer or to a UK port for export any such carrier shall be deemed to be an agent of the Seller and not of the Buyer for the purposes of sections 44, 45 and 46 of the Sale of Goods Act 1979.

7.4 The Buyer agrees that section 32(3) of the Sale of Goods Act 1979 shall not apply to Goods sent by the Seller.

7.5 If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Seller may, at its sole discretion, without prejudice to its other rights and for such period as the Seller may determine, store the Goods at the Buyer's risk and take all reasonable steps to safeguard and insure them at the Buyer's cost, provided that the Buyer shall be informed thereof as soon as reasonably possible.

7.6 The Seller shall have the right to make delivery by instalments of such quantities and at such intervals as it may decide, and any express provision as to instalments in the Contract shall be in addition to and not in derogation of this right.

7.7 Where the Goods are for delivery by installments any defect in any installment shall not be a ground for cancellation of the remainder of the installments and the Buyer shall be bound to accept delivery thereof.

## **8. CARRIAGE**

8.1 Unless otherwise agreed by the Seller in writing, the Goods will be delivered Ex Works and the Price of the Goods is exclusive of carriage, packing and insurance.

8.2 Where the Buyer requests delivery in a manner other than Ex Works the Seller shall be entitled to adjust the Price to reflect the manner of delivery requested by the Buyer.

8.3 In addition to the requirements of condition 8.2, where the Goods are sold CFR (also known as "c and f") the Buyer shall be responsible for loss or damage from their time of delivery onboard on the agreed date or within the agreed period, in accordance with Incoterms 2010.

## **9. INSPECTION OF GOODS**

9.1 All Goods are assumed to have been delivered in accordance with the Contract unless:

(a) where no Goods are received, their non-delivery is notified in writing to the Seller within 7 days of the date of their invoice;

(b) the Buyer or Buyer's agent has noted on the Seller's delivery record at the time of accepting the shipment that they are Defective (as defined in condition 16.3(a)) or there is a Shortage in the Goods or damage to the Goods and/or packaging ('**Damage**') which would have been apparent upon reasonable inspection of the Goods on delivery, and notified the Seller of such in writing within 14 days of receipt of the shipment. The endorsement of the words "not checked" or "unexamined" (or different words to the same effect) on the delivery record shall not render the Seller liable for any Damage or Shortage in the Goods which may be subsequently discovered; or

(c) where it is not readily ascertainable from reasonable inspection and checking by the Buyer either before or after delivery that Goods are Defective in accordance with condition 16.3(b) then such claims shall be notified in writing by the Buyer to the Seller within 14 days of the date of discovery that the Goods are so Defective.

9.2 The Buyer shall only be entitled to reject Goods if upon reasonable examination, in accordance with condition 9.1, they are found to be Defective.

9.3 Where the Buyer wishes to reject Goods as Defective or claim that they are Damaged it shall, before returning the same to the Seller, allow the Seller reasonable time and facilities to examine the Goods at the Buyer's premises. If following such examination the Seller agrees that the Buyer is entitled to reject the Goods or that they are Damaged then they shall be returned without incurring any or further damage and suitably packaged to the Seller in accordance with condition 10.1 below. Goods returned by the Buyer without the Seller's agreement shall be at the sole risk and cost of the Buyer at all times.

## **10. RETURNING GOODS**

10.1 Once a return has been agreed with the Seller, then the Goods must be dispatched to the Seller within 14 days using only transport that has been agreed in advance with the Seller. The Seller will pay all costs directly relating to the transport of the Goods to be returned provided the agreed transport is used.

10.2 Regrettably, the Seller is unable to credit or refund Goods that have been incorrectly ordered by the Buyer or where the Goods have been specially manufactured, prepared, or cut in pieces at the request of the Buyer.

## **11. IMPORT AND EXPORT REQUIREMENTS**

11.1 The Buyer shall be solely responsible for complying with any legislation or regulation governing the exportation of the Goods from the UK and their importation into another country and for the payment of any duties thereon and shall indemnify and keep indemnified the Seller against all actions, proceedings, costs, claims, losses (including indirect and consequential losses), damages, demands, expenses and liabilities arising out of or in connection with the failure by the Buyer to so comply.

11.2 The Seller may terminate any Contract at any time without liability by written notice to the Buyer if any export licence, consent or permission which the Seller determines is required by either the Buyer or the Seller from time to time, whether under the Seller's export compliance policy, the UK export control regime, the US export control regime (as the Seller is a subsidiary of a US company), or otherwise, is not in place.

11.3 If a Buyer domiciled outside the UK or an agent of such a Buyer collects Goods and transports or despatches them, the Buyer shall furnish to the Seller any export certificate required by law. If such a certificate is not furnished, the Buyer shall pay the Seller any applicable UK tax or duty which is payable, including, without limitation, value added tax, in respect of the invoice amount.

## **12. PASSING OF TITLE AND RISK**

Except as otherwise provided in these Conditions, the risk of loss or damage to the Goods shall pass to the Buyer upon delivery of the Goods in accordance with condition 8.

## **13. TITLE AND LIEN**

13.1 The Seller shall retain title to and ownership of the Goods until it has received payment in full of all sums due for all Goods supplied to the Buyer. If payments received from the Buyer are not stated to refer to a particular invoice the Seller may appropriate such payments to any outstanding invoice.

13.2 If any of the Goods owned by the Seller are attached to, mixed with or incorporated into any other goods not owned by the Seller so that the Goods in question are not separate from the resulting composite or mixed goods, then immediately upon manufacture all such composite or mixed goods shall belong to the Seller absolutely and not by way of charge until the Goods have been paid for in full or until the Seller recovers possession of and resells sufficient of the composite or mixed goods to discharge the purchase Price in full and the Seller's costs are recovered, any excess to be accounted for to the Buyer.

13.3 Until payment of the Price the Buyer shall be the bailee of the Goods for the Seller and the Goods shall be stored separately from any Goods which belong to the Buyer or any third party, and shall be clearly marked and identifiable as being the Seller's property.

13.4 The Seller hereby licences the Buyer to sell, as the Seller's agent and bailee Goods which belong to the Seller. All monies received from any such sale shall be held on trust to settle any sums due in respect thereof to the Seller and pay any balance to the Buyer. Such monies shall be placed to the credit of a separate fiduciary bank account which shall not be permitted to become overdrawn and shall not be released to the Buyer until payment for the Goods has been received.

13.5 If the Buyer fails to make any payment to the Seller when due, compounds with its creditors, executes an assignment for the benefit of its creditors, has a bankruptcy order against it or, being a company, enters into voluntary or compulsory liquidation or has an administrator or administrative receiver or receiver appointed over all or part of its assets or takes or suffers any similar action in consequence of debt or becomes insolvent or if the Seller has reasonable cause to believe that any of these events is likely to occur, the Seller shall have the right, without prejudice to any other remedies: (a) to enter without prior notice any premises where Goods owned by it may be, and to repossess and dispose of any Goods owned by it so as to discharge any sums owned to it by the Buyer under this or any other contract;

(b) to require the Buyer not to resell or part with possession of any Goods owned by the Seller until the Buyer has paid in full all sums owed by it to the Seller under this or any other contract;

(c) to withhold delivery of any undelivered Goods and stop any Goods in transit.

Unless the Seller expressly elects otherwise, any contract between it and the Buyer for the supply of goods shall remain in existence notwithstanding any exercise by the Seller of its rights under this condition 13.

13.6 The Goods shall, once the risk has passed to the Buyer in accordance with condition 12 (Passing of Title and Risk) or otherwise, be and remain at the Buyer's risk at all times unless and until the Seller has retaken possession of them, and the Buyer shall insure accordingly.

## **14. FORCE MAJEURE**

The Seller shall not be liable to the Buyer for any loss or damage which may be suffered by the Buyer as a result of the supply of Goods by the Seller being cancelled, prevented, hindered, delayed or rendered uneconomic by reason of any circumstances beyond the Seller's control including acts of God, war (whether declared or not), armed conflict (whether internal or international), insurrection, riot, civil commotion, rebellion, any act of violence, act of any government, tide, storm, tidal wave, flood, lightning, explosion, fire, earthquake, strike, lock-out, labour or industrial dispute or stoppage, reduction in or unavailability of power at a manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources of supply.

## **15. INFRINGEMENT OF RIGHTS OF THIRD PARTIES**

If Goods are made in accordance with the specification or special requirements of the Buyer, the Buyer shall indemnify the Seller against all actions, proceedings, costs, claims, losses, damages, demands, expenses and liabilities incurred by the Seller or for which it may be liable due to or arising directly or

indirectly out of any infringement or alleged infringement of patents, trade marks, copyright, design rights or other intellectual property rights occasioned by the importation, manufacture or sale of such Goods.

## **16. WARRANTY AND GUARANTEE**

16.1 The Contract shall not constitute a sale by description or sample.

16.2 The Seller warrants that the Goods manufactured by the Seller shall not be Defective as defined in condition 16.3 below. Any Goods which are shown to be Defective or Damaged will, at the Seller's option, be replaced or repaired free of charge, or if not practicable, the Price paid for the Goods will be refunded or credited to the Buyer, provided that the Buyer has notified the Seller in accordance with condition 9.1 above (as applicable) and if so requested by the Seller, has returned the Goods in accordance with condition 10.1.

16.3 The Goods delivered to the Buyer shall be considered as defective ('**Defective**') if they do not conform with the specification provided by the Seller in the Contract, or are not free from defects in materials and workmanship:

(a) where such defects are readily ascertainable from reasonable inspection and checking by the Buyer either before or after delivery, at the time of their delivery; or

(b) in a case where defects in the Goods are not readily ascertainable from reasonable inspection and checking by the Buyer either before or after delivery, within a reasonable time after delivery.

16.4 Nothing herein shall impose any liability upon the Seller in respect of any defect in the Goods arising out of:

(a) the acts, omissions, negligence or default of the Buyer, its servants or agents including in particular (but without prejudice to the generality of the foregoing) any failure by the Buyer to comply with any recommendations of the Seller as to storage and handling of the Goods; or

(b) any inaccuracies in any drawing, bill of quantities or specification supplied by the Buyer.

16.5 In the case of Goods not manufactured by the Seller, the Seller shall, to the extent it is legally able to do so, make available to the Buyer the benefit of any guarantee or warranty for the Goods given by the Seller's supplier provided that the Goods have been accepted and paid for by the Buyer and will, if requested by the Buyer, show to, or provide the Buyer with a test certificate from the supplier, whenever reasonably possible.

16.6 Except as expressly stated in this condition 16 any conditions or warranties (whether express or implied by statute, common law or arising from conduct, a previous course of dealing, trade custom, usage or otherwise howsoever) as to the quality of the Goods or their fitness for any particular purpose, including the suitability of a particular size or dimension of the Goods, (even if that purpose is made known expressly or by implication to the Seller) or as to the correspondence of the Goods with any description or sample are hereby expressly excluded.

## **17. LIABILITY**

17.1 Nothing in these Conditions shall have the effect of excluding or restricting the liability of the Seller for death or personal injury resulting from its negligence, or fraud, in so far as the same is prohibited by UK statute.

17.2 Subject to clause 17.1, but without prejudice to any other provisions of these Conditions the Seller shall not be liable in respect of breach of contract or in tort or for breach of statutory duty or otherwise for any special, indirect or consequential damage or loss of any nature whatsoever, even if the Seller was advised in advance of the possibility of such loss or damage.

17.3 Subject to clause 17.1, but without prejudice to any other provisions of these Conditions the Seller shall not be liable in respect of breach of contract or in tort or for breach of statutory duty or otherwise for any loss of profits, business, income, business interruption, interest, loss of contracts, anticipated savings or goodwill.

17.4 Subject to clause 17.1, but without prejudice to any other provisions of these Conditions the Seller's aggregate liability for any loss or damage of whatsoever nature and howsoever caused in connection with the Contract shall be limited to and in no circumstances shall exceed:

(a) in the case of loss or damage to property, the value of the Seller's public liability insurance; and

(b) in any other case, the sum of £50,000.00 per claim, or series of claims arising from the same event, act or omission.

## **18. INDEMNITY**

The Buyer shall indemnify the Seller in respect of any actions, suits, claims demands, loss, costs, charges or expenses incurred by the Seller as a result, directly or indirectly, of the Buyer's instructions or lack of

instructions or through any failure or delay whatsoever in taking delivery or through any other act, neglect or default on the part of the Buyer, its servants, agents or employees.

#### **19. TERMINATION**

Should the Buyer default in any payment or otherwise be in breach of its obligations to the Seller under the Contract or under any other contract with the Seller or compound with or execute an assignment for the benefit of its creditors or commit any act of bankruptcy or being a company enter into voluntary or compulsory liquidation or suffer a receiver or administrative receiver or administrator to be appointed over all or any part of its assets or take or suffer any similar action in consequence of debt or become insolvent or should the Seller have reasonable cause to believe that any of these events is likely to occur, the Seller may, by notice in writing to the Buyer, without prejudice to any other rights, forthwith suspend or cancel any uncompleted part of the Contract or stop any Goods in transit or require payment in advance or satisfactory security for further deliveries under the Contract and if the Goods have been delivered but not paid for, the Price shall become immediately due and payable, notwithstanding any previous agreement to the contrary.

#### **20. ASSIGNMENT**

The Buyer shall not without the prior written consent of the Seller, assign or sub-contract the whole or any part of the Contract.

#### **21. SEVERABILITY**

If any Condition of these Conditions or part thereof shall be found to be invalid, ineffective or unenforceable, the invalidity, ineffectiveness or unenforceability shall not affect the remainder of these Conditions, which shall remain in full force and effect.

#### **22. GOVERNING LAW AND JURISDICTION**

The Contract shall be governed and construed in accordance with the laws of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English Courts provided that the Seller may sue the Buyer in the courts of any country such proviso being for the sole benefit of the Seller.

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