

Metal Inox Ltd

Standard conditions of sale

In these conditions 'the Seller' means the company by which the goods are sold. Other terms used in these conditions are defined in Condition 25.

1. All contracts for the sale of goods by the Seller incorporate these conditions. Any term or condition in the Buyer's order which is inconsistent with these conditions shall be of no effect.

2. Dates or periods for delivery are approximate and are given for information only and shall under no circumstances be essential terms. A delay in delivery, including delivery later than the date or dates provided in the Contract Documents, shall not constitute a breach of contract and shall not entitle the Buyer to avoid the contract or to any other remedy, unless the Seller has guaranteed the date of delivery in a warranty set out in the Contract Documents that expressly modifies the provisions of this condition.

3. Should the manufacture or processing of any of the goods, or the delivery of any of the goods at any of the Seller's sites or to the Buyer elsewhere, whether by the Seller, an associated company or an independent freight carrier, be prevented or hindered directly or indirectly by fire, the elements, war, civil commotion, strikes, lock-outs, industrial dispute, shortage of raw materials or fuel (notwithstanding that the Seller has taken all reasonable steps to procure such raw materials or fuel), shortage of labour, breakdown or partial failure of plant or machinery, late receipt of the Buyer's specification or other necessary information, acts, orders or regulations of Governments, decisions or directives of the Commission of the European Communities, delay on the part of any sub-contractor or supplier, or any cause whatsoever beyond the reasonable control of the Seller or any of its associated companies concerned with the manufacture, processing or delivery of the goods then, notwithstanding any warranty set out in the Contract Documents expressly modifying Condition 2, the time for delivery of the goods shall be extended for a reasonable period, and any such warranty shall be deemed to have been modified accordingly.

4. If delivery of any goods is likely to be delayed by reason of any of the causes or events referred to in Condition 3, and:

(a) the Seller shall not have taken delivery, or shall not have completed the manufacture or processing, of the goods or the goods shall have been lost, destroyed or irreparably damaged after completion of manufacture or processing; and

(b) the delay is likely to continue for so long that the Buyer will need to acquire substitute goods from a source other than the Seller; and

(c) the Buyer shows to the reasonable satisfaction of the Seller that the conduct of the Buyer's operations is likely to be seriously affected by the likely delay in delivery of the goods or that the Buyer is in peril of being in breach of a contractual obligation to a third party as a result of such delay,

then the Seller shall at the request of the Buyer agree to the cancellation of the delivery of those goods.

5. (a) The Seller reserves the right to supply the goods from any of its sites or any of the sites of any of its associated companies. Unless the Contract Documents specify otherwise, the method of carriage of the goods shall be at the Seller's discretion. If the Contract Documents provide that the Buyer shall collect the goods from the site, then the Buyer shall collect them without delay after being notified by the Seller that the goods are ready for collection. If the goods are not collected by the Buyer within 3 days of being so notified the Seller may despatch the goods itself at the Buyer's expense and risk (if an address for delivery of the goods has not been specified by the Buyer, to such address of the Buyer as the Seller may in its discretion decide) or store them at the Buyer's expense and risk.

5. (b) The Seller reserves the right to charge to the Buyer any costs, charges or expenses incurred by the Seller as a result of vehicle or wagon detention or demurrage of ships in consequence of any act or omission of the Buyer, or its servants or agents, or as a result of any special requirement or stipulation not set out in the Contract Documents.

5. (c) Where the Contract Documents provide for delivery of the goods elsewhere than at the Seller's site or the site of one of the Seller's associated companies, the Seller will consider a claim by the Buyer in respect of loss or damage in transit only if the Buyer:

(i) gives notice to the Seller within 21 days after receiving an advice note or other notification of the despatch of the goods from the Seller, in the case of loss, or within 7 days after delivery of the goods in the case of damage; and

(ii) where the goods are transported by an independent freight carrier, complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.

5. (d) (i) Any marine insurance required to be effected by the Seller under the Contract Documents shall, unless otherwise agreed in the Contract Documents, be 10% over the invoice price and shall cover the goods from the time when transit of the goods to the destination named in the Contract Documents commences, as provided and contained in the Institute of London Underwriters ('the Institute') Cargo Clauses, the Institute's War Clauses and the Institute's Strikes Clauses, current at the time of shipment.

(ii) Except as varied by these conditions or otherwise agreed in the Contract Documents, any terms defined in the relevant edition of Incoterms current at the date of the Seller's order acknowledgment, such as CIF and CFR, shall have the meaning assigned to them by such Incoterms when used in any of the Contract Documents.

6. Subject to the provisions of these conditions, goods supplied by the Seller will comply with any specification and standard specified in the Contract Documents.

7. (a) Unless the parties have expressly agreed in the Contract Documents to modify this condition then, notwithstanding the provisions of Condition 6 above, any condition, warranty, statement or undertaking as to the quality of the goods or their fitness or suitability for any purpose however or whenever expressed or which may be implied by statute, custom of the trade or otherwise is hereby excluded, except to the extent such exclusion is prevented by law

7. (b) Without prejudice to the foregoing, no statement or undertaking contained in any national Standard, National edition of a European Standard, ISO Standard, or other standard or technical specification as to the suitability of the goods for any purpose shall give rise to any legal liability of the Seller, except to the extent such exclusion is prevented by law. The Buyer shall satisfy itself that the goods are suitable for any product or application for which they are to be used before the goods are incorporated into such product or application.

8. Where the Contract Documents provide for testing or inspection of the goods by or on behalf of the Buyer before delivery (whether at the Seller's site or elsewhere), then the Buyer shall inspect and/or test the goods within 7 days of being notified by the Seller that the goods are available for inspection or testing. If the Buyer does not inspect or test the goods within the time specified by the Seller in that notice or if within 14 days of such testing or inspection the Buyer does not give notice to the Seller stating that, and specifying the reasons why, the goods do not comply with the Contract Documents, then the Buyer shall conclusively be deemed to have accepted that the goods comply with the Contract Documents and shall not be entitled to reject the goods on the grounds of anything which such inspection or testing has or would have revealed.

9. The Buyer shall be deemed to have accepted the goods and that the goods comply with the Contract Documents unless:

9. (a) the Buyer gives notice in accordance with Condition 8 herein; or

9. (b) in the case of a defect in the quality or state of the goods or the goods otherwise not complying with the Contract Documents, which defect or non-compliance was apparent upon on careful inspection or reasonable testing of the goods (or would have been had a careful inspection or reasonable test been carried out), the Buyer gives the Seller a notice specifying such defect or non-compliance within 21 days after receiving the goods and in any event prior to their use or re-sale and, after doing so, gives the Seller a reasonable opportunity to inspect or test the goods before they are used or resold; or

9. (c) in the case of a defect in the quality or state of the goods or the goods otherwise not complying with the Contract Documents, which defect or non-compliance was not apparent upon careful inspection or reasonable testing of the goods (or would not have been had a careful inspection or reasonable test been carried out), the Buyer gives the Seller notice specifying such defect or non-compliance immediately upon discovering it and in any event not more than 12 months after receiving the goods and, after doing so, gives the Seller a reasonable opportunity to inspect the goods. The Buyer shall not be excused from providing such opportunity by reason only that the goods have been incorporated into the goods or property of a third party or that the goods are located in, upon or under the premises or land of a third party.

Any dispute between the parties as to whether any goods are defective in quality or state or otherwise not in compliance with the Contract Documents shall be referred, in accordance with the provisions of the Arbitration Acts 1950 and 1979 or any statutory modification or re-enactment thereof for the time being in force, to a single arbitrator to be agreed between the Seller and the Buyer or in default of agreement to be nominated by the President for the time being of The Law Society of England and Wales.

10. The weight or quantity of the goods printed upon the Seller's advice or despatch note shall be final unless the Buyer shall have given notice to the Seller of any discrepancy in weight or quantity within 14 days after receiving the goods and shall have given the Seller a reasonable opportunity to witness the weight and/or quantity of the goods being verified before they have been used, processed or sold.

11. Provided that the Buyer has complied with the requirements of Condition 8 or 9 (as applicable), and subject to the provisions of Condition 13, if the goods (or any part of them) are defective in quality or state or (save for discrepancy in weight or quantity) otherwise not in compliance with the Contract Documents, then, either:

(a) if the Seller and the Buyer agree, the Buyer shall accept the goods at an agreed value or the goods shall be made good at the Seller's expense; or

(b) if the Seller and the Buyer do not so agree within 21 days after the Buyer gave notice to the Seller under Condition 8 or 9 (as applicable), the Buyer may return the relevant goods to the Seller upon which the Seller shall, at the Buyer's option either:

(i) repay the Buyer, or give the Buyer credit for, the invoice price of the goods (including freight) and any reasonable transport costs incurred by the Buyer in carrying the relevant goods from the place they were originally delivered to the Seller's site from which they were despatched or to such other place as the Seller may nominate; or

(ii) replace the goods by delivering replacement goods to the original place of delivery as soon as may be reasonably practicable.

12. (a) The undertakings in Condition 11 are given in lieu of any other legal remedy the Buyer may have in respect of goods (or any part of them) being defective in quality or state or otherwise not in compliance with the Contract Documents.

12. (b) The liability of the Seller (and its associated companies) to the Buyer in respect of:

(i) such defects or non-compliance; and

(ii) in the event that the Seller is not entitled to rely upon the provisions of clause 12(c) below, any loss, damage or expense whatsoever incurred or suffered by the Buyer (including, but without limitation, loss of profit, revenue or goodwill) howsoever such loss, damage, or expense may have been caused (including, but without limitation, any breach of contract, negligence or breach of any duty of the Seller whatsoever),

shall for all purposes (including, but without limitation, under the Contract Documents and in negligence or any other tort) be limited to the cost of making good the goods, the repayment or giving of credit for the invoice price of the goods or to the replacement of the goods in accordance with Condition 11.

12. (c) Under no circumstances shall the Seller (or any of its associated companies) be liable for any loss, damage or expense whatsoever incurred or suffered by the Buyer (including, but without limitation, loss of profit, revenue or goodwill) howsoever such loss, damage, or expense may have been caused (including, but without limitation, any breach of contract, negligence or breach of any duty of the Seller whatsoever) other than as set out in clause 12(a).

12. (d) This Condition 12 shall not apply so as to exclude or restrict the liability of the Seller for death or personal injury caused by the Seller's negligence.

12 (e) Clauses 12(a) to (d) (inclusive), clauses 7(a) and (b) and clauses 20(a) to (d) (inclusive) shall be construed severally and as separate contract terms. These clauses shall survive the termination of the contract for whatever cause.

13. Goods sold as 'non-prime' or goods accepted by the Buyer pursuant to Condition 11 which the Seller and the Buyer agree to be 'non-prime' are sold in their actual state, as seen, without warranty and with all faults whether or not the goods have been inspected by the Buyer prior to delivery. Any statement, specification, description or other information provided by the Seller in respect of such goods is given in good faith but the Seller accepts no responsibility for its accuracy. Under no circumstances will

the Seller be under an obligation to replace or make good such goods or be liable for any claim whatsoever in respect of them. If the Buyer shall re-sell such goods the Buyer shall ensure that a provision in similar form to this condition is incorporated in the re-sale agreement, unless, prior to reselling the goods, the goods or such part of them as the Buyer re-sells are first made to comply with a recognised specification or standard.

14. Each part delivery or instalment of the goods shall be deemed to be sold under a separate contract. Delivery to the Buyer of a quantity of goods less than or greater than that which the Seller has agreed to sell shall under no circumstances entitle the Buyer to reject the goods delivered.

15. (a) Subject to any Incoterms expressly incorporated into the contract by any of the Contract Documents, risk in the goods shall pass to the Buyer when the goods are delivered to the Buyer.

15. (b) The Seller and the Buyer expressly agree that until the Seller has been paid in full for the goods, or any other goods comprised in any other sale contract between them, or until all other monies due from the Buyer to the Seller on any account whatsoever have been paid in full:

(i) legal and beneficial ownership of such goods remain with the Seller;

(ii) the Seller may recover all or any part of such goods at any time from the Buyer if they are in its possession and, if the amount outstanding from the Buyer to the Seller in respect of any goods supplied or any other amounts owed shall remain unpaid after the due date for payment has passed and for that purpose the Seller, its servants and agents may enter upon any land or building upon or in which such goods are situated;

(iii) the Buyer has a right to dispose of such goods (as between it and its customers only) as principal in the ordinary course of its business with such right being terminable by the Seller giving to the Buyer notice at any time and being automatically terminated (without notice) upon the happening of any of the events referred to in clause 16(d);

(iv) in the event of such disposal, the Buyer has the fiduciary duty to the Seller to account to the Seller for the proceeds but may retain from such proceeds any excess of such proceeds over the amount outstanding under this or any other sale contract between the Buyer and the Seller; and

(v) each sub-clause (ii), (iii) and (iv) shall be construed and have effect as a separate clause and accordingly in the event of any of them being for any reason whatsoever unenforceable according to its terms, the others shall remain in full force and effect.

16. 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 contract in any of the following events:

16. (a) If any debt is due and payable by the Buyer to the Seller but is unpaid.

16. (b) If the Buyer has failed to provide any letter of credit, bill of exchange or any other security required by the Contract Documents provided that in such event the Seller's rights of termination or suspension under this Condition shall apply only in regard to the particular contract in respect of which the Buyer shall have so failed.

16. (c) If the Buyer has failed to take delivery of the goods under any contract between it and the Seller otherwise than in accordance with the Buyer's contractual rights.

16. (d) If the Buyer becomes insolvent or enters into any composition or arrangement (including a voluntary arrangement) with its creditors or, being a body corporate, has passed a resolution for voluntary winding up except where solely for the purpose of reconstruction or if a petition has been presented for an order for its winding up or for a receiver (including an administrative receiver) or administrator to be appointed or if any such order or appointment is made or if, being an individual or partnership, the Buyer suspends payment of his or their debts in whole or in part or if an application has been made for an interim order or a petition has been presented for a bankruptcy order or if any such order is made or if the Buyer, whether or not a body corporate, shall carry out or be subject to any analogous act or proceedings under any law.

The Seller shall be entitled to exercise its rights of termination or suspension under this Condition at any time during which the event giving rise to such rights is continuing and has not been remedied and, in the event of a suspension, the Seller shall be

entitled, as a condition 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 goods.

17. The Buyer shall not be entitled to withhold payment of any amount payable under the Contract Documents to the Seller because of any disputed claim of the Buyer in respect of defective goods or any other alleged breach of the Contract Documents, nor shall the Buyer be entitled to set off against any amount payable under the Contract Documents to the Seller any monies which are not then presently payable by the Seller or for which the Seller disputes liability.

18. (a) The price payable by the Buyer for each delivery shall be the price set out in the Contract Documents to which shall be added any Value Added Tax and any other tax or duty relating to the sale or delivery of goods chargeable to the Seller and the freight and other charges as specified in the Contract Documents. Unless otherwise expressly stated in the Contract Documents, the price of each delivery (including such Value Added Tax, other tax or duty, freight and other charges) shall be paid in full and received by the Seller by the last day of the month following the month in which the goods were despatched. The Seller shall be entitled to charge interest on any sums not so paid. Such interest shall be calculated on a day-to-day basis on the amount outstanding at the rate of 4% above the arithmetic average for each day of the published base rate of the Central Bank for the currency in which the goods are priced or at any higher rate as the Seller would (but for this condition) have been entitled to charge interest under any applicable legislation.

18. (b) Payment shall be made in the currency specified in the Contract Documents. Subject to Condition 17, that amount shall not be subject to any discount or deduction except as agreed by the Seller in the Contract Documents.

19. (a) Except where expressly stated otherwise in any of the Contract Documents, a notice under any of the Contract Documents shall only be effective if it is in writing. Email and notices given via the Seller's electronic data interchange system are permitted.

19. (b) Notices under any of the Contract Documents shall be sent to a party at its address or number and for the attention of the individual specified in the Contract Documents, provided that a party may change its notice details on giving notice to the other party of the change in accordance with this condition.

20. The Seller and the Buyer agree that if any term of the Contract Documents purports to confer a benefit on any person who is not a party to the contract (a 'third party'), that term shall not be enforceable by any such third party.

21. (a) The Contract Documents constitute the whole and only agreement between the parties relating to the subject matter of the contract.

21. (b) The Buyer acknowledges that in entering into the contract it is not relying upon any pre-contractual statement which is not set out in the Contract Documents.

21. (c) Except in the case of fraud, no party shall have any right of action against any other party to this agreement arising out of or in connection with any pre-contractual statement except to the extent that it is repeated in the Contract Documents.

21. (d) For the purposes of this condition, 'pre-contractual statement' means any draft, agreement, undertaking, representation, warranty, promise, assurance or arrangement of any nature whatsoever, whether or not in writing, relating to the subject matter of the contract made or given by any person at any time prior to the date of this agreement.

22. The rights of the Seller 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. Any variation in the terms of the contract must be agreed between the parties in a Contract Document.

23. In the event that, for any reason, any provision in any of the Contract Documents is held to be void, unenforceable or otherwise invalid, any contract which incorporates any such Contract Document shall otherwise continue to be fully binding and all the other provisions of the Contract Documents, and the remainder of any provision where the effect of some part of it is held to be void, unenforceable or otherwise invalid, shall remain fully effective.

24. (a) The Contract Documents shall be governed by and construed in accordance with the laws of England.

24. (b) Subject to Condition 9:

(i) the courts of England are to have jurisdiction to settle any dispute arising out of or in connection with the Contract Documents; and

(ii) any proceeding, suit or action arising out of or in connection with the Contract Documents ("Proceedings") may be brought in the English courts.

24. (c) This jurisdiction agreement is for the benefit of the Seller. Seller is therefore, subject to Condition 9, to retain the right to bring Proceedings in any court which has jurisdiction other than by virtue of this jurisdiction agreement. The Buyer has, subject to Condition 9, the right to bring Proceedings only in the courts of England and not in any other courts.

24. (d) The Buyer on entering into this contract irrevocably submits to the jurisdiction of the English courts and of any other court in which Proceedings may be brought in accordance with this clause.

25. In these conditions, unless the context requires otherwise:

'associated company' means, in relation to the Seller, a company:

25. (a) which holds or controls, directly or indirectly through another person, entity or otherwise, more than half of the shares in the Seller; or

25. (b) in which any such company or the Seller holds or controls, directly or indirectly through another person, entity or otherwise, more than half of the shares,

and 'associated companies' means all of them.

26. 'Contract Documents' means, in relation to each contract for the sale of goods by the Seller to the Buyer:

26. (a) these standard conditions of sale for deliveries worldwide;

26. (b) any order acknowledgement, or advice or despatch note given by the Seller to the Buyer in respect of the contract; and

26. (c) any other document, signed by or on behalf of both the Seller and the Buyer, that expressly provides it is a Contract Document for the purposes of the contract,

and 'Contract Document' shall mean any one of them.

'goods' means, in relation to each contract, the goods referred to in the Contract Documents as being sold by the Seller to the Buyer