

# Conditions of Sale

## 1. Definition

- 1.1 “Buyer” Means the person who buys or agrees to buy the goods from the Seller.
- 1.2 “Conditions” Means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Seller.
- 1.3 “Delivery Date” Means the date specified by the Seller when the goods are to be delivered.
- 1.4 “Goods” Means the articles which the Buyer agrees to buy from the Seller.
- 1.5 “Price” Means the price for the goods excluding carriage, packing, insurance and VAT.
- 1.6 “Seller” Means Bellingham Steel and Tinsplate Company Limited.

## 2 Conditions Applicable

- 2.1 These conditions shall apply to all contracts for the sale of goods by the Seller to the Buyer to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation or similar document.
- 2.2 All orders for goods shall be deemed to be an offer by the Buyer to purchase goods pursuant to these conditions.
- 2.3 Acceptance of delivery of the goods shall be deemed conclusive evidence of the Buyer’s acceptance of these conditions.
- 2.4 Any variation to these conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Seller.

## 3 The Price and Payment

- 3.1 The price shall be the Seller’s quoted price. The price is exclusive of VAT which shall be due at the rate ruling on the date of the Seller’s invoice.
- 3.2 Payment of the price and VAT shall be due within 60 days from the date of the invoice.
- 3.3 Interest on overdue invoices shall accrue from the date when payment becomes due from the day to day until the date of payment at the rate of 2% above Barclays Bank Plc’s base rate from time to time in force.

## 4 The Goods

- 4.1 The quantity and description of the goods shall be as set out in the Seller’s quotation.

## 5 Warranties and Liability

- 5.1 The Seller warrants that the goods will at the time of delivery correspond to the description given by the Seller. Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 section 12) all other warranties, conditions or terms relating to fitness for purpose, satisfactory quality of condition of goods and whether implied by statute or common law or otherwise are excluded.
  - 5.1.2. Without prejudice to the foregoing no statement or undertaking contained in any British Standard, Euronorm, ISO Recommendation, or other standard or technical specification as to the suitability of the goods for any purpose shall give rise to any legal liability. 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.

## 6 Delivery of Goods

- 6.1 Unless otherwise agreed in writing delivery of the goods shall be made to the Buyer’s address on the delivery date or, where no delivery date is stipulated within a reasonable time. The Buyer shall make all arrangements necessary to take delivery of the goods whenever they are tendered for delivery.
- 6.2 The delivery date stipulated is subject to confirmation from the rolling mill producing the goods and the Seller reserves the right to vary the delivery date by giving notice to the Buyer in writing.
- 6.3 The Seller shall not be liable for any loss or damage or have a duty to failure by the Seller to deliver the goods (or any of them) by the delivery date.
- 6.4 Notwithstanding that the Seller may have delayed or failed to deliver the goods (or any of them) promptly by the delivery date the Buyer shall be bound to accept delivery and to pay for the goods in full provided that the delivery shall be tended at any time within 4 weeks of the delivery date.

## **7 Acceptance of Goods**

- 7.1 The Buyer shall be deemed to have accepted the goods 3 days after delivery to the Buyer.
- 7.2 After acceptance the Buyer shall not be entitled to reject goods which are not in accordance with the contract.
- 7.3 The Buyer shall inspect the goods on delivery and shall within the 3 day period stipulated in clause 7.1 above notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with description or sample. The Buyer shall afford the Seller an opportunity to inspect the goods within a reasonable time following delivery and before any use is made of them. If the Buyer shall fail to comply with these provisions the goods shall be conclusively presumed to be in accordance with the contract or free from any defect or damage which would be apparent on a reasonable examination of the goods and the Buyer shall be deemed to have accepted the goods.
- 7.4 If the goods are not in accordance with the contract for any reason the Buyer's sole remedy shall be limited to the Seller making good any shortage or replacing such goods or, if the Seller shall elect, by refunding the price or a proportionate part thereof.
- 7.5 The Seller's liability to the Buyer, whether for any breach of contract or otherwise, shall not in any event exceed the price and the Seller shall be under no liability for any direct loss and/or expense or indirect loss and/or expense suffered by the Buyer or liability to third parties incurred by the Buyer.
- 7.6 All warranties and conditions whether implied by statute or otherwise are excluded from this contract provided that nothing in this contract shall restrict or exclude liability for death or personal injury caused by the negligence of the Seller or effect the statutory rights for the Buyer dealing as a consumer.

## **8 Testing and Inspection**

- 8.1 Unless expressly agreed in writing the Seller shall be under no obligation to inspect or test the goods supplied.
- 8.2 Where the contract provides 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 upon the Seller giving notice of the availability of the goods for inspection/testing the Buyer shall inspect and/or test the goods within 7 days of such notice. If the Buyer does not inspect or test the goods within the time specified or if within 14 days of such testing or inspection the Buyer does not notify the Seller in writing that the goods are not in accordance with the contract, specifying the matters complained of, then the Buyer shall conclusively be deemed to have accepted the goods as being in accordance with the contract and shall not thereafter be entitled to reject the goods on the grounds of anything which such testing or inspection has or would have revealed.

## **9 Title and Risk**

- 9.1 The goods shall be at the Buyer's risk as from delivery.
- 9.2 In spite of delivery having been made property in the goods shall not pass from the Seller until:-
  - 9.2.1 The Buyer shall pay the price plus VAT in full and
  - 9.2.2 No other sums whatsoever shall be due from the Buyer to the Seller.
- 9.3 Until property in the goods passes to the Buyer in accordance with clause 8.2 the Buyer shall hold the goods and each of them on a fiduciary basis as bailee for the Seller.
- 9.4 Notwithstanding that the goods (or any of them) remain the property of the Seller. The Buyer may sell or use the goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealings shall be a sale or used for the sale as property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the goods passes from the Seller the entire proceeds of sale or otherwise of the goods shall be held in trust for the Seller shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.
- 9.5 The Seller shall be entitled to recover the price (plus VAT) notwithstanding the property in any of the goods has not passed from the Seller.
- 9.6 Until such time as property in the goods passes from the Seller the Buyer shall upon request deliver up such of the goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the goods are situated and repossess the goods. On the making of such request the rights of the Buyer under clause 8.4 shall cease.
- 9.7 The Buyer shall not make any pledge or allow any charge by way of security for any indebtedness of the goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer shall forthwith become due and payable.
- 9.8 The Buyer shall insure and keep insured the goods to the full price against all risks and quote to the reasonable satisfaction of the Seller until the date that the property and the goods passes from the Seller and shall whenever requested by the Seller produce a copy of the policy of insurance. Without prejudice to the other

rights of the Seller, if the Buyer fails to do so all sums whatever owing by the Buyer to the Seller shall forthwith become due and payable.

- 9.9 The Buyer shall promptly deliver the prescribed particulars of this contract to the Registrar in accordance with the Companies Act 1985 part XII as amended without prejudice to the other rights of the Seller.

## **10 Remedies of the Buyer**

- 10.1 Where the Buyer rejects any goods then the Buyer shall have no further rights whatever in respect of the supply to the Buyer of such goods or the failure by the Seller to supply goods which conformed to the contract of sale.
- 10.2 Where the Buyer accepts or has been deemed to have accepted any goods then the Seller shall have no liability whatever to the Buyer in respect of those goods.
- 10.3 The Seller shall not be liable to the Buyer for late delivery or short delivery of the goods.
- 10.4 The Seller shall be under no liability whatsoever to the Buyer for any indirect loss and/or expense (including loss of profit) suffered by the Buyer arising out of a breach by the Seller of this contract.

## **11 Proper Law of Contract**

- 11.1 This contract is subject to the law of England and Wales.

## **12 Notices**

- 12.1 Notice required to be served pursuant to this contract shall be in writing and served by first class post or by hand or by facsimile transmission to the Seller at the Seller's address or such other address that the Seller may from time to time notify to the Buyer and on the Buyer at the Buyer's registered office or principle place of business.

## **13 Insolvency or other Default of Buyer**

- 13.1 It the Buyer fails to make payment for the goods in accordance with this contract of sale or commits any other breach of this contract of sale or if any distress or execution shall be levied upon any of the Buyer's goods or if the Buyer offers to make any arrangement with its creditors or commits an act of bankruptcy or if any petition in bankruptcy is presented against the Buyer or if the Buyer is unable to pay its debts as they fall due or be a Limited Company in resolution or petition to wind up the Buyer (other than for the purpose of amalgamation or reconstruction without insolvency) shall be passed or presented or if a receiver, administrator, administrative receiver or manager shall be appointed over the whole or any part of the Buyer's business or assets or if the Buyer shall suffer any analogous proceedings under foreign law all sums outstanding in respect of the goods shall become payable immediately. The Seller may in its absolute discretion and without prejudice to any other rights which it may have
- 13.1.1 Suspend all future deliveries of goods to the Buyer and/or terminate the contract without liability upon its part or
- 13.1.2 Exercise any of its rights pursuant to clause 8 above.

## **14 Set off and Counterclaim**

- 14.1 The Buyer may not withhold payment of any invoice or other amount due to the Seller by reason of any right of set off or counterclaim which the Buyer may have or alleged to have or for any reason whatsoever.

## **15 Headings**

- 15.1 All headings are for ease of reference only and shall not affect the construction of this contract.
- 15.2 Any provision of this contract which is or may be void or unenforceable shall to the extent of such invalidity or enforceability be deemed severable and shall not affect any other provision of this contract.

## **16 Waiver**

- 16.1 No waiver or forbearance by the Seller (whether expressed or implied) in enforcing any of its rights under this contract shall prejudice its rights to do so in the future.

## **17 Force Majeure**

- 17.1 Neither party shall be liable for any default due to any act of God, war, strike, lockout industrial action, fire, flood, drought, Tempest or any other event beyond the reasonable control of either party.