

# THE INTERNATIONAL STEEL TRADE ASSOCIATION

## Standard Conditions of Sale (1992 Edition)

### Interpretation

- 1.1 The following Conditions shall apply so far as the same are not varied by any special terms or conditions agreed in writing between the parties. No variation of the Contract or these Conditions will become binding unless confirmed in writing by the Seller and any provision of the Buyer's order or conditions of purchase which is inconsistent with these Conditions shall be of no effect
- 1.2 In these Conditions:
- 'BUYER'** means the person who accepts a quotation of the Seller for the sale of the Goods or whose order for the Goods is accepted by the Seller; reference to "Buyer" includes the successors and assigns of the Buyer
- 'CONDITIONS'** means the standard terms and conditions of sale set out in this document subject to any special terms and conditions agreed in writing between the Buyer and the Seller
- 'CONTRACT'** means the contract for the purchase by the Buyer and sale by the Seller of the Goods and all contracts between the Buyer and the Seller shall be deemed to incorporate and be subject to the Conditions as defined above
- 'GOODS'** means the goods (including any instalment of the goods or any parts of them) which the Seller is to supply in accordance with these Conditions
- 'INCOTERMS'** means the edition of the International Rules for the Interpretation of Trade Terms in force at the date of the contract which shall be deemed to apply to the interpretation of the Contract
- 'SELLER'** means a member of the International Steel Trade Association who is to supply the Goods or any other person specified as Seller by a member of the International Steel Trade Association; reference to Seller includes the successors and assigns of the Seller
- 'WRITING'** includes telex, cable, facsimile transmission and comparable means of communication
- 1.3 Any reference in these Conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time
- 1.4 If any provision of these Conditions is held by any competent authority to be void, un-enforceable or otherwise invalid in whole or in part, any contract made which incorporates these Conditions shall continue to be fully binding and all other conditions herein, including the remainder of any Condition where the effect of some part thereof is avoided, shall remain fully effective

### 2. Delivery

- 2.1 Any dates referred to or quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any loss or damage whatsoever due to delivery of the Goods upon a different date or the expiry of any delivery period referred to in the Contract or quotation. Time for delivery shall not be of the essence unless previously agreed by the Seller in writing
- 2.2 Where stipulated in the Contract, the Goods are to be collected or called forward by the Buyer immediately they are ready for despatch failing which the Seller shall be entitled to store the Goods without liability and in the open if necessary at the cost and risk of the Buyer in accordance with clause 3.1. In the event of the Goods being ready for despatch more than 7 days before the date referred to or quoted in the Contract for delivery, the Buyer shall not be obliged to collect or take delivery of the Goods until 7 days before the date so referred to or quoted.
- 2.3 If the Seller indicates within seven days after the Contract delivery date that delivery of the Goods has been prevented or hindered due to any cause beyond the Seller's reasonable control then the delivery date or periods shall be altered as required by the Seller having regard to the cause or causes of delay
- 2.4 Each part delivery or instalment of the Goods shall be deemed to be sold under a separate contract and no default by the Seller in respect of any such part delivery or instalment shall entitle the Buyer to treat the Contract as repudiated as regards any balance or instalment remaining to be delivered
- 2.5 Where the Goods are sold F.O.B. (Incoterms), the Seller's responsibility shall cease immediately the Goods are so placed and the Seller shall be under no obligation to give the Buyer the notice specified in Section 32(3) of the Sale of Goods Act 1979
- 2.6 In respect of Contracts concluded on a delivered basis, the Seller shall not in any event be liable:-
- 2.6.1 for any partial loss or damage to the Goods in the course of transit unless the Buyer shall within fourteen days of the receipt of the Goods have sent to the Seller and the carrier a written notice of the Buyer's complaint; or
- 2.6.2 for non-delivery or non-arrival of the whole of any consignment of the Goods or of any separate package unless the Buyer shall, within fourteen days from the scheduled date of arrival of the Goods have sent to the

Seller and the carrier (if known to the Buyer) a written notice thereof

reasonable time before the Contract delivery date or the Buyer's delay in calling forward or collecting the Goods or the Buyer's failure without valid reason to accept delivery of the Goods

### 3. Price and Payment

- 3.1 If the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods or delivery of the Goods is delayed due to a cause beyond the Seller's reasonable control, the Seller shall be entitled to invoice the Buyer for the price (plus any additional costs as provided herein) at any time after the Seller has notified the Buyer that the Goods are ready for calling forward or collection or (as the case may be) the Seller has tendered delivery of the Goods
- 3.2 The Buyer shall pay the total invoice price within the time specified by the Seller even though delivery may not have taken place and the property in the Goods not passed to the Buyer
- 3.3 The Seller shall be entitled to charge the Buyer interest on a daily basis on overdue payments at the rate of 5 per cent per annum above Bank of England base rate from time to time in force and to charge the Buyer for any loss or damage consequential on non-completion of the Contract
- 3.4 Any variation in the rates of freight, insurance, dock charges, duties, or taxes levied in respect of the Goods from those in force at the date of the Contract shall be for the account of the Buyer, subject to the Seller providing, on request, reasonable evidence of the increases.
- 3.5 In the case of Goods imported into the United Kingdom, the Seller shall deliver them to the place stated in the Contract but if no place of delivery is so stated and the place of delivery subsequently specified by the Buyer is more than 150 miles from the point of entry of the Goods into the United Kingdom, the Buyer shall pay the cost of transport of the Goods beyond 150 miles from such point. The Goods shall be treated as delivered when they are consigned to a public carrier unless delivery is made by transport owned by or directly controlled by the Seller. The Seller shall give notice to the Buyer within twenty four hours after such consignment is made
- 3.6 For the avoidance of doubt:
  - 3.6.1 if no rate of freight is specified in the quotation or Contract the appropriate World Scale rate at the date of the quotation or Contract shall apply
  - 3.6.2 if no rate of insurance is specified in the quotation or Contract the Marine War Register Insurance Risks rate at the date of the quotation or Contract shall apply
- 3.7 The Buyer shall not be entitled to withhold payment of any amount payable to the Seller under the Contract because of any previously disputed claim of the Buyer in respect of faulty Goods or any other alleged breach of the Contract or any other Contract between the Buyer and the Seller, nor shall the Buyer be entitled to set-off against any amount payable to the Seller under the Contract any moneys which are not then presently payable by the Seller or for which the Seller disputes liability
- 3.8 All prices shall be deemed exclusive of VAT and any other sales taxes.

- 4.2 Any additional costs (whether direct or indirect) and risks resulting from any cause beyond the Seller's reasonable control shall be borne by the Buyer. Despatch of the Goods is conditional upon payment by the Buyer of such additional costs immediately upon receipt of advice that the Goods or the relevant part of the Goods are ready for despatch

### 5. Weights

- 5.1 The weights ascertained either by the producer of the Goods or on a tested weigh-bridge at the Seller's option shall be final and binding on both parties. The number of pieces stated in the Seller's invoice shall not be binding where Goods are charged according to weight
- 5.2 In respect of Contracts concluded on a delivered basis, the Seller shall not be liable for any discrepancies in weight unless the Buyer gives the Seller written notice thereof within seven days of receipt of the Goods and gives the Seller a reasonable opportunity of witnessing and re-weighing before the Goods have been used, processed or sold
- 5.3 The quantity of Goods actually delivered may vary from the quantities specified in the Contract and a variation of not more than plus or minus 10 per cent from such quantities shall not constitute a failure to perform the Contract.

### 6. Acceptance

- 6.1 The Buyer shall be deemed to have accepted the Goods and it shall be conclusively agreed that the Goods are in accordance with the Contract unless
  - 6.1.1 The Buyer gives notice in accordance with Conditions 2.6, or 5.2, or 6.2 herein; or
  - 6.1.2 Within fourteen days after receipt of the goods and prior to their use or re-sale, the Buyer gives written notice to the Seller specifying any alleged defect in the quality or state of the Goods or other respect in which the Goods do not accord with the Contract which would be apparent on careful inspection or by reasonable testing in all the circumstances and thereafter gives to the Seller a reasonable opportunity to inspect or test the Goods before they are used or re-sold; or
  - 6.1.3 If a defect in the quality or state of the Goods which would not be apparent upon careful inspection or reasonable testing is alleged and the Buyer gives the Seller written notice of such defect forthwith upon its discovery (and in any event not later than three months after receiving the Goods) specifying the matters complained of and giving the Seller a reasonable opportunity to inspect the Goods before any making good or replacement is undertaken. The Buyer shall not be excused from providing such opportunity by reason only of the incorporation of the Goods in the property of a third party or the location of the Goods in upon or under the premises or land of a third party
- 6.2 If the Contract stipulates for testing or inspection of the Goods by or on behalf of the Buyer before delivery such testing and inspection shall be made at the Seller's producing works and shall be the Buyer's final opportunity of examining whether they conform with the Contract. The Buyer shall be conclusively deemed to have accepted the Goods as being in conformity with the Contract if upon reasonable notice the Buyer does not inspect or test the Goods or if having inspected or tested the Goods at the producing works the Buyer does not within seven days thereafter notify the Seller in writing of any claim that the Goods are not in conformity with the Contract, and specifying the matters complained of. The Buyer shall not thereafter be entitled to reject or require replacement or compensation for the Goods

### 4. Force Majeure

- 4.1 The Seller shall not be liable to the Buyer or any third party or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure is due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, causes beyond the Seller's reasonable control shall include Acts of God, acts, restrictions, regulations, prohibitions or measures of any kind by any governmental or local authority; the Buyer's failure to give shipping instructions within a

- 6.3 Any inspection shall be made at the Buyers' expense and in the case of commercial quality material the examination shall be restricted to surface condition, finish and size of the Goods
- 6.4 Any dispute between the parties as to whether any Goods are defective in quality or state shall be referred in accordance with the provisions of the Arbitration Acts 1950 and 1979 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

## 7. Warranties and Liability

- 7.1 Goods sold as "non-prime" or Goods accepted by the Buyer pursuant to Condition 6 herein which the Seller and the Buyer agree to be "non-prime" are sold in their actual state, as seen, without warranty, 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 can accept no responsibility for its accuracy. In no circumstances will the Seller be under an obligation to replace or make good such Goods or entertain any claim whatsoever in respect thereof. 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 Buyer caused the Goods or such part of the Goods as the Buyer re-sells to comply with a recognised specification or standard
- 7.2 The Seller shall not be responsible for the eventual insertion in any Bill of Lading or other shipping documentation or document of title of clauses such as "rust stained", "rust spotted", "wet before shipment" and other similar clauses, and no claim can be entertained in this respect unless otherwise agreed in writing by the Seller
- 7.3 Where the Goods are either packed or protected in the manner specified in the Contract, or if there is no such specification, delivered without sufficient packing or protection, the Seller shall not be liable for any damage to or deterioration of the Goods during carriage or delivery
- 7.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) or, at the Seller's sole discretion, credit the Buyer with the Contract price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer
- 7.5 The undertakings in Condition 7.4 herein are given in lieu of any other legal remedy and the liability of the Seller shall be for all purposes limited to the giving of any appropriate credit or repayment or replacement in accordance with that Condition. Under no circumstances shall the Seller be liable (save in respect of non-excludable statutory liability) for any other loss damage or expense whatsoever occasioned by any breach of contract, negligence, or breach of any duty of the Seller whatsoever and howsoever such loss, damage or expense may have been caused
- 7.6 Subject to the provisions of these Conditions Goods supplied by the Seller will comply with the specification and standard, if any, agreed in writing between the Seller and the Buyer in respect of the Contract to which those Goods relate and will be of merchantable quality unless specifically stated otherwise and any other condition or warranty statement or undertaking as to the quality of the Goods or their fitness or suitability for any purpose however and whenever expressed or which may be implied by statute or custom of the trade or otherwise is hereby excluded to the fullest extent permitted by law
- 7.7 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 himself or

herself that the Goods are suitable for any product or application for which they are to be used

- 7.8 The Buyer shall indemnify the Seller against all claims, costs and expenses of any nature whatsoever which may arise pursuant to Part 1 of the Consumer Protection Act 1987 or any other product liability in respect of any alleged defect in the Goods

## 8. Risk and Property

- 8.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, the time when the Seller has tendered delivery of the Goods or the time when the Seller notified the Buyer that the Goods are ready for calling forward or collection
- 8.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods
- 8.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods in a fiduciary capacity and as bailee for the Seller, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured
- 8.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods
- 8.5 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller in respect of the Goods shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable
- 8.6 The Seller shall be entitled to maintain an action for the price of any Goods notwithstanding that title in them has not passed to the Buyer and it shall not be a defence to such an action that title has not so passed

## 9. Cancellation

- 9.1 The Seller shall be entitled, without prejudice to his other rights or remedies, either to terminate the Contract or any other contract between the Seller and the Buyer wholly or in part or to suspend any further deliveries under the Contract or any other contract between the Seller and the Buyer in any of the following events:-
- 9.1.2 if any debt is due and payable by the Buyer to the Seller but is unpaid; or
- 9.1.3 if the Buyer has failed to provide within the time specified by the Seller any letter of credit, bills of exchange or any other security required by the Contract; or
- 9.1.4 if the Buyer has failed to collect or take delivery of any Goods under any contract between it and the Sellers otherwise than in accordance with the Buyer's contractual rights and obligations; or

- 9.1.5 if the Buyer becomes insolvent or, in the case of a body corporate or a partnership a resolution is passed for its winding up (except solely for the purpose of amalgamation or reconstruction) or an Order of the Court for its winding up is made or a Receiver is appointed (whether administrative or otherwise), or in the case of an individual or partnership, he is or they are adjudicated bankrupt or payment of his or their debts is suspended in whole or in part or the Buyer convenes a meeting of or proposes or enters into any composition or arrangement with its creditors or a comparable act occurs under another jurisdiction; or
- 9.1.6 if the prompt transfer of funds from the country of the Buyer's residence to the country of the Seller's residence is impeded either by Government acts, orders or regulations or by reason of strikes or breakdowns in the banking system in the country of the Buyer's residence; or
- 9.1.7 if the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly
- 9.2 Without prejudice to the preceding clause 9.1 the Seller shall be entitled to withdraw credit from the Buyer without prior notice or divulgence of reasons

## 10. General

- 10.1 The Seller's rights shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver by the Seller in respect of any breach shall operate as a waiver in respect of any subsequent breach
- 10.2 The Buyer shall indemnify the Seller against all claims, demands, damages, penalties, costs and expenses for which the Seller may become liable by reason of the infringement or alleged infringement of any patent design trademark or other industrial or intellectual property right arising out of performance of the Contract in accordance with the Buyer's specifications
- 10.3 Any notice under the Contract shall be sufficiently given if served personally on or left at the registered office or principal place of business of the party on whom it is served or sent by telex or facsimile transmission or by recorded or registered delivery pre-paid first class or air mail letter post to the party on whom it is served at its registered office or principal place of business. A notice shall in the case of posting be deemed to have been served at the expiration of twenty four hours after posting to a United Kingdom destination or four days after posting to a destination outside the United Kingdom. A notice sent by telex or facsimile transmission shall be confirmed by post and shall be deemed to have been received in the case of telex upon receipt of the correct answerback, and in the case of facsimile transmission upon the sending machine's confirmation of sending.

Whenever the last day for giving any notice falls upon a Sunday, or a Bank Holiday, the time for giving such notice shall be extended until the next following ordinary working day

- 10.4 The Contract shall be construed in accordance with English law and the parties hereto submit to the exclusive jurisdiction of the English courts, save that the Seller shall be entitled, at his option, to commence proceedings within the jurisdiction of the Buyer's principal place of business or residence
- 10.5 If the Buyer and Seller both agree, any dispute arising out of or in connection with the Contract may be submitted to arbitration by the London Court of Arbitration under and in accordance with its rules
- 10.6 Deletion of any clause, clauses or part of the same by written agreement of both parties does not invalidate the remaining Conditions.

**Any member using these terms and conditions does so strictly at his/her/its own risk and on the basis that the International Steel Trade Association (ISTA) is not responsible for any errors or omissions in these terms and conditions or for their compliance with any legal requirements or prohibitions, whether of local, national, European law or otherwise. Any corrections or compliance requirements are the responsibility of the member in each individual case, and members are requested to inform ISTA of such corrections or requirements for future revisions.**

**The foregoing terms and conditions are recommended to members but are not mandatory.**

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