



1 General

1.1 In these terms and conditions ("Conditions"), the following words shall have the following meanings unless the context otherwise requires:

- "Contract" any contract between the Seller and the Customer for the sale and purchase of the Goods, incorporating these Conditions;
- "Customer" the person, firm or company purchasing Goods and (if applicable) Services from the Seller;
- "Goods" any goods that the Seller is to supply to the Customer in accordance with these Conditions;
- "Price" the price payable for the Goods and (if applicable) the Services in accordance with Condition 3;
- "Quantity Tolerances" plus or minus five percent (5%) of the quantity ordered;
- "Seller" Clarke Metal Services Ltd.
(registered number 3768253) whose registered office address is C/O DPC Accountants, Stone House, 55 Stone Road Business Park, Stone Road, Stoke-on-Trent. ST4 6SR
- "Services" those services (if any) that the Seller is to supply to the Customer in connection with the manufacture and/or supply of the Goods, including (without limitation) the manufacture of any Goods from or using materials supplied to the Seller by the Customer; and
- "Specification" the functional and/or technical specification (if any), subject to the usual mill tolerances, agreed between the Seller and the Customer in respect of the Goods.

1.2 These Conditions are the only conditions upon which the Seller is prepared to deal with the Customer and they shall govern any contract with the Customer for the sale, purchase and supply of Goods and (if applicable) Services to the entire exclusion of any other express or implied conditions.

1.3 These Conditions may only be modified by a variation in writing signed on behalf of the Seller by a director or other authorised representative of the Seller and no other action on the part of the Seller (whether delivery of any Goods, supply of any Services or otherwise) shall be construed as an acceptance of any other conditions.

1.4 These Conditions (as modified in accordance with Condition 1.3) together with the matters referred to in the Specification (if any) and the Seller's quotation (if any) and/or acceptance of the Customer's order (as applicable) embody the entire agreement of the Seller and the Customer in relation to the sale, purchase and supply of the Goods and any Services quoted for by the Seller and/or ordered by the Customer (as applicable) and supersede any prior promises, statements, representations (save for those made fraudulently) or undertakings of either party in respect thereof.

1.5 No employee, agent or sub-contractor of the Seller is authorised to make any representations concerning the Goods or (if applicable) the Services unless confirmed by a director or other authorised representative of the Seller in writing and the Customer acknowledges that it does not rely on any such representations that are not so confirmed.

1.6 No contract shall be concluded with the Customer until the Seller despatches an acceptance of the Customer's order to the Customer. Any quotation in whatever form given to the Customer by the Seller is given subject to these Conditions and does not constitute an offer to sell or supply.

1.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of order, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2 Performance

2.1 The Seller warrants that (subject to the other provisions of these Conditions): -
2.1.1 on delivery the Goods shall be manufactured in accordance with the Specification; and

2.1.2 due care and skill shall be exercised in the supply of any Services.
2.2 If any Goods or Services do not conform to the warranty given under Condition 2.1, the Seller will at its option:

- 2.2.1 replace the non-conforming Goods (or the component(s) in question) and/or repeat the non-conforming Services (as applicable);
- 2.2.2 take such steps as the Seller deems necessary to bring the non-conforming Goods into a state where they are free from the relevant defects and, if applicable, materially compliant with the Specification; or
- 2.2.3 take back the non-conforming Goods and refund the appropriate part of the Price for such Goods and/or refund the appropriate part of the Price for the non-conforming Services (as applicable);

provided that the liability of the Seller for any non-conformance to the warranty given under Condition 2.1 shall in no event exceed the appropriate part of the Price (exclusive of value added tax or any similar applicable taxes, levies or duties) for the non-conforming Goods and/or Services (as applicable) and performance of any one of the above options shall constitute an entire discharge of the Seller's liability under such warranty.

2.3 The warranty given under Condition 2.1 is conditional upon:
2.3.1 the Customer giving written notice to the Seller of the alleged defect or non-compliance in the Goods or Services (as applicable), such notice to be received by the Seller within 24 hours when the Customer discovers or ought to have discovered the defect or non-compliance and in any event within six months of delivery of the Goods or supply of the Services (as applicable);

2.3.2 the Customer affording the Seller a reasonable opportunity to inspect the Goods and, if so requested by the Seller, returning the allegedly defective or non-compliant Goods to the Seller's premises, carriage pre-paid, for inspection to take place there;

2.3.3 the Goods not having been altered or modified in any way whatsoever or subjected to misuse or unauthorised repair;

2.3.4 the Goods having been properly installed or incorporated; and
2.3.5 the Customer having complied with its obligations under these Conditions, any contract with the Customer to which these Conditions apply and any other contract between the Seller and the Customer.

2.4 The Seller shall not be in any way liable for any claim under the warranty given under Condition 2.1 in respect of any defect in the Goods or (if applicable) non-compliance with the Specification:

2.4.1 arising from any drawing, design, specification or materials supplied by the Customer to, from or with which the Goods have been manufactured by the Seller; or

2.4.2 arising from fair wear and tear, any fault or negligence of the Customer, any damage caused by the Customer's employees, agents or sub-contractors, any abnormal working conditions of the Customer or any failure to follow the Seller's instructions (whether or not in writing).

2.5 The warranty given under Condition 2.1 does not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Customer shall only be entitled to the benefit of any warranty or guarantee as given by the relevant manufacturer to the Seller.

2.6 Save as provided in Conditions 1.4 and 2.1, in section 12 of the Sale of Goods Act 1979 and in section 2 of the Supply of Goods and Services Act 1982:

2.6.1 all conditions and warranties, express or implied, as to the quality or fitness for any purpose of the Goods or as to the provision of the Services are hereby expressly excluded; and

2.6.2 the Seller shall not under any circumstances be liable in contract, tort (including negligence), statute or otherwise for any direct, indirect or consequential loss, any increased costs or expenses or any loss of actual or anticipated income, profits, contracts, business, goodwill, revenues or anticipated savings that may be suffered by the Customer under any contract to which these Conditions apply howsoever arising and whether or not such losses were foreseeable, foreseen or known, except in respect of death or personal injury caused by the Seller's negligence for which the Seller in no way seeks to exclude or limit its liability unless the contract to which these Conditions apply is an international supply contract (as described in section 26 of the Unfair Contract Terms Act 1977).

2.7 If, notwithstanding the foregoing provisions of this Condition 2, the Seller is found liable under any contract to which these Conditions apply for any loss or damage suffered by the Customer, that liability shall (unless otherwise provided in these Conditions) in no circumstances exceed the higher of: (i) the Price (exclusive of value added tax or any similar applicable taxes, levies or duties); and (ii) the actual proceeds received by the Seller under its public liability policy (or other relevant insurance policy) in respect of the liability in question.

2.8 Nothing in these Conditions excludes or limits the liability of the either party:
2.8.1 for death or personal injury caused by that party's negligence; or
2.8.2 under section 2(3), Consumer Protection Act 1987; or
2.8.3 for any matter which it would be illegal for that party to exclude or attempt to

2.8.4 exclude its liability; or
2.9 for fraud or fraudulent misrepresentation or concealment.

The Seller reserves the right to make any changes to any component(s) of the Goods and/or (if applicable) the Specification provided that these do not materially affect the quality or performance of the Goods.

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3.1

Price

3.1.1 In respect of any contract with the Customer to which these Conditions apply, the Price for the Goods and any Services to be supplied under that contract will be: in respect of the Goods, notwithstanding the Seller's quotation for the Goods or in the absence of such a quotation, as set out in the Seller's price ruling applicable at the date on which the Goods are despatched to the Customer or, if the Goods are to be collected by the Customer, the date on which the Seller notifies the Customer that the Goods are ready for collection; or

3.1.2 in respect of the Services (if any), notwithstanding the Seller's quotation for the Services or in the absence of such a quotation, as set out in the Seller's price ruling applicable at the date on which the Services are provided.

3.2 The Seller reserves the right, by giving written notice to the Customer at any time before delivery of the Goods, to increase the Price of the Goods and/or Services (as applicable) to reflect any increase in the cost to the Seller of supplying the Goods and/or Services that is due to any factor beyond its reasonable control (such as, without limitation, foreign exchange fluctuation, currency regulation, alteration of duties or significant increases in the cost of the labour, materials or other costs of manufacture), any changes in the Specification or the delivery dates or quantities of the Goods and/or Services that are requested by the Customer or any delay caused by any of the Customer's instructions or the Customer's failure to give the Seller adequate information or instructions.

The Price is exclusive of value added tax or any similar applicable taxes, levies or duties, which will be added to or charged on invoices at the appropriate rates.

4 Payment

4 Unless otherwise agreed in writing:
the Seller may invoice the Customer for the Price on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongly fails to take delivery of the Goods in which event the Seller shall be entitled to invoice the Customer for the Price at any time after the Seller has notified the Customer that the Goods are ready for collection or the Seller has tendered delivery of the Goods (as applicable);

4.1 the Seller may invoice the Customer for the Price when or at any time after the Services have been supplied;

4.1.1 the Customer shall pay the Price of any Goods and (if applicable) Services no later than the thirtieth day from the date of the Seller's relevant invoice; and the Price will be paid in Pounds Sterling.

4.1.2 Where any sum owed by the Customer to the Seller under any contract to which these Conditions apply is overdue:

4.1.3 interest will be chargeable on the sum due before and after judgment, accruing on a day-to-day basis at an annual rate of 4 per cent above the base lending rate from time to time of HSBC Bank Plc, until the sum due is paid in full and cleared funds; and

4.2 the Seller may withhold the delivery or supply of any Goods and/or Services due to be made to the Customer under any contract to which these Conditions apply until arrangements as to payment or credit have been established which are satisfactory to the Seller.

4.3 If the Customer fails to pay for any Goods in accordance with these Conditions, the Seller may bring an action against the Customer for the Price of those Goods at any time, even though the property in the Goods has not passed to the Customer.

5.1 The Supplier will be entitled to perform or make delivery of Services and/or Goods by instalments and to invoice the Customer for each instalment performed or dispatched. Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Customer to repudiate or cancel any other Contract or instalment

6 Lien

The Seller will (without prejudice to any other rights or remedies available to it) have in respect of all unpaid debts due from the Customer a general lien on all property of the Customer in possession of the Seller for whatever purpose and whether worked upon or not and be entitled on the expiration of not less than fourteen days' notice in writing to the Customer to dispose of such property and to apply the proceeds towards satisfaction of such debts.

- 6.2.1 any Services to be supplied to the Customer under any contract to which these Conditions apply shall be supplied at the Seller's premises; and
- 6.2.2 the Price for any Goods shall be exclusive of the costs of delivering the same in accordance with these Conditions (for which the Customer will be invoiced separately by the Seller). Such delivery charges shall include the costs of freight and insurance and the Seller's handling charge.
- 6.3 Any dates quoted for delivery of the Goods or supply of any Services are non-binding, indicative business estimates only and the Seller will not be liable to the Customer for any loss or damage (whether direct, indirect or consequential and howsoever arising) sustained by the Customer as a result of any delay in despatch or delivery of the Goods or supply of the Services. Time for delivery or supply shall not be of the essence. The Goods may be delivered or the Services supplied by the Seller in advance of the quoted delivery or supply date(s) on giving reasonable notice to the Customer.
- 6.4 The Seller may deliver the Goods by separate instalments. Where any Goods or Services are to be delivered or supplied in instalments, each delivery or supply shall constitute a separate contract and failure by the Seller to deliver or supply any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the contract with the Customer for the sale, purchase and supply of such Goods and (if applicable) such Services as repudiated in its entirety.
- 6.5 The Seller will be deemed to have performed the Contract if the Goods delivered are within the Quantity Tolerances.
- 6.6 If the quantity of any consignment of Goods delivered does not correspond with the quantity required to be delivered in that consignment, the Customer shall not be entitled to reject that consignment but shall be entitled only:
- 6.6.1 if the quantity delivered is less than the quantity required and falls outside the Quantity Tolerances, to (at the Seller's option) a further delivery of Goods to make up the deficiency or a refund of the appropriate part of the Price for the Goods, provided that the Customer shall have no entitlement whatsoever under this Condition 6.6.1 in respect of any deficiency unless the Customer notifies the Seller of such deficiency in writing within three days of delivery; or
- 6.6.2 if the quantity delivered exceeds the quantity required and falls outside the Quantity Tolerances, to return the excess or to retain the whole, in which case the Price for the Goods shall be adjusted at the applicable rate then prevailing.
- 6.7 If the Customer fails to take delivery of any Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by any reason of any cause beyond the Customer's reasonable control or by reason of the Seller's fault) or the Seller is withholding delivery of any Goods pursuant to Condition 4.2.2, the Seller (without prejudice to any other rights or remedy it may have) may either:
- 6.7.1 store the Goods as set out in Condition 9; or
- 6.7.2 sell the Goods at the best price readily obtainable and, after deduction of the Seller's reasonable storage and sale expenses, charge the Customer for any shortfall below the Price for such Goods.
- 7 Non-delivery**
- 7.1 The quantity of any consignment of Goods as recorded by the Seller on despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving the contrary.
- 7.2 The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless the Customer gives written notice to the Seller of the non-delivery within 2 working days of the date when the Goods would in the ordinary course of events have been received.
- 7.3 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods.
- 8 Risk and property**
- 8.1 The risk in the Goods shall pass to the Customer upon delivery of the Goods to the Customer or any carrier acting on the Customer's behalf. If the Seller is unable to despatch the Goods because of the Customer's acts or omissions or the Customer fails to take delivery of the Goods or fails to collect the Goods from the Seller's premises on the date specified (as applicable), the risk in the Goods shall still pass to the Customer at the time when the Customer should have collected the Goods or taken delivery.
- 8.2 The property in the Goods shall not pass to the Customer until the total price of:
- 8.2.1 the Goods and (if applicable) the Services; and
- 8.2.2 any other goods and/or services supplied under any contract with the Customer to which these Conditions apply or any other contract between the Seller and the Customer for which payment to the Seller remains due,
- is paid in full and cleared funds.
- 8.3 Until such time as the Price for any Goods has been paid in full and cleared funds:
- 8.3.1 those Goods shall be held by the Customer in fiduciary capacity and stored by the Customer at its premises in such a manner that they are clearly identifiable as the Goods of the Seller and shall be kept separate from other goods whether or not supplied by the Seller;
- 8.3.2 the Customer shall insure those Goods to the full replacement value of the Goods and shall note the Seller's interest on the policy;
- 8.3.3 the Customer shall not pledge or charge in any other way any of those Goods and, if the Customer breaches this clause 8.3.3, the Price for those Goods shall become immediately due and payable; and
- 8.3.4 those Goods shall be handed over to the Seller on demand and the Seller: (i) shall be entitled to re-take possession of them without prejudice to any of its other rights against the Customer; and (ii) is hereby granted a licence to enter into the Customer's premises for such purposes.
- 8.4 If the Customer sells any Goods prior to paying the Price due in respect thereof in full and cleared funds: (i) the Customer shall hold the proceeds of sale on trust for the Seller and shall immediately pay the proceeds of sale into a separate bank account for such purposes; and (ii) the Seller shall be entitled to call upon the Customer to assign all claims that the Customer may have against the purchaser(s) of those Goods.
- 8.5 The Customer's right to possession of the Goods shall terminate immediately if:
- 8.5.1 the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- 8.5.2 the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Seller and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
- 8.5.3 the Customer encumbers or in any way charges any of the Goods.
- 8.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller.
- 8.7 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Seller to the Customer in the order in which they were invoiced to the Customer.
- 8.8 On termination of the Contract, howsoever caused, the Seller's (but not the Customer's) rights contained in this Condition 8 shall remain in effect.
- 9 Storage**
- 9.1 The Seller shall be entitled to store the Goods (or any of them) at the Customer's expense at the Seller's premises or elsewhere if:
- 9.1.1 where the Customer is required to collect the Goods from the Seller's premises, the Customer fails to collect the Goods at the specified time;
- 9.1.2 where the arrangement is for the Goods to be delivered to the Customer, the Seller is either unable to despatch the Goods by reason of the acts or omissions of the Customer or the Seller has despatched the Goods but the Customer fails to take delivery; or
- 9.1.3 if the Seller is withholding delivery of the Goods pursuant to Condition 4.2.2.
- 9.2 Where the Seller becomes entitled under Condition 9.1 to store away Goods at its premises or elsewhere at the Customer's expense, the Seller (whether by way of storage, insurance or otherwise) in respect of those Goods. It is expressly declared that it shall be reasonable for the Seller to take out insurance in respect of any Goods stored at the Seller's premises or elsewhere at the Customer's expense notwithstanding that risk in the Goods has passed to the Customer.
- 10 Intellectual property**
- 10.1 The Customer acknowledges that the Seller and/or its licensors retain ownership of all intellectual property rights in the Goods and (if applicable) the Services and in any goods, products or materials made available or produced as part of any such Services.
- 11 Cancellation**
- 11.1 Orders for Goods and (if applicable) Services that have been accepted by the Seller can only be cancelled by the Customer with the prior written agreement of the Seller and on the condition that the Customer shall indemnify the Seller in full against all loss (including, without limitation, loss of profit), damage, costs (including, without limitation, the cost of all labour and materials used) and expenses incurred by the Seller as a result of such cancellation.
- 12 Force majeure**
- 12.1 If the Seller is prevented from or hindered in delivering any Goods or supplying any Services through any circumstances beyond its reasonable control (including, without limitation, strike, lock-out or other industrial action, war, fire, Act of God or prohibition or enactment of any kind), the Seller shall have the right to cancel or to reduce the volume of the Goods to be delivered or Services to be supplied without any liability to the Customer.
- 13 Assignment and sub-contracting**
- 13.1 The Seller shall be entitled to assign, transfer or sub-contract all or any of its obligations under any contract with the Customer to which these Conditions apply.
- 14 Termination and suspension**
- 14.1 Without prejudice to any other rights or remedies available to the Seller, the Seller may terminate any contract with the Customer to which these Conditions apply or suspend or cancel delivery of any Goods and/or any Services to be supplied or recover possession of any Goods supplied under such contract without any liability to the Customer if:
- 14.1.1 any sum owed by the Customer under that contract, any other contract with the Customer to which these Conditions apply or any other contract between the Seller and the Customer is overdue;
- 14.1.2 the Customer breaches any term of that contract and (if capable of remedy) does not remedy such breach within seven days of being requested to do so by the Seller;
- 14.1.3 the Customer passes a resolution or suffers an order of a court to be made for its winding-up, a receiver, administrative receiver or administrator shall be appointed over all or any part of the Customer's undertaking or assets, the Customer goes into liquidation or ceases to trade or a petition for the appointment of an administrator shall be presented in respect of the Customer; or
- 14.1.4 in the reasonable opinion of the Seller, the Customer is for any other reason unable to meet its obligations under that contract.
- 14.2 Upon termination for any reason of any contract with the Customer to which these Conditions apply, the Price payable for any Goods and/or Services supplied under such contract for which the Seller has not received payment prior to termination shall become immediately due and payable.
- 15 Export sales**
- 15.1 Where any Goods are to be exported to the Customer outside the United Kingdom:
- 15.1.1 the Customer shall be solely responsible for complying with any legislation or regulations governing the importation of such Goods into the country of destination and for the payment of all taxes, duties, levies and other charges in relation thereto;
- 15.1.2 payment for such Goods will be made in pounds sterling in England; and
- 15.1.3 the Uniform Laws on International Sales Act 1967 shall not apply to the contract with the Customer for the sale, purchase and supply of such Goods to which these Conditions apply.
- 16 Withholding and set-off**
- 16.1 The Customer shall have no right of withholding or set-off, statutory or otherwise, under any contract to which these Conditions apply.
- 17 Third party rights**
- 17.1 These Conditions do not create any right under any contract to which these Conditions apply that is enforceable by any person who is not a party to such contract.
- 18 Governing law**
- 18.1 The laws of England shall govern any contract with the Customer to which these Conditions apply and the English courts shall have the exclusive jurisdiction (to which the Customer hereby irrevocably submits) to resolve any disputes arising out of any such contract.
- NOTE:** The Price for any Goods and/or Services to be supplied by the Seller is calculated on the basis that the above Conditions will apply. Any customers requiring prices to be quoted on a different basis should inform the Seller.