

CONDITIONS OF SALE

1. **Interpretation**
- 1.1 In these Conditions:-
 - "Buyer" means the person whose order for the Goods is accepted by the Company
 - "Company" means Michael Barugh Steel Stockholding Limited
 - "Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Company
 - "Contract" means the contract for the purchase and sale of the Goods
 - "Goods" means any goods or services (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions
 - "Writing" includes telex, cable, facsimile transmission and comparable means of communication.
- 1.2 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.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.
2. **Basis of Sale**
- 2.1 The Company shall sell and the Buyer shall purchase the Goods in accordance with any written order of the Buyer which is accepted by the Company, subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions subject to which any quotation is purported to be accepted or any order is made or purported to be made by the Buyer.
- 2.2 No variation to these Conditions shall be binding unless agreed in Writing between the authorised representatives of the Buyer and the Company.
- 2.3 A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or revise a quotation at any time prior to the Company's acceptance of the Buyer's order.
- 2.4 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on, and waives any claim for, such representations or assurances which are not so confirmed.
- 2.5 Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in Writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 2.6 The description illustrations and prices contained in the Company's catalogues price lists and other advertising materials are intended to present a general idea of the Goods described in them and shall not form part of the Contract. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of order or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
3. **Orders and Specifications**
- 3.1 No order submitted by the Buyer (including telephone orders) shall be deemed to be accepted by the Company unless and until confirmed in Writing on the Company's Order Acceptance Form or headed notepaper duly countersigned by an authorised representative of the Company.
- 3.2 The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.
- 3.3 The quantity, quality and description of and any specification for the Goods shall be those set out in the Company's quotation or the Buyer's order (if accepted by the Company).
- 3.4 If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Buyer, the Buyer shall indemnify the Company against all loss, damages, costs and expenses awarded in respect of the settlement of any claim for infringement of a copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Buyer's specification.
- 3.5 The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable safety or other statutory requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 3.6 No writing which has been accepted by the Company may be cancelled by the Buyer except with the agreement in Writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages charges and expenses incurred by the Company as a result of cancellation.
4. **Price of the Goods**
- 4.1 The price of the Goods shall be the Company's quoted price, or where no price has been quoted (or a quoted price is no longer valid), the price listed in the Company's published price list current at the date of acceptance of the order. Where the Goods are supplied for export from the United Kingdom, the Company's published export price list shall apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer.
- 4.2 The Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange, fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, material or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions.
- 4.3 Except as otherwise provided in any quotation or in any price list of the Company, and unless otherwise agreed in Writing between the Buyer and the Company, all prices are given by the Company on an ex works basis, and where the Company agrees to deliver the Goods otherwise than at the Company's premises, the Buyer shall be liable to pay the Company's charges for transport, packaging and insurance.
- 4.4 The price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Company.
5. **Terms of Payment**
- 5.1 Subject to any special terms agreed in Writing between the Buyer and the Company, the Company shall be entitled to invoice the Buyer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Buyer for the price at any time after the Company has notified the Buyer that the Goods are ready for collection or (as the case may be) that the Company has tendered delivery of the Goods.
- 5.2 The Buyer shall pay the price of the Goods (without any deduction) within 30 days of the date of the Company's invoice, notwithstanding that delivery may not have taken place and the Goods may not have been passed to the Buyer. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued only upon request.
- 5.3 If the Buyer fails to make any payment on the due date then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:-
 - 5.3.1 cancel the Contract or suspend any further deliveries to the Buyer;
 - 5.3.2 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract) between the Buyer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Buyer);
 - 5.3.3 charge the Buyer interest (both before and after any judgment) on the amount unpaid at the rate of four per cent per annum above the base rate from time to time of Barclays Bank plc, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).
- 5.4 Any amount due by the Buyer to the Company under the Contract shall be payable in full without any compensation set off or counterclaim.
6. **Delivery**
- 6.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Company's premises at any time after the Company has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering the Goods to that place.
- 6.2 Any dates quoted for delivery of the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Company in Writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
- 6.3 Where the Customer orders Goods by reference to weight and the Company holds stocks of the relevant Goods in packs, the Company shall be entitled to supply whichever pack has a weight closest to that ordered by the Customer (provided that the weight of such pack shall not be more than 15% more or 15% less than the weight ordered by the Customer) and the price for such Goods shall be adjusted pro rata according to the actual weight supplied.
- 6.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- 6.5 If the Company fails to deliver the Goods for any reason other than any cause beyond the Company's reasonable control or the Buyer's fault, and the Company is accordingly liable to the Buyer, the Company's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
- 6.6 If the Buyer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery (whether by reason of any cause beyond the Buyer's reasonable control or by reason of the Company's fault), then, without prejudice to any other right or remedy available to the Company, the Company may:-
 - 6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
 - 6.6.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.
- 6.7 Any receipt obtained by the Company from the Buyer or its employee or agent accepting or taking delivery of the Goods shall be conclusive evidence of delivery in satisfactory condition by the Company to the Buyer of the Goods or such part thereof as is indicated by the receipt.
7. **Risk and Property**
- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer:-
 - 7.1.1 in the case of Goods delivered at the Company's premises, at the time when the Company notifies the Buyer that the Goods are available for collection; or
 - 7.1.2 in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Goods, at the time when the Company has tendered delivery of the Goods.
8. **Retention of Title**
- 8.1 Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in and legal title to the Goods shall not pass to the Buyer until the Company has received in cash or cleared funds payment in full of all monies due by the Buyer or any of the Buyer's associated subsidiary or holding companies to the Company (including any interest payable under Condition 5.4.3) or any of the Company's associated subsidiary or holding companies under any contract between them.
- 8.2 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and free from any lien charge or encumbrance and properly stored, protected and insured (in an amount which is not less than the price payable to the Company therefor) and identified as the Goods of the Company. Until that time and subject to Condition 8.3 the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business but shall account to the Company for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall hold all such proceeds in trust for the Company and shall keep them separate from any monies or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured as aforesaid.
- 8.3 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 Company shall be entitled at any time to require the Buyer to deliver up the Goods to the Company 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.
- 8.4 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 Company, but if the Buyer does so all monies owing by the Buyer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 8.5 **Liability**
- 9.1 The Buyer shall be responsible for ensuring that the Goods are fit for the purpose for which it wishes to use them and the Company gives no warranty (and none shall be implied) that the Goods are fit for any particular purpose.
- 9.2 Subject as expressly provided in these Conditions, and except where the Goods are sold to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 9.3 Where the Goods are sold under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by these Conditions.
- 9.4 The Buyer shall be deemed to have examined the Goods upon delivery and to have satisfied itself that they conform to the Contract. Any claim by the Buyer which is based on any defect in quality or condition of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Company within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Company accordingly, the Buyer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- 9.5 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 specifications is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price).
- 9.6 Any Goods considered to be damaged or defective shall, unless the Company specifically requests otherwise, be retained by the Buyer, intact as delivered, for a period of 21 days from notification of the claim within which time the Company or its agents shall have the right to attend at the Buyer's premises to investigate the complaint and, if possible, to remedy any defect. If so requested by the Company, the Goods alleged to be defective shall be promptly returned at the Buyer's risk and expense to the Company's works. Any breach of this condition shall disentitle the Buyer to any allowance in respect of its claim.
- 9.7 The Company shall have no liability to the Buyer in respect of damaged or defective Goods where damage has been sustained in transit after delivery of the Goods to the Buyer or its agents.
- 9.8 Except in respect of death or personal injury caused by the Company's negligence (for which the Company will be liable without limit), the Company shall not be liable to the Buyer for any consequential loss or damages (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its employees or agents or by breach of contract or otherwise) which arise out of or in connection with the supply of the Goods or their use or resale by the Buyer.
- 9.9 Subject to the exception in Condition 9.8, the Company's aggregate liability under the Contract shall not exceed the price of the Goods in respect of any one event or series of events arising out of the same cause.
10. **"Himalaya" Clauses**
- 10.1 No servant or agent or sub-contractor of the Company performing the whole or any part of the Contract shall in any circumstances whatsoever be under any liability whatsoever to the Buyer or to the Buyer's principal for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and every exemption, limitation and condition contained in these Conditions to which the Company is entitled is applicable to the servant, agent or sub-contractor of the Company and to the extent to which the Company is entitled to limit its liability to its servants, agents and sub-contractors and for the purposes of this Condition the Company shall be deemed to be acting as agent on behalf of and for the benefit of all persons who are or may be the Company's servant, agent or sub-contractor from time to time and all such persons shall to this extent be or be deemed to be parties to the Contract.
11. **Force Majeure**
- 11.1 The Company shall not be liable to the Buyer 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 Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:-
 - 11.1.1 Act of God, explosion, flood, tempest, fire or accident;
 - 11.1.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - 11.1.3 acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
 - 11.1.4 import or export regulations or embargoes;
 - 11.1.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or of a third party);
 - 11.1.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;
 - 11.1.7 power failure or breakdown in machinery.
12. **Company's Right of Termination**
- 12.1 This Condition applies if:-
 - 12.1.1 the Buyer fails to observe or perform any of its obligations under the Contract and fails to remedy such breach (if remediable) within 10 working days of the Company's notice to do so;
 - 12.1.2 the Buyer shall refuse to take delivery or collect any of the Goods in accordance with the terms of the Contract;
 - 12.1.3 an encumbrancer takes possession of or a trustee or administrative or other receiver or similar officer is appointed in respect of all or any material part of the business or assets of the Buyer or distress or any form of execution is levied or enforced upon or sued out against any such assets and is not discharged within 7 days of being levied, enforced or sued out;
 - 12.1.4 the Buyer is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or suspends or threatens to suspend making payments (whether of principal or interest) with respect to all or any class of its debts;
 - 12.1.5 the Buyer convenes a meeting of its creditors or prepares or makes any arrangement or composition with, or any assignment for the benefit of, its creditors or a petition is presented or other steps are taken for making an administration order against or for winding up of the Buyer (other than for the purposes of and followed by a reconstruction previously approved in Writing by the Company, unless during or following such reconstruction the Buyer becomes or is declared to be insolvent);
 - 12.1.6 the Buyer ceases, or threatens to cease, to carry on business; or
 - 12.1.7 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 12.2 If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.
- 12.3 The Buyer shall notify the Company forthwith of the happening of any of the events referred to in Conditions 12.1.1 to 12.1.6.
13. **Confidentiality**
- 13.1 The Buyer shall not disclose, and shall use its best endeavours to prevent the disclosure by any of its employees or agents of, any confidential information about the Company, its employees or agents, its business or the Goods which may come into its possession or knowledge as a result of the Contract.
- 13.2 The provisions of Condition 13.1 shall survive any termination of the Contract.
14. **General**
- 14.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice and shall be deemed to have been received either 48 hours after posting (in the case of first class, recorded delivery or registered post) or 12 hours after despatch (in the case of telex or facsimile) or immediately (in the case of personal delivery).
- 14.2 The failure to exercise or delay in exercising a right or remedy under the Contract shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies or no single or partial exercise of any right or remedy under the Contract shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.
- 14.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
- 14.4 The Buyer shall not be entitled to assign its rights or transfer its obligations under the Contract in whole or in part, without the prior consent of the Company.
- 14.5 Save as expressly provided none of the provisions of this Agreement are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not named as a party to the Contract.
15. **Governance Law**
- 15.1 The Contract shall be governed by and construed in accordance with the Laws of England and the parties submit to the non-exclusive jurisdiction of the English Courts.
16. **Data Protection**
- 16.1 The company shall only collect, use and retain any personal information in the manner set out in the company's Privacy Policy. A copy of the company's Privacy Policy can be found on the company's web site: www.mhsteel.co.uk