

CONDITIONS OF SALE

INTRODUCTION

These conditions shall form part of every contract of sale entered into by Kingfisher Industrial Management Limited ("the Company") to the exclusion of all other terms and conditions including any which the Customer may purport to impose. They may not be varied except in writing signed by an officer of the Company. No contract comes into force until the Company, having received the Customer's purchase order, issues a written acceptance to the Customer pursuant to these Conditions of Sale.

1. DEFINITIONS AND INTERPRETATION

(a) "Customer" means the person, firm or company buying or agreeing to buy the Goods and/or Services from the Company.

"Contract" means the contract for supply of Goods and/or services and comprises the Company's written acknowledgement of the Customer's order, those parts of any design or instruction given by the Customer which have been expressly accepted by the Company in writing (if applicable), the Scheduled Sales Order Agreement (if applicable), the Terms and Conditions of Scheduled Order Agreement (if applicable), the proposal document for bespoke stainless steel design work (if applicable) and these Conditions of Sale.

"Goods" means any goods agreed in the Contract to be supplied to the Customer by the Company (including any part or parts of them).

"Input Material" means any documents, plans or other materials or specifications and any data or other information provided by the Customer in whatever format relating to the Goods and/or Services.

"Output Material" means any documents, plans or other materials or specifications and any data or other information provided by the Company in whatever format relating to the Goods and/or Services.

"Services" means (if applicable) any delivery, design, manufacture, advice or installation services provided by the Company or its sub-contractors.

(b) The headings in these Terms and Conditions are for convenience only and shall not affect their construction.

(c) References to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

2. VALIDITY AND ACCEPTANCE

(a) Unless previously withdrawn, the Company's quotation is open for acceptance for the period stated, or if no period is stated, 30 days. All orders (including those not based upon a quotation) must be in writing or by email and are subject to the Company's acceptance in writing. The Customer must ensure that the terms of its order and any applicable Input Material are complete and accurate.

(b) Any representations or warranties made or given by the Company or anyone on the Company's behalf prior to the Company's acceptance of an order and not contained in the Company's written quotation are hereby expressly excluded.

(c) All quotations are made subject to availability of the Goods or materials on receipt of the order.

3. SPECIFICATIONS

(a) All descriptive and shipping specifications, estimates, drawings and particulars of weights and dimensions supplied by the Company are approximate only and the descriptions and illustrations contained in its catalogues, price lists and other marketing materials are intended merely to present a general idea of the goods described therein, unless otherwise stated. ACO reserves the right to change its marketing materials from time to time without notice to the Customer.

(b) The Company may correct any typographical or other errors or omissions in any marketing materials, quotation, written acknowledgement of the Customer's order, or other document relating to the provision of the Goods and/or Services without any liability to the Customer.

(c) Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods and/or Services which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

4. SERVICES

(a) Where the Company has undertaken to provide any Services to the Customer, the Company shall provide the Services subject to these Conditions. Any changes or additions to the Services must be agreed in writing by the Company and the Customer may be charged extra.

(b) The Customer shall at its own expense supply the Company with all necessary documents, plans or other materials, and all necessary data or other information relating to the Services, within sufficient time to enable the Company to provide the Services in accordance with the Contract. The Customer shall ensure the accuracy of all Input Material.

(c) The Customer shall at its own expense retain duplicate copies of all Input Material and insure against its accidental loss or damage. The Company shall have no liability for any such loss or damage, however caused. All Output Material shall be at the sole risk of the Customer from the time of delivery to or to the order of the Customer.

(d) The Services shall be provided using reasonable care and skill and as far as reasonably possible in accordance with the Output Material, subject to these Conditions.

(e) The Company may at any time without notifying the Customer make any changes to the Services and Goods which are necessary to comply with any applicable safety or other statutory requirements, or which do not materially affect the nature or quality of the Services and Goods.

(f) The property and any copyright or other intellectual property rights in:

(i) any Input Material shall belong to the Customer.

(ii) Any Output Material shall, unless otherwise agreed in writing between the Customer and the Company, belong to the Company, subject only to the right of the Customer to use the Output Material for the purposes of utilising the Services and/or Goods.

(g) The Customer warrants that any Input Material and its use by the Company for the purpose of providing the Services and/or Goods will not infringe the copyright or other rights of any third party, and the Customer shall indemnify the Company against any loss, damages, costs, expenses or other claims arising from any such infringement.

(h) The Company warrants that any Output Material and its use by the Customer for the purposes of utilising the Services and/or Goods will not infringe the copyright or other rights of any third party, and the Company shall indemnify the Customer against any loss, damages, costs, expenses or other claims arising from any such infringement.

(i) Where the Company supplies in connection with the provision of the Services, any Goods (including Output Material) supplied by a third party, the Company does not give any warranty, guarantee or other term as to their quality, fitness for purpose or otherwise, but shall, where possible, assign to the Customer the benefit of any warranty, guarantee or indemnity given by the person supplying the Goods to the Company.

(j) The Company shall have no liability to the Customer for any loss, damage, costs, expenses or other claims for compensation arising from any Input Material or instructions supplied by the Customer which are incomplete, incorrect, inaccurate, illegible, out of sequence or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of the Customer.

(k) The Customer shall provide the Company or its sub-contractors or agents full and proper access to the Customer's site for the Company or its sub-contractors or agents to perform the Services and shall not hinder said performance in anyway.

5. SUBSTITUTION

In the event of a shortage of raw materials or component parts specified in the contract for use in the production of Goods the Company shall be entitled to substitute such other materials as it shall consider reasonably fit for such purpose.

6. PRICES

(a) Except where agreed in writing to the contrary, all prices quoted by the Company exclude carriage from the warehouse which shall be charged in addition.

(b) All prices are subject to revision at any time (including after the Company has acknowledged the Customer's order) in the event of any increase in cost caused by circumstances beyond the Company's control and the Company reserves the right to charge such revised prices for Goods and/or Services affected by the increase and remaining to be delivered.

(c) The Customer shall be liable for extra charges required as a result of its instructions, lack of instructions, and the inaccuracy of any Input Material or any other cause attributable to the Customer.

7. PAYMENT

(a) Unless otherwise agreed in writing, prices quoted are net of tax, which shall be payable in addition and:

(i) Payment for Goods and/or Services within the United Kingdom shall be made and be cleared funds on or before on the last day of the month following the month in which the Company's invoice is dated. Time for payment shall be of the essence.

(ii) payment for Goods and/or Services outside the United Kingdom shall be made by pro-forma payment or irrevocable letter of credit deposited with a London Bank approved by the Company upon presentation of shipping documents or if the Company is unable by reason of the Customer's instructions or lack of instructions to ship Goods when ready, upon notification to the Customer that the Goods are ready for shipment.

(b) In the event of any delay in payment the Company shall be entitled to charge interest at 8% over Bank of England minimum lending rate from time to time, accruing daily until payment is made, whether before or after any judgment. During any such period of default and at any time when the Company shall have reasonable grounds for doubting that payment will be made on the due date the Company shall be entitled to withhold deliveries on all contracts with the Customer without prejudice to its right to payment for Goods and Services delivered and for work undertaken and expenses incurred in connection with undelivered Goods and/or Services which shall become immediately due and payable on demand.

(c) The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

8. TERMINATION AND CANCELLATION

- (a) Either party may (without limiting any other remedy) at any time terminate the Contract by giving written notice to the other if the other commits any material breach of these Conditions and (if capable of remedy) fails to remedy the breach within 30 days after being required by written notice to do so, or if the other goes into liquidation, or (in the case of an individual or firm) becomes bankrupt, makes a voluntary arrangement with his or its creditors or has a receiver or administrator appointed.
- (b) No order for Goods or Services which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer 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 Seller as a result of cancellation.

9. DELIVERY DATES

Delivery dates are estimated only and not guaranteed and are not of the essence. The Company will endeavor to meet the Customer's delivery requirements but shall not be liable for any loss or damage whether direct, indirect, consequential or otherwise (all which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss) caused by the delay in delivery. Any liability of the Company for non-delivery of the Goods and/or Services shall be limited to replacing the Goods and/or Services within a reasonable time or issuing a credit note at the pro-rata Contract rate against any invoice raised for such Goods and/or Services.

10. TITLE

- (a) The property in the goods shall not pass to the Buyer and the Buyer shall keep the goods as bailee and trustee for the Company (returning the same to the Company upon request) until the price of the goods shall have been wholly paid and until any other sums whatsoever which are due from the Buyer to the Company whether under this contract or howsoever otherwise shall have been paid in full without any reduction or deferment on account of any dispute or cross-claim whatsoever.

(b) If the Buyer:-

- i) Manufactures another article or articles from the goods with or without the addition of other materials and/or
- ii) Mixes the goods in any way whatsoever with other materials and/or
- iii) Incorporates the goods into any other article as a component part the property in the products of such manufacture, mixing or incorporation (hereinafter referred to as "the Products") shall be transferred to the Company at the time of such manufacture, mixing or incorporation. The Buyer shall keep the Products as bailee and trustee for the Company until the Buyer has paid to the Company any sums due to the Company whether under this contract or howsoever otherwise in full and without any reduction or deferment on account of any dispute.

(c) Notwithstanding sub clauses (1) and (2) hereof the Buyer shall be entitled to sell the goods or the Products to third parties in the normal course of his business and to deliver them to such third parties but the proceeds of any such sale shall whenever any sum whatsoever is due from the Buyer to the Company whether under this contract or howsoever otherwise be held on trust for the Company and on such sale and/or delivery the Buyer, in any case where the price of the goods sold has not been paid in full to the Company, the buyer is hereby deemed to assign to the Company absolutely (and the Company hereby accepts such assignment) the benefit of any claim which the Buyer has against any such third party arising from such sale and/or delivery.

In the event of the Buyer becoming insolvent and a Receiver or Liquidator being appointed such Receiver or Liquidator shall pay into a separate bank account any sums received from third parties in respect of sales to them of goods or products by the Buyer, up to the amount of any indebtedness of the Buyer to the Company for the sole benefit of the Company.

11. RISK

Risk in the Goods shall pass to the Customer on delivery or immediately prior to off-loading from the delivery vehicle where the Customer undertakes the off-loading or immediately after loading a Customer's vehicle at our premises. If the Customer fails to take delivery or has not provided appropriate instructions, documents or authorisations, risk will pass when delivery is tendered.

13. DELIVERY

The Company will use all reasonable endeavors to adhere to any time stated for delivery, but any dates quoted for delivery are approximate only the Company shall not be liable for any delay in delivery of the goods however caused.

The Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and likely loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods (even if caused by the Company's negligence), nor will any delay entitle the customer to terminate or rescind the Contract unless such delay exceeds 180 days.

Terms and conditions are only applicable in the UK. For delivery outside the UK please contact the Company's export department by email at enquiries@kingfisher-industrial.com

Unless otherwise agreed delivery of the goods shall take place at the Customer's place of business.

Where the Company makes delivery of the goods to the Customer's place of business as agreed in writing, all charges in relation to carriage, including, without limitation to, transport costs, insurance and unloading, will at the Company's option, be borne to the Customer.

If for any reason the Customer does not accept delivery of any of the goods when they are ready for delivery then the goods will be deemed to have been delivered, risk passing to the Customer (including for loss or damage caused by the Company's negligence) and the Company may; Store the goods until actual delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation to storage and insurance); OR sell the products at the best price readily obtainable and (after deduction of all reasonable storage and selling expenses) charge the Customer for any shortfall below the contract price.

"This contract is divisible". Each delivery made hereunder:

- a) Shall be deemed to arise from a separate contract, and
- b) Shall be invoiced separately and any invoice for a delivery shall be payable in full in accordance with the terms of payment provided for herein without reference to and notwithstanding any defect or default in the delivery of any other instalment.

14. DAMAGE TO GOODS IN TRANSIT

(a) The Company shall have no liability in respect of Goods lost or damaged in transit unless the Customer or its agent notes such loss or damage on the delivery receipt and gives notice thereof in writing to the Company and the carrier within three days of delivery or such shorter period as may be required by the carrier's conditions of carriage or in the case of a whole consignment failing to arrive gives notice thereof in writing to the Company within three days of receipt of the Company's invoice or despatch note.

(b) The Company's liability in respect of Goods lost or damaged in transit shall be limited to repairing or replacing such Goods.

15. GUARANTEE

(c) All Goods sold by the Company shall be of satisfactory quality but shall not be sold as fit for any particular purpose unless the Customer shall have informed the Company in writing that it is relying upon the Company's skill and judgment and the Company shall have accepted such stipulation in writing.

(d) The Company will repair or replace any of the Goods or parts thereof in respect of which any defects arise solely from faulty materials or workmanship or (subject to Clause 6 (Substitution) above) from the Company's failure to supply Goods of the quality or specification ordered provided that such defects are notified to the Company in writing within three months of the date of delivery provided as follows:

(i) That in the case of defects which would have been apparent to the Customer on reasonable examination of the Goods on delivery the Customer shall notify the Company of the defects in writing within three days of the date of delivery.

(ii) that in the case of any other defects the Customer shall notify the Company of the defects in writing within three days of the date when the defects become apparent and

(iii) In respect of 15. (b) (i) and (ii) above, that the defective Goods are promptly returned carriage paid.

(e) Except insofar as any statute provides to the contrary the undertakings contained in the preceding paragraphs of this Clause are given in lieu of and to the exclusion of all conditions, warranties and representations whether express or implied by statute or otherwise as to the quality of the Goods or their fitness for any particular purpose or otherwise and the Company shall have no liability in respect of the Goods and/or Services save as provided in paragraph (b) of this Clause.

16. LIMITATION OF LIABILITY

(f) Except as expressly provided in these Conditions, the Company shall not be liable to the Customer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expenses or other claims and for the avoidance of doubt this includes loss of business and depletion of Goodwill (whether caused by the negligence of the Company, its servants or agents or otherwise) which arise out of or in connection with the provision of the Goods and/or Services or their use by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the amount of the Company's charges for the provision of the Goods and/or Services, except as expressly provided in these Conditions of Sale.

(g) Nothing in these Conditions of Sale will exclude or limit the Company's liability for death or personal injury caused by its negligence or for fraudulent misrepresentation.

17. INDEMNITY

Except insofar as any statute provides to the contrary, the Company shall not be responsible for any loss or damage suffered by any third party caused directly or indirectly by the Goods and/or Services whether as a result of their operation or use or otherwise and whether as a result of any defect therein or otherwise and the Customer shall indemnify the Company from any claim arising from any such loss or damage.

18. THIRD PARTIES

- (a) Where the Customer is selling on the Goods to others it agrees to pass to those others full and accurate information supplied by the Company concerning the Goods, including without limitation product information, specification, advice as to usage and details of all exclusions and limitations.
- (b) The parties do not intend that any term of the Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

19. FORCE MAJEURE

The Company will not be liable for any loss or damage sustained by the Customer by reason of act of God, war, riot, fire, strike, lock-out, governmental control or regulation, abnormal weather conditions, accident, breakdown or any other circumstances beyond the Company's control.

20. GENERAL

- (a) The contract shall be governed by English law and the English courts shall have non-exclusive jurisdiction to determine any dispute between the parties in connection with this Contract.
- (b) The Contract constitutes the entire agreement between the parties, supersedes any previous agreement or understanding and may not be varied except as stated herein. All other terms and conditions, express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.
- (c) Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.
- (d) The Customer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- (e) The Company may at any time assign, transfer, charge, mortgage, subcontract, declare a trust of or deal in any other manner with all or any of its obligations under the Contract to any third party or agent.
- (f) No failure or delay by either party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either party of any breach of the Contract by the other shall be considered as a waiver of any subsequent breach of the same or any other provision.
- (g) 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.