

# Megasteel LLP

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General Conditions of Sale:

## 1.0 GENERAL

### 1.1 Definitions:

'Seller' means Megasteel LLP or any of its named subsidiaries or divisions.

'Goods' means the subject matter of the contract including (but not limited to) raw materials, finished or semi finished materials or articles, machinery, parts, spares, commodities etc., and whether one or a number of items, whether or not identical or similar. These conditions apply to installation, inspection, maintenance and any other services provided by the Seller in the same way as they apply to Goods supplied by the Seller.

'Buyer' means the company, legal entity or individual with whom the Seller enters into a contract for the provision of the Goods as defined in Seller's tender.

1.2 All tenders submitted and orders accepted by the Seller are subject to the following Conditions of Sale to the exclusion of any conditions of order or purchase conditions of the Buyer or any other standards, conditions or (particulars of sale adopted by the Buyer), unless expressly accepted in writing by the Seller as part of the contract. No other variation or qualification will be valid.

1.3 Should any individual clause of these conditions be or become partly or totally invalid the remaining conditions shall remain unaffected.

## 2.0 QUOTATIONS & ACCEPTANCE

2.1 Quotations do not constitute an offer by the Seller to supply the Goods or carry out the work referred to therein and no order placed in response to a quotation will be binding unless accepted by the Seller in writing whereupon these conditions shall be deemed to be incorporated in the contract.

2.2 Unless previously withdrawn or expressly stated otherwise in writing by Seller, the tender is open for acceptance within thirty days of the date quotation.

2.3 All acceptances by the Seller will be subject to availability of the necessary materials and to the Buyer being able to provide any necessary authorisation and or licences and the same remaining valid.

2.4 The acceptance of the tender must be accompanied by sufficient information to enable Seller to proceed with the order or Seller shall be at liberty to amend the tender price or delivery to reflect any increase in costs resulting from the late supply of necessary information.

## 3.0 PRICE & DELIVERY

3.1 Unless otherwise specified in the tender and subject to Clause 9 Price Adjustment:

i. All prices are quoted and payable in UK pounds sterling except in the case of tenders clearly stating origin as Seller's German sales offices when prices are quoted and payable in European Union Euros.

ii. All prices quoted are exclusive of any Value Added Tax or similar tax or duty payable therein.

iii. The price includes for delivery Ex Works, or as otherwise specified in writing therein.

iv. The price includes for packing suitable for the Goods to the agreed point of delivery. In the case where Goods are agreed to be for export, packaging in accordance with Seller's standard export practice is included. Unless otherwise specified all packaging is non-returnable.

v. Delivery terms are to be interpreted in accordance with ICC "INCOTERMS" current at the date of tender.

3.2 Where Goods are sold by reference to the Seller's published price list, the price payable for the Goods shall be the ruling price as published in the price list current at the date of ex-works delivery of the Goods from the Seller's works.

3.3 Where the Agreement is for the provision of services, in the event of stand-down or demobilisation the Buyer shall pay the Seller the rate agreed by the parties for such events and all costs incurred by the Seller.

## 4. LIMITS OF CONTRACT

Seller's tender includes only for the supply of goods and/or services specified in our tender.

## 5. DRAWINGS, SPECIFICATIONS & PERFORMANCE

5.1 Buyer assumes responsibility for the specified capacity and performance of the goods being sufficient and suitable for Buyer's purpose. The Seller is entitled to assume that all drawings, descriptions, specifications and other information supplied by the Buyer to the Seller, whether written or verbal, is in all respects complete, accurate and entirely suitable for the Buyer's requirements.

5.2 Unless otherwise expressly agreed, the Seller shall have no responsibility for the performance, suitability or durability or any Goods or any materials or workmanship comprised therein to the extent that the same is manufactured in accordance with the Buyer's designs, drawings, standards or specifications.

5.3 All descriptions, specifications, drawings, and particulars of weights and dimensions submitted with Seller's tender or otherwise are approximate only and are intended merely to present a general idea of the goods described therein. Except where expressly agreed in writing, none of these shall form part of the contract.

5.4 Any performance figures given by Seller are based upon Seller's experience and are as Seller expects to attain on a test but Seller accepts no liability for failure to attain any figures given for performance unless specifically guaranteed in writing with an agreed method of recourse following failure to attain performance criteria. In the event of any part of the goods failing to fulfil any such written performance guarantee, Seller shall be entitled to a reasonable period to comply with the same.

## 6. TESTS

6.1 The Seller shall only be obliged to carry out tests which are specified in the tender and subsequent contract, and reasonable excesses and deficiencies thereof shall be accepted by the Buyer who shall not be entitled to reject any Goods on the grounds that they are not to precisely as specified. Tests and inspections shall take place under the Seller's standard testing arrangements. Any additional testing which the Seller expressly agrees in writing to carry out for the Buyer shall be charged extra to the Buyer.

6.2 If special tests are required or the tests are to be carried out in the presence of Buyer or Buyer's representative, unless otherwise agreed in writing, these must be made at Seller's Works and will be charged for. In the event of any delay on Buyer's part in attending such tests after seven days' notice that Seller is ready to complete them, the tests will proceed in Buyer's absence and shall be deemed to have been made in Buyer's presence.

#### **7. TIME FOR DELIVERY**

7.1 Time for delivery shall be determined in the written acceptance of the order issued by the Seller. Any times quoted for despatch in such written acceptance are from receipt by Seller of all necessary information and drawings to enable us to proceed.

7.2 Save insofar as a delay is caused by circumstances defined in clause 7.3, if Seller fail to deliver the goods within the period specified in Seller's Acceptance, Buyer shall be entitled to liquidated damages of 0.5% per complete week that the goods are late, subject to a maximum percentage of 5% of the Contract Price. Seller's liability for such liquidated damages shall be in full satisfaction for Seller's liability for delay.

7.3 Seller shall not be liable for any delay in delivery caused by any circumstances beyond our reasonable control, industrial action, instructions or variations issued by the Purchaser or any Purchaser's act or omission. In the event of such delay Seller shall be entitled to a reasonable extension of time.

7.4 If for any reason the Buyer is unable to accept delivery of the Goods when the Goods are contracted to be delivered and are ready for delivery the Seller shall be entitled to arrange suitable storage of the Goods and the Buyer shall be liable for all reasonable costs (including insurance) incurred by the Seller. This provision is without prejudice to any other right which the Seller may have in respect of the Buyer's failure to take delivery of the goods.

7.5 Part deliveries are permissible. Where an order consists of several part deliveries, non-compliance, defective or delayed performance of one part shall have no effect on the other part deliveries of such order.

#### **8. TERMS OF PAYMENT**

8.1 Subject to credit being approved all accounts are due for payment not later than 30 days from date of invoice unless otherwise agreed in writing. Otherwise payment must be received by Seller before despatch from Seller's works. All payments shall be made without deduction or set off. When deliveries (or the provision of services) are spread over a period each consignment will be invoiced as dispatched and each month's invoices will be treated as a separate account and be payable accordingly. Time is of the essence.

8.2 Failure to pay for any Goods or for any delivery or instalment as defined in clause 8.1 or where genuine doubts arise as to the Buyer's financial position shall entitle the Seller to suspend further deliveries and/or work both on the same order and on any other order from the Buyer without prejudice to any other right the Seller may have.

8.3 In the case of Seller's suspension of the work due to clause 8.2 this shall be without liability until payment or satisfactory security for payment has been provided. Following any conclusion of suspension due to clause 8.2 Seller reserves the right to revise the price and delivery date.

8.4 In the case of sales FOB at a named port within the country of manufacture of the Goods, unless otherwise agreed, the Buyer shall upon request by the Seller nominate a vessel willing to receive the Goods. Failing such a nomination within thirty (30) days (or such longer period as may be agreed in writing by the Seller) the Seller shall be entitled to require immediate payment for the Goods and to place the Goods in store at the risk and expense of the Buyer or to treat the contract as discharged and dispose of the Goods.

8.5 If the contract stipulates that payment is to be made by letter of credit this must be irrevocable and be drawn on or confirmed by a first class United Kingdom bank to be paid over the United Kingdom counter and all the appropriate documentation is presented to the Seller when requested by the Seller.

8.6 Any overdue payments shall be subject to interest at 8% above the rate from time to time charged by the Seller's receiving bank, as shown on the face of the invoice(s), for each month or part thereof that payment remains overdue.

8.7 If for any reason the Buyer is unable to accept delivery of the Goods when the Goods are contracted to be delivered and are ready for delivery the Seller shall be entitled to invoice the Buyer for the Goods and any additional costs subject to Clause 7.4. Payment shall be due in accordance with Clause 8.1 and notification from Seller that the goods are ready for despatch after having been tested as may be required by Clause 6.

#### **9. PRICE ADJUSTMENT**

9.1 The price appearing in our tender ("the Contract Price") shall be subject to adjustment as follows:

i. In the event of the suspension of work by Buyer's instructions or lack of instructions or following invoking clause 8.2, the Contract Price shall be increased to cover any extra expense thereby incurred by Seller.

ii. Seller reserves the right to increase all prices by the amount to which Seller becomes liable in respect of any material, fuel, power, transportation, labour or other costs, or tariffs, duties or taxes whatsoever imposed.

iii. Where delivery other than Ex Works as defined in clause 3.1 sub-clause (ii) is expressly stipulated, all charges for freight, insurance, etc., are based on the rates current at the time of tender, and any variation in such rates is for Buyer's account.

9.2 Where the price for the Goods is varied in accordance with this clause the price as varied shall be binding on both parties and shall not give either party any option of cancellation.

## **10. STORAGE**

If Seller does not receive forwarding instructions sufficient to enable despatch within seven (7) days, or in the case of goods for export fourteen (14) days, after notification that the goods have been tested under clause 6 or that they are ready for despatch, Buyer shall take delivery or arrange for storage. If delivery is not taken or if Buyer does not promptly arrange for storage, Seller shall be entitled to store the goods at Buyer's risk and expense.

## **11. DAMAGE IN TRANSIT.**

11.1 Seller accepts no responsibility for loss or damage to the goods or the packing thereof, beyond the contracted point of transference of risk as defined in Clause 12.

11.2 Up to contracted point of transference of risk as defined in Clause 12, Seller shall only be liable for damage or loss or non-delivery of the goods or any part thereof if :

i. in the case of damage, Buyer expressly notifies Seller and Seller's carriers (if known to Buyer) in writing of the existence of damage within three days and notify Seller in writing of detailed particulars of the same within seven days after the termination of the transit, and

ii. in the case of loss or non-delivery Buyer expressly notifies Seller and Seller's carriers (if known to Buyer) in writing of the loss or non-delivery within fourteen days and supply particulars thereof within twenty-eight days after the date on which the transit of the Goods was terminated or would, in the normal course of events, have terminated. Subject to compliance with such requirement, Seller will repair or replace at Seller's cost the Goods damaged, lost or undelivered, as the case may be.

11.3 When Bills of Lading are taken out by Seller, Seller will, on Buyer's instructions and expense, insure against loss or other risk, and will, on receipt of Buyer's indemnity, take all reasonable steps to recover from the underwriters any loss or damage for which they may be liable.

## **12. TRANSFER OF OWNERSHIP.**

12.1 The risk in the Goods shall pass to the Buyer in accordance with delivery terms as defined by INCOTERMS current at the date of tender. If the Goods are appropriated to the Buyer but kept at the Seller's premises article 10 shall apply.

12.2 Notwithstanding sub-clause 12.1, title to the Goods remains vested in the Seller and the Buyer shall keep the Goods as bailee and trustee for the Seller (returning the same to the Seller upon request) until the price thereof has been paid in full together with all other sums due from the Buyer in accordance with the contract and until payment in full has been received by the Seller for any other Goods supplied by the Seller.

12.3 Pending payment for Goods as aforesaid the Buyer shall not mix or incorporate the Goods with any other goods and shall keep the Goods suitably marked or otherwise plainly identified that they are the property of the Seller.

12.4 Pending payment for Goods as aforesaid the Buyer shall store them separately so that they can be identified as the property of the Seller. The Seller shall be entitled to direct the Buyer not to resell the same or remove them from where they are located without consent. Any Goods in the Buyer's possession shall be presumed not to have been paid for unless the Buyer can prove otherwise and the Seller shall have the right to appropriate any payment made by the Buyer to any invoice or invoices (whether or not due at the time of payment) in the Seller's absolute discretion.

12.5 If, prior to making payment for the Goods, the Buyer shall sell or otherwise dispose of the Goods or make any insurance claim in respect thereof, the Buyer shall not give any warranties or incur any liabilities on behalf of the Seller and the proceeds of any such sale or other disposition (or claim hereto) or any such insurance proceeds (or claim thereto) shall belong to the Seller and be held by the Buyer as trust funds to the extent of all sums due to the Seller in respect of such Goods, and the Buyer shall pay such proceeds into a separate account.

12.6 At any time prior to full payment (whether or not payment is then overdue) the Seller may (without prejudice to any of its other rights) retake possession of the Goods or any part thereof and may enter on the Buyer's premises by its employees or agents for that purpose or for the purpose of ascertaining whether the Buyer is complying with the provisions of this clause.

12.7 Any Goods repossessed by the Seller may be resold on such terms as he may determine and the Buyer shall remain liable to the Seller for the difference between the net proceeds of such resale and all outstanding sums due to the Seller in respect of such Goods and for all costs and expenses incurred by the Seller in repossessing, storing and reselling the same.

12.8 Nothing in this clause shall give the Buyer any right to return Goods sold by the Seller and the Seller may sue the Buyer for the price when due (without prejudice to its other rights) notwithstanding that property therein may not have passed to the Buyer.

12.9 The Buyer's rights to use the Goods or to sell them prior to full payment may be terminated forthwith by written notice given by the Seller to the Buyer and shall automatically terminate with or without such notice if a receiver is appointed over any of the assets or the undertaking of the Buyer or a winding up order is made against the Buyer or the Buyer goes into voluntary liquidation (otherwise than for the purpose of solvent reconstruction or amalgamation) or calls a meeting of or makes any arrangement or composition with its creditors generally or commits any acts of bankruptcy or allows execution or distress to be levied against its Goods and in the event of a Receiver or Liquidator of the Buyer 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 by the Buyer up to the amount of any indebtedness of the Buyer to the Seller for the sole benefit of the Seller.

## **13. WARRANTY: LIMITATION OF RESPONSIBILITY**

13.1 All goods are guaranteed against defects from faulty design, materials, or workmanship for six (6) months from the date of transfer of risk as defined in Article 12 ('Warranty Period'). Seller's liability under this clause will cease following expiration of said Warranty Period.

13.2 Seller will (at Seller's discretion) make good by repair or replacement of the defective part any such defect, provided that such defective parts are promptly returned to our Works or Store, all charges prepaid. The repaired or new parts will be delivered free of charge in the country of replacement manufacture or location of repair. Defective parts thus replaced remain Seller's property. Seller will require a reasonable period of time to complete repairs or replacements.

13.3 A claim under this clause in respect of any defect shall not entitle Buyer to cancel or refuse delivery of or payment for any other order, delivery or instalment.

13.4 Seller's liability hereunder, during or following the Warranty Period, is in lieu of any condition or warranty implied by law or otherwise as to the suitability of the goods for any particular purpose, use or application.

13.5 In the event that Free Issue items are supplied to the Seller by the Buyer for use in the execution of the order, the Buyer warrants that such items shall be suitable for the purpose for which they are supplied and will indemnify Seller against any damages or liabilities incurred by Seller to any Third Party as a result of such warranty.

#### **14. PERMITS**

14.1 Where appropriate the Buyer shall obtain within fourteen (14) days of making the contract or such other period as the Seller may agree and shall maintain in full force all necessary permits:

- i. to enable the Goods to be imported into the country of destination;
- ii. to enable payment to be affected in accordance with the contract. Written confirmation thereof, including the permit number, date and period of validity, shall be furnished to the Seller which shall be under no obligation to manufacture or supply the Goods before receipt thereof. In the event of any breach of this obligation, the Seller shall be entitled without prejudice to any of their remedies to cancel the contract; and
- iii. to enable in the case of services the work to be performed in accordance with the contract.

#### **15. PATENTS**

15.1 Any drawings, specifications or other technical information supplied to the Buyer by the Seller in connection with the contract are provided on the express understanding that the Buyer will not disclose, give, loan, exhibit or sell such drawings, specifications or technical information to any third party and that the Buyer will not use them in any way except in connection with the Goods or services provided hereunder. The copyright in all documents provided by the Seller will remain vested in the Seller.

15.2 The Buyer shall indemnify the Seller against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement of any patent, registered design, copyright, trademark or other industrial or intellectual property rights resulting from compliance by the Seller with the Buyer's specific requirements, designs or specifications or the use of such article or material in a manner or for a purpose or in a foreign country not specified or disclosed to Seller..

15.3 The Seller shall indemnify the Buyer against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement of any patent, registered design, copyright, trademark or other industrial or intellectual property rights resulting from the use or sale of the Goods supplied by Seller to Buyer, provided this action does not result from circumstances defined in clause 15.2.

15.4 Provision of such indemnity as defined in clause 15.3 is conditional on Buyer giving to Seller the earliest possible notice in writing of any claim being made or action threatened or brought against Buyer and on Buyer permitting Seller at Seller's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim. Provided also that this indemnity is conditional on Buyer not making any admission which might be prejudicial to such negotiations or litigation and affording Seller all available assistance for such purposes, any expenses incurred by Buyer in so doing being repaid by Seller.

#### **16. SUB-CONTRACTING**

The Seller reserves the right to sub-contract the whole or any part of the contract.

#### **17. INDEMNITY**

The Buyer agrees upon demand to indemnify the Seller against death of or injury to persons or loss of or damage to property or for or in respect of any claims, demands, proceedings, damages, costs charges and expenses in respect thereof or in relation thereto to the extent that same are caused by or related to:

- i. defective materials or products supplied by the Buyer to the Seller and incorporated by the Seller in Goods produced by the Seller for the Buyer;
- ii. the improper incorporation, assembly, use, processing, storage or handling of Goods by the Buyer;
- iii. designs, drawings or specifications given to the Seller by the Buyer in respect of Goods produced by the Seller for the buyer.
- iv. any act, neglect or breach of statutory duty done or committed by the Buyer his agents servants or other contractors.

#### **18. LIMITATIONS OF LIABILITY**

18.1 Seller shall not be liable, whether in contract or by way of indemnity or tort (including but not limited to negligence) for loss of contracts, loss of profits or use or any other economic loss resulting.

18.2 In respect of all other losses, our liability shall be limited to £1,000,000 or the contract price, whichever is the lesser.

#### **19. ASSIGNMENTS**

None of the rights or obligations of the Buyer under the contract may be assigned or transferred in whole or in part without the prior written consent of the Seller.

#### **20. ARBITRATION**

If at any time any dispute or difference arises out of or in connection with the contract, either party may give the other notice in writing of the existence of such dispute, or difference, and the same shall be referred to the arbitration of a person and location to be mutually agreed upon, or failing agreement within fourteen days of the receipt of such notice, of some person and location appointed by the President for the time being of the Chartered Institution of Arbitration. The submission shall be deemed to be a submission to arbitration within the meaning of the Arbitration Acts 1950-1996 or any statutory modification or re-enactment thereof.

#### **21. DETERMINATION OF A CONTRACT**

If Buyer shall make any arrangement or composition with creditors, or commit any act of bankruptcy, or if any petition or receiving order in bankruptcy shall be presented or made against Buyer, or if, being a limited company, any resolution or petition to wind up the company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver or manager shall be appointed of Buyer's company's undertaking, property or assets, Seller shall have the right forthwith to determine the contract, and upon written notice of such determination being posted to Buyer's last known address, the contract shall be deemed to have been determined.

#### **22. RIGHTS OF THIRD PARTIES**

The right whether past present or future pursuant to the Contracts (Rights of Third Parties) Act 1999 (or otherwise) of any third party to enforce the terms of this contract is expressly excluded.

#### **23. FORBEARANCE**

No forbearance or indulgence by the Seller shown or granted to the Buyer whether in respect of these conditions or otherwise shall in anyway affect or prejudice the rights of the Seller against the Buyer or be regarded as a waiver of any of these conditions.

#### **24. LEGAL CONSTRUCTION**

The contract shall in all respects be construed and operate in conformity with English Law and is subject to the exclusive jurisdiction of the English Courts.