

## STANDARD CONDITIONS OF MANUFACTURE AND SALE



### 1. RULING CONDITIONS

(a) These Conditions shall apply to all quotations made and all orders and contracts for the sale of goods accepted by us. Any other terms, conditions, warranties or representations, whether made prior to, collateral with or subsequent to the order or contract are, hereby excluded. Special or additional terms of the Purchaser contained in his order or otherwise shall be of no effect unless the same be separately brought to our notice and express consent thereto is given in our written acceptance.

(b) None of our servants or agents has authority orally to agree to or accept any variation or addition to any contract and the same shall only be binding upon us if contained in writing and signed on our behalf by a director or other duly authorised person. Nothing in this clause shall limit or exclude our responsibility for fraudulent misrepresentation.

(c) Each order for goods shall be deemed to be an offer by the Purchaser to purchase goods subject to these Conditions. No contract shall exist until written confirmation of acceptance of the order is issued by us or (if earlier) the goods are delivered to the Purchaser.

(d) We shall be entitled but not obliged to require the Purchaser to confirm in writing all orders for extra goods or variations upon the work specified in the quotation.

(e) We reserve the right to deliver goods made specifically or to the Purchaser's Patterns to within 10% of the quantity or weight specified in the Purchaser's order and payment shall be made for the actual quantity supplied pro rata.

(f) All orders are subject to our receiving any necessary licence to purchase or use and to our being able to obtain raw materials.

### 2. DOCUMENTS

(a) Unless otherwise stipulated by us all descriptions, illustrations, drawings, estimates or performance, weights and measures or other specifications provided by us are approximate only and will not form part of the contract for the sale of goods between us and the Purchaser.

(b) We reserve the right at any time to correct clerical or technical errors in the contract documents.

(c) The Purchaser shall furnish us with all necessary specifications with his order. The Purchaser must ensure that the terms of his order and any applicable specification are accurate and complete. We take no responsibility for goods manufactured, priced or delivered not in accordance with the order or the specifications unless the corresponding part of the Purchaser's order and specifications are clear and correct in every particular and the said particulars are correctly set out in any drawings submitted by us, which it is the Purchaser's duty to check. No responsibility is accepted for goods manufactured or priced not in accordance with any requirements or any governmental or other inspecting authority unless such fault arises from our negligence.

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Certificate No. 01119

[www.harrisonilverdale.com](http://www.harrisonilverdale.com)

Registered in England No. 01686821. All transactions subject to our standard conditions of trade. V.A.T. Registration No. 308 9259 36.

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Dronfield  
Sheffield  
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United Kingdom

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### 3. PRICES

(a) All selling prices contained in quotations and acknowledgements are based upon conditions existing at the time of quotation or the acknowledgement. They are provisional only and are subject to revision by us at any time before the goods are despatched to take account of any subsequent variations in the cost to us, whether direct or indirect (including but without prejudice to the generality of the foregoing) changes in the cost of materials, any increase in wage rates or National Insurance contributions or increases in overhead costs. Prices may also be revised by us where the Purchaser calls down quantities smaller than those specified in his order, alters the specifications of the goods ordered, or if delays are caused by any instructions of the Purchaser or failure of the Purchaser to give us adequate information or instructions.

(b) All prices are quoted exclusive of Value Added Tax (VAT) and the Purchaser will be responsible to pay all VAT due on the contract price.

(c) Unless otherwise stipulated in the contract where the selling price of goods delivered by us within the United Kingdom exceeds £250 carriage will be paid by us. Carriage on all other deliveries will be charged to the Purchaser at cost (save as provided below). No allowance will be made to the Purchaser for carriage where goods are collected from our works by the Purchaser or a carrier arranged by him. Carriage on goods delivered by courier on the same day basis or by carrier on next day basis will be charged to the Purchaser, the charge to be at our absolute discretion.

(d) Where prices are varied in accordance with this condition then they shall be binding on the Purchaser and shall not give the Purchaser any right or cancellation.

### 4. TERMS OF PAYMENT

(a) Unless otherwise stipulated in writing by us all payments fall due no later than 30 days from the date on which the goods were despatched. Time for payment shall be of the essence and no payment shall be deemed to have been received until we have received cleared funds.

(b) The Purchaser shall make all payments due under the contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Purchaser has a valid court order requiring an amount equal to such deduction to be paid by the Purchaser to us.

(c) Where the contract is to be or may be fulfilled in separate instalments, deliveries or parts, payment for each such instalment, delivery or part shall be made as if the same constituted a separate contract.

(d) Should the Purchaser fail punctually to comply with the terms of payment, we shall be entitled claim costs and interest all on the sum due under the Late Payment of Commercial Debts (Interest) Act 1998 from the date when such sum became due to the date of actual payment to us, both before and after any judgement.

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## 5. TERMINATION AND PARTIAL DELIVERIES

(a) In the event of the Purchaser for any reason whatsoever failing within one calendar month to effect any payment which may be due under any contract with us, or if he commits any breach of the contract, or if he becomes insolvent or enters into a composition with or for the benefit of his creditors, or being a body corporate has a receiver appointed of its undertaking or assets or any part thereof, or save for the purpose of reconstruction or amalgamation, goes into liquidation, we shall thereupon be entitled, without prejudice to our other rights, to require payment in cleared funds in advance of further deliveries of the goods, to exercise our right under clause 4(d) or 10(c) of these Conditions or to forthwith terminate this or any other contract with the Purchaser or suspend or cancel any further deliveries of the goods to the Purchaser under any contract without liability on our part.

(b) We shall be entitled, without liability on our part and without prejudice to our other rights, to terminate the contract or any unfulfilled part thereof, or at our option to suspend or make partial deliveries, if:-

(i) The Purchaser requests us to carry out works development or modifications in addition to or in variation of the contract.

(ii) The performance of our contractual obligations or that of our suppliers is prevented, hindered or delayed, whether directly or indirectly, by reason of the Purchaser failing to furnish necessary information or instructions, war, civil commotion, governmental restrictions, transport difficulties, strikes, lock-outs, accidents or stoppages to works, shortages of labour, materials, equipment, fuel or power, machinery breakdown or any other cause whatsoever beyond our or our sub-contractor's reasonable control, whether such cause exists at the date of the order or not. Any such cause shall be deemed to prevent, hinder or delay us or our suppliers if we or our suppliers respectively are thereby prevented, hindered or delayed from fulfilling all aggregate obligations both under the contract and under all other contracts, whether with the Purchaser or with third parties, relating to the supply of the same or similar goods.

## 6. CANCELLATION

Contracts may be cancelled only with our written consent and on terms which will indemnify us for all loss including, but without limitation:-

- (i) The full cost of parts manufactured or in course of manufacture, less scrap value;
- (ii) The full cost of metal in stock, less scrap value;
- (iii) Any cancellation charges suffered by us in relation to the cancellation of outstanding metal commitments relating to the contract.

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## 7. TIME FOR DESPATCH

All periods for despatch and delivery expressed in the contracts are approximate only and time shall not be made of the essence by notice. We will use all reasonable endeavours to effect despatch within the stipulated period, or if no such period be stipulated, within a reasonable time. But we shall be under no liability for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the goods (even if caused by our negligence) nor shall such late despatch or delivery be deemed to be a breach of contract, nor entitle the Purchaser to cancel the contract.

## 8. DELIVERY

(a) Where delivery is affected on our vehicles or by an independent contractor, arranged by us, the Purchaser shall be bound to accept delivery of the goods on arrival at his works, when risk in the goods shall pass to the Purchaser. The Purchaser must notify us and the carrier in writing (otherwise than upon the carrier's documents) of damage in transit, mis-delivery or quantity discrepancy immediately on arrival. The Purchaser must notify us and the carrier in writing (otherwise than upon the carrier's documents) of non-delivery within 6 days where delivery is effected through the post, 7 days where delivery is effected by road transport or British Rail, and 5 days where delivery is effected on our own vehicles in all cases from the date of despatch advised to the Purchaser.

(b) Where delivery is affected on the Purchaser's vehicles or is arranged by him, risk in the goods shall pass to the Purchaser on delivery to the carrier, whether he be the Purchaser's servant or agent or an independent contractor arranged by the Purchaser.

(c) Without prejudice to our other rights should the Purchaser, for any reason fail to accept delivery of the goods on arrival, the goods shall be deemed to have been delivered and we shall be entitled at the Purchaser's risk and expense to store the goods and/or to procure or effect storage of the goods elsewhere.

(d) The Purchaser will ensure that any necessary unloading facilities will be available at the place of delivery.

(e) Without prejudice to our other rights, should the Purchaser for any reason fail or refuse to accept delivery of the goods or any instalment or part thereof within 30 days of the due date, we shall be entitled to invoice the Purchaser at monthly intervals until actual delivery for an amount equal to 1% of the selling prices of such delivery, instalment or part, and the Purchaser shall pay such invoices within 14 days of the Purchaser's receipt thereof. Following actual delivery, the Purchaser will be entitled to set off the amounts of such invoices in reduction of the selling price provided payment is made in accordance with clause 4 hereof.

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## 9. SUB-CONTRACTORS

We may employ sub-contractors or hire without notification to the Purchaser.

## 10 TITLE

(a) The property in the goods shall not pass to the Purchaser until we have received in cash or cleared funds payment in full of the price of the goods and all other goods agreed to be sold by us to the Purchaser for which payment is then due.

(b) Until such time as the property in the goods passes to the Purchaser, the Purchaser shall hold the goods as our fiduciary agent and bailee, and shall keep the goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as our property. Until that time the Purchaser shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to us for the proceeds of sale or otherwise of the goods, whether tangible or intangible, including insurance proceeds and shall not pay such proceeds into an overdrawn bank account and shall keep all such proceeds separate from any moneys or property of the Purchaser and third parties and, in the case of tangible proceeds, properly stored, protected and insured.

(c) Until such time as the property in the goods passes to the Purchaser (and provided the goods are still in existence and have not been resold), we shall be entitled at any time to require the Purchaser to delivery up the goods to us and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or any third party where the goods are stored and repossess the goods.

(d) The Purchaser shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain our property, but if the Purchaser does so all moneys owing by the Purchaser to us shall (without prejudice to our other rights or remedies) forthwith become due and payable.

## 11. FAULTS DEFECTS AND EXCLUSION OF LIABILITY

(a) On arrival of the goods the Purchaser must immediately examine test inspect and mechanically (if necessary) examine them and on discovery of any faults or defects notify us thereof in writing within 7 days.

(b) Upon the Purchaser notifying us within the appropriate period provided by sub-clause (a) above of any defect in the goods or notifying us within the appropriate period provided by Clause 8 (a) of damage in transit, mis-delivery or quantity discrepancy and upon the goods being returned to us within 10 days of such notification and upon the fault, defect, or damage in transit, mis-delivery or quantity being established to our satisfaction, we shall use our reasonable endeavours to replace such goods or to make up any shortage. If goods are delivered not in accordance with specification, we shall accept the same for credit and replacement. All goods replaced hereunder remain our property. We shall not replace goods or make up shortages:

(i) if the Purchaser makes any further use of the goods after giving such notice;

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- (ii) if faults or defects are not notified in accordance with clause (a) or if damage in transit, mis-delivery or quantity discrepancy is not notified in accordance with clause 8(a);
  - (iii) in respect of which the Purchaser has without our previous written consent effected modifications or repairs;
  - (iv) if the faults or defects were caused by incorrect or negligent handling, disregard of operation instructions, overloading, unsuitable work, faulty erection or any other default by the Purchaser, his servants or agents;
  - (v) if the faults or defects were caused by fair wear and tear, accident or any other matter beyond our reasonable control occurring after the date of arrival.
- (c) the terms of this Condition are in lieu of all conditions, warranties or other terms as to description, fitness for purpose, condition, merchantability, quality or otherwise in respect of the goods or packing, whether expressed in the contract or implied by common law, custom or statute and notwithstanding that such purpose or condition may be, may become, or may have been known to us. Apart from our obligation to replace goods in accordance with the terms of this clause 11, we accept no liability either for faults or defects in goods or for any loss or damage to the Purchaser or others arising directly or indirectly from any breach by us of the terms of the contract or of the general law, and defects in quality of dimensions shall not be a ground for the cancellation of the contract or for the balance of the contract by the Purchaser.
- (d) Without prejudice to the generality of the foregoing:
- (i) all warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the contract for the sale of goods.
  - (ii) Nothing in these conditions excludes or limits our liability in respect of death or personal injury caused by our negligence or in respect of fraudulent misrepresentation.
  - (iii) Subject to clauses 11(d)(i) and (ii), our total liability in contract, tort, (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the contract shall not exceed the price of the goods stated in the contract in question. The Purchaser shall also indemnify us against all actions, claims or demands by third parties in tort or otherwise arising directly or indirectly in connection with the goods to the extent that the same exceeds the limitation of liability aforesaid.
  - (iv) Subject to conditions 11 (d) (i) and (ii) we shall not be liable to the Purchaser for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the contract.

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## 12 INDEMNITY

The Purchaser shall indemnify us and shall keep us indemnified against all actions, claims, demands, penalties and costs by third parties in tort or for infringement of patents or registered designs or otherwise arising in connection with the goods or with their delivery or unloading or with work done by us on the goods in accordance with the Purchaser's specifications.

## 13 EXPORT TERMS

13.1 Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of INCOTERMS shall have the same meaning in these Conditions, but if there is any conflict between the provisions of INCOTERMS and these Conditions, the latter shall prevail.

13.2 Where the goods are supplied for export from the United Kingdom, the provisions of this clause 13 shall (subject to any special terms agreed in writing between the Purchaser and us) apply, notwithstanding any other provision of these Conditions.

13.3 The Purchaser shall be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties on them.

13.4 Where goods are sold f.o.b. the risk in the goods shall pass to the Purchaser immediately the goods are over the ship's rails and we shall be under no obligation to give the Purchaser the notice specified in Section 32(3) of the Sale of Goods Act 1979.

13.5 The Purchaser shall be responsible for arranging for testing and inspection of the goods at our premises or at a place agreed in writing by us and the Purchaser before shipment. We shall have no liability for any claim in respect of any defect in the goods which would be apparent on inspection and which is made after shipment or in respect of any damage during transit.

13.6 Unless otherwise required by us, payment of all amounts due to us shall be made by an irrevocable letter of credit, in a form acceptable to us, to be opened by the Purchaser in our favour and confirmed by a bank in the United Kingdom acceptable to us within fourteen days after delivery.

## 14 EXPECTED ORDERS

If the Purchaser places an order for goods and incorporates in that order an estimate of the volume which he expects to require at a specified future date ("Expected Order") the Purchaser must confirm the Expected Order by notice in writing at least one month before such specified date. The Purchaser's notification does not bind us to accept the order so placed until acceptance of such an order is made by us in writing within 14 days of the date of such notification.

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## 15 TOOLING

- (a) "Tool" means an instrument used by us or our suppliers to produce goods ordered by the Purchaser.
- (b) The ownership and property in a Tool is vested in or shall become vested in us and the Purchaser shall obtain no right or interest in it notwithstanding that the Tool is manufactured specifically to make or contribute in the making of the goods to be supplied to the Purchaser or the Purchaser has made any contribution to the cost thereof howsoever made. The cost of obtaining or manufacturing a Tool shall be reflected in the price paid by the Purchaser for the goods supplied.

## 16 GENERAL

- (a) Failure by us at any time to enforce any of the provisions of these Conditions shall not be construed as a waiver by us of such provisions, or a waiver if any subsequent breach or default or in any way effect the validity of these Conditions.
- (b) Neither party intends 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.
- (c) If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.
- (d) The Purchaser shall not be entitled to assign the contract or any part of it without our prior written consent.
- (e) The formation, existence, construction, performance, validity and all aspects of the contract shall be governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.



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