

SPERRIN METAL PRODUCTS LIMITED

General Terms and Conditions of Offer and Sale

DEFINITIONS

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| Buyer | shall mean any Person, Corporation, Organisation or Company contracting to purchase any goods or services from the company. |
| Company | shall mean Sperrin Metal Products Limited. |
| Conditions | shall mean the Company's general terms and conditions of offer and sale set out below. |
| Contract | shall mean the agreement between the Buyer and the Company for the execution of the Works howsoever made, including therein the conditions and all other documents to which reference may properly be made in order to ascertain the rights and obligations of the parties under the said agreement. |
| Contract Price | shall mean the sum in the Company's quotation increased or reduced by such sums (if any) as under the Conditions are to be taken into account in ascertaining the Contract Price. |
| Company's Equipment | shall mean all plant, vehicles, machinery, stores, tools, and other things brought on to the site by the Company and required for the construction and completion of the Works but not for incorporation therein. |
| Materials Site | shall mean the goods to be supplied under the Contract shall mean the address specified by the Buyer to which delivery of the materials shall be made by the Company. |
| Works | shall mean all the Materials to be supplied and the work and labour to be done by the Company under the Contract. |

1. Offer and Acceptance

- 1.1 The Company's quotation shall constitute an offer to supply Materials or services or to carry out any Works referred to therein on and subject to the Conditions.
- 1.2 An order placed by the Buyer in response to a quotation shall only be binding on the Company if it is accepted by the Company in writing. Notwithstanding that at the order form or other document whereby the Buyer places his order with the Company may contain or refer to printed terms or conditions inconsistent with or differing from the Conditions, such order form or other document shall, unless the same be accompanied by a separate letter expressly requesting that the Conditions be varied or supplemented in such specific respect or respects as may be particularised in such letter, be deemed to constitute an unqualified acceptance of the Conditions which shall apply to the exclusion of any other such printed terms or conditions as aforesaid.
- 1.3 No variation, waiver or supplement to the Conditions shall be binding on the Company unless expressly accepted by the Company in writing.
- 1.4 An order must be placed by the Buyer in response to a quotation within 28 days of the date of the quotation, failing which the quotation shall be deemed to have been withdrawn.

2. Point of Delivery

- 2.1 Unless otherwise agreed in writing, the Buyer shall be responsible for the provision of labour and equipment to off-load the Materials upon their arrival at the Site. Those engaged in such off-loading operation to be the responsibility of the Buyer so far as any claim arising in respect of any personal injury or loss or damage sustained as a result of the off-loading operations, such persons at no time being under any contract of service or employment with the Company.
- 2.2 Unless otherwise specified, the prices of Materials are quoted 'Carriage Paid to Site.'

3. Buyer's Risk

- 3.1 From time of their arrival at the Site, the Buyer shall be responsible for loss or damage to the Materials and to the Company's Equipment however caused or arising (except to the extent that it is caused by or arises from the acts or omissions of the Company's servants or subcontractors) and shall indemnify and keep the Company indemnified to the full value thereof until the Contract is completed or the Materials and Company's Equipment have been removed from the Site by the Company.
- 3.2 Should any Materials required for the installation be lost or damaged by acts or omissions of the Buyer or of others (not being the Company's servants or subcontractors) such Materials shall be replaced by the Company at the Buyer's expense. The Buyer shall accept any delay to the Works due to the need to replace lost or damaged items.
- 3.3 The Buyer is required to acknowledge receipt of all Materials, delivered at the Site by signing the appropriate Delivery Note. The Delivery Note, duly signed, should then be forwarded to the Company Contracts Manager, at the address shown thereon.

4. Price Variations

- 4.1 Unless otherwise stated in the quotation, the Contract Price is deemed to exclude Value Added Tax. To the extent that the Tax is properly chargeable on the supply to the Buyer of any Materials or services provided by the Company under the Contract, the Buyer shall pay such Tax as an addition to payments otherwise due to the Company under the Contract.
- 4.2 The Contract is based on the cost of materials, labour and other rates and prices ruling at the date of the Company's quotation. If by reason of any rise or fall in the rates of wages, salaries or other payments (including allowances) payable to labour or in the cost of material or transport or of conforming to such laws, orders, regulations and by-laws (including the imposition of any new such matter) as are applicable to the Works above or below such rates and costs ruling at the date of the Company's quotation, the cost to the Company of performing its obligations under the Contract shall be increased or reduced, the amount of such increase or reduction shall be added to or deducted from the Contract Price as the case may be. For the purposes of this Condition, 'the cost of material' shall be construed as including any duty or tax by whomsoever which is payable under or by virtue of any Act of Parliament on the import, purchase, sale appropriation, processing or use of such material.
- 4.3 Where the Works include the erection of Materials the Contract Price is based upon the Site being available to the Company between the hours of 9.00am and 5.00pm from Monday to Friday inclusive unless otherwise agreed, and on the assumption that full and free access to the Site will be given to the Company during these hours and that the facilities specified in paragraph 5 hereof will be provided by the Buyer. The additional costs of overtime or weekend working and lost time due to lack of access to the Site or non-availability of the facilities to be provided by the Buyer shall be added to the Contract Price and shall be paid by the Buyer.

5. Obligations

Unless the Buyer shall be otherwise advised in writing he shall at his own expense and at such time or times as may be specified by the Company.

- 5.1 Provide covered and secured waterproof accommodation, within the immediate vicinity of the Site in which erection of the Works is to take place to ensure the safe custody of the materials and to minimize deterioration to Materials and Company's Equipment whilst on Site.
- 5.2 Provide adequate lifting facilities and personnel to handle Materials and Company's Equipment into store as provided in paragraph 5.1 above, prior to commencement of the Works.
- 5.3 Provide a satisfactory and continuous means of access to the Site free from all obstructions together with offloading facilities and parking facilities for vehicles of the Company, its servants and agents.
- 5.4 Effect and complete all works of preparation and construction necessary to receive the Materials including clearance of all obstructions from the area of the Site in which erection of the Work is to take place.
- 5.5 Ensure that there is a sufficient and continuous supply of electric light, power and water available at all points where necessary for the performance of the Works by the Company prior to the commencement of such works.
- 5.6 Provide a level and even floor capable of supporting the Works and the loads imposed upon the Works. The Company reserves the right to suspend the Works until such time as the floor meets its requirements or at its discretion the Company may proceed with the Works and any additional costs incurred shall be added to the Contract Price and shall be paid by the Buyer. The Company will advise the Buyer when the Works is stopped because of these reasons.
- 5.7 Provide any health and welfare facilities which may be required by law under the regulations current from time to time for employees of the Company while they are engaged at the Buyer's premises in the performance of the Contract.
- 5.8 Supply all such plans, data and information together with Site plans and levels (in every case to an identified scale) as the Company may reasonably require from time to time in connection with the Works.

6. Limitation of Liability of Company

- 6.1 The Company's quotation is based upon an analysis of advice, information, drawings and specifications (as the case may be) supplied by the Buyer regarding the Buyer's requirements for storage and materials handling. The Company shall not be responsible for any discrepancies, errors or omissions in its analysis nor in any drawings, data specifications or information prepared by it utilising or incorporating all or any plans, data and information supplied by the Buyer pursuant paragraphs 5.6 and 5.8 above. The Buyer shall pay the extra cost reasonably incurred by the Company due to alteration to the Works necessitated by (a) reason of inaccurate drawings or information in whatever form so supplied to the Company and (b) any delay in commencing or interruption in the programme for the Works drawn up by the Company due to the non-performance or late performance by the Buyer of all or any of the obligations to, be performed by him pursuant to paragraph 5 hereof; such extra cost shall either be added to the Contract Price or may be the subject of a separate payment at the discretion of the Company.
- 6.2 The Company shall not be liable for any loss or damage whatsoever (including consequential loss or damage) in any way suffered by the Buyer or any other person firm or company (whether on the grounds of negligence or otherwise) by reason of the fact that the Company may have inspected, advised on or approved the site and/or any plans data and information supplied by or on behalf of the Buyer whether prior to the date of the Company's quotation or pursuant to paragraphs 5.6 or 5.8 above and the Buyer shall at all times indemnify and keep the Company indemnified against all losses claims damages charges and expenses for injury (including death) suffered by any person or loss of or damage to property belonging to any person firm or company for which the Company its subcontractors or their respective employees may be liable or deemed to be liable under the Contract except where such losses claims damages charges and expenses arise out of or are caused by the negligence willful misconduct or breach of warranty of the Company its subcontractors or their respective employees.
- 6.3 If the Company is held to be legally liable for any breach of the Contract or shall become legally liable to the Buyer in any way howsoever the liability of the Company in respect of any or all causes of action shall in no circumstances exceed in the aggregate (100 per cent of) the Contract Price.
- 6.4 The terms and conditions of the within contract are without prejudice to either party's rights under the sale of Goods and Supply of Services Act 1980 save where they have been limited or excluded either expressly or implied or by a course of dealing between the parties hereto and as is allowable under the Act.
- 6.5 Delivery dates or periods are approximate only and time shall not be of the essence of the contract. Sperrin Metal shall incur no liability whatsoever in respect of any loss or damage by the Buyer resulting from delay in delivery however caused.

7. Builders Work and Alterations to Premises

Unless otherwise specifically agreed the Company will not carry out under the Contract any builders work or alterations to premises.

8. Payment and Buyer's Default

Unless otherwise agreed payment terms are strictly net not later than 10 days after the date of invoice(s), time being of the essence of the Contract Amounts and times of payments are set out in the Quotation.

- 8.1 If under the Contract deliveries are required over an extended period each consignment shall be invoiced separately.
- 8.2 If the Buyer fails to make payment of a sum when the same becomes due whether under the Contract or any other contract which the Company may have with the Buyer, the Company shall be entitled to charge the Buyer interest on the sum due under the Contract and unpaid calculated at a rate of two per cent per annum over the Bank of England minimum lending rate (minimum 5 per cent) from time to time ruling and further to suspend the Works. If such payment, or any part thereof, shall remain in arrears for (7) days after written demand shall have been made therefore, the Company shall have the further right to cancel the Contract and/or any such other contract and, in either case, without prejudice to any other right or remedy which the Company may have.
- 8.3 If the Buyer makes any composition or arrangement with or assignment for the benefit of his creditors or has any process of execution levied upon his goods or being a corporation goes into liquidation or has a Receiver appointed or being a person becomes bankrupt or commits any act of bankruptcy the Company may without prejudice to any other remedy determine the Contract and resell the Materials and any loss on such resale shall be paid by the Buyer.
- 8.4 Where the Company tenders the Materials but delivery is not accepted the Company may store the Materials in its own or any other warehouse for the account of the Buyer and the Buyer shall be liable for the cost of storage, additional handling transport and any associated costs. The Company may also deliver its invoice for the Materials stored and payment thereof shall be due at the same time and in the same manner as if the Materials had been delivered to the Buyer at the time they were placed in store.
- 8.5 Any concession, latitude or waiver the Company may allow or has allowed the Buyer at any time shall not prevent the Company subsequently exercising its full right under the Contract.
- 8.6 Until payment in accordance with these conditions is made, the Buyer shall not mortgage pledge, charge or allow any lien to be created on the Materials without prior consent in writing of the Company.

9. Right of Set Off

No right of set off shall exist in respect of any claims by the Buyer against the Company unless and until such time as such claims are accepted by the Company in writing and the Buyer shall not withhold all or any part of any sum which has become due for payment under the Contract.

10. Suspension and Cancellation

- 10.1 In the event of suspension or cancellation of the Contract by the Buyer for any reason whatsoever (otherwise than in consequence of some default the part of the Company) reserves the right to make a charge which shall be paid within 30 days of the notification of the charge by the Company to the Buyer.

The charge may include:

- (a) A sum representing the difference between the Contract Price and the cost of the Materials of the Company.
- (b) Where the Materials have been specially prepared or manufactured for the Buyer and are not readily re-saleable, the cost of the Materials to the Company and in cases where manufacture has not yet commenced a charge in respect of any preliminary and terminal costs including preparation of drawings, site plans and specifications.
- (c) In the case of contracts which include erection a sum calculated on the value of the labour content of any works already carried out.
- (d) All other costs charges and expenses which the Company has or will become liable to pay to any person, firm or company in consequence of or arising out of the suspension or cancellation of the Contract.
- 10.2 Upon the resumption of the Contract after any suspension the Company shall be allowed such extensions of time for the performance of its obligations as is fair and reasonable having regard to the period of suspension and the Contract Price shall be adjusted in accordance with the provisions of 4.2 above.

11. Title

The property in the Materials shall remain with the Company until it has received in cash the whole of the Contract Price. On completion of the Contract surplus Materials supplied by the Company shall unless otherwise agreed remain the property of the company and removed from the Site by the Company together with the Company's Equipment (if any). Until such removal the Buyer shall continue to take reasonable precautions for the safe custody of such surplus Materials and Equipment

- 11.1 All materials sold shall remain the sole and absolute property of the company as legal and equitable owners until the full purchase price and all additional charges relating to the Material shall have been paid in full and received by the Company and pending such payment the Buyer acknowledges that it holds the Materials as bailee for the Company.
- 11.2 The Customer shall store the Materials separately so as to clearly show it to be the Material property of the Company and the Company shall be entitled at any time to demand immediate re-delivery of such of the Material as shall have been delivered to the Buyer and the Buyer shall so re-deliver the Material to the Company upon such demand being so made and the Company shall also be entitled to such immediate re-delivery upon the appointment of a receiver of the whole or any part of the Buyer's undertaking or on the passing of a resolution or the making of an order to wind up the Buyer for which purpose the Company shall be entitled and the Buyer hereby grants to the Company a license to enter upon the premises of the Buyer during normal business hours for the purpose of removing such of the Material from the Buyer's premises.
- 11.3 All or any sale or other disposal proceeds received by or on behalf of the Buyer in respect of any of the Material property which is reserved to the Company or which is otherwise the property of the Company shall be received by or on behalf of the Buyer in trust for the Company and shall not be mingled with any other monies and shall at all times be identifiable as the Company's monies.
- 11.4 If the Materials the property of the Company is admixed with goods the property of the Buyer or processed with or incorporated therein the product thereof shall become and/or shall be deemed to be the sole and exclusive property of the Company. If the Material the property of the Company is admixed with goods, the property of any other person other than the Buyer, or are processed with or incorporated therein, the product thereof shall be deemed to be owned in common with that other person.
- 11.5 Notwithstanding the foregoing provisions, the provisions of Condition 3 shall apply to this.

12. Patents and Copyright

- 12.1 Where the Materials agreed to be sold or any part thereof shall consist of any article to be manufactured altered or worked upon by the Company in accordance with the design specification or instructions of the Buyer the Buyer warrants to the Company that any such article or the design or the construction thereof shall not in any way infringe any letters patent copyright or any other protection subsisting in favour of third parties and agrees to indemnify the Company against all actions claims and demands which may be made against it by such third parties including any costs and expenses incurred by the Company in respect thereof.
- 12.2 In all other cases in the event of any claim being made against the Buyer in respect of infringement or alleged infringement of letters patent copyright or other protection in respect of Materials designed and supplied by the Company the Buyer shall inform the Company immediately. Thereupon the Company shall be at liberty at its absolute discretion to conduct all negotiations for the settlement of any such claim or any litigation or proceedings which may arise there from. The liability of the Company to the Buyer in any such cases whether or not the Buyer shall be permanently prohibited from using the Materials by reason of such claim shall be limited to accepting a return of the said Materials and refunding the Buyer the purchase price thereof paid by him less a fair proportion thereof for the benefit which may have been derived from the use of the Materials whilst it remained in the buyer's possession.
- 12.3 Any specification and/or drawing prepared by or on behalf of the Company submitted with or expressly referred to in a quotation shall form part of that quotation. The copyright of all such specifications and drawings remains the copyright of the Company or the Company's suppliers (as the case may be) and may not be divulged or used without the Company's permission in writing.

13. Warranties

- 13.1 All equipment sold by the Company is manufactured from raw materials to the Company's specification. The Company warrants that in the manufacture of equipment the highest standards of workmanship and raw materials have been used.
- 13.2 If within a period of six months
- (a) after the dispatch of the Materials in the case of a single consignment, or
- (b) after the dispatch of the final consignment of the Materials in the case of delivery by installments, or
- (c) after the Materials have been taken over by the Buyer in the case of a contract with erection
- any fault is found in the Materials in the opinion of the Company, is not attributable wholly or in part to inexpert installation or repair by persons other than the Company or a subcontractor and is a fault within its control then in each such case the Company shall at its own expense and sole discretion either repair the faulty Materials provided that notice of the fault is given in writing to the Company by registered post not more than 7 days after the expiry of the said period of six months.

- 13.3 Save as aforesaid, all express or implied warranties terms and conditions, statutory or otherwise, as to the quality or fitness of any purpose or the soundness of performance of the Materials or any component thereof whether manufactured by the Company or a third party are hereby expressly excluded from the Contract notwithstanding that samples of materials or merchandise to be handled or products to be produced by the use of the Materials shall have been supplied to or by the Company.
- 13.4 The warranties and undertakings contained in paragraphs 13.1 and 13.2 above do not extend to any Materials not manufactured by the Company but wherever possible the Company will extend to the Buyer the benefit of any warranty or guarantee given to it by any other manufacturer of Materials.
- 13.5 Extreme situations of product misuse cannot be accounted for without imposing a severe cost penalty on the system. The SEMA Code of Practice does not specify the magnitude of any impact forces apart from those imparted by moving equipment. It must be noted that the design of company products presumes a significant degree of skill on the part of those operating it. Therefore SEMA recommend that formal inspections be carried out on the equipment yearly or half yearly. Lifetime warranty offered on company products is pending on yearly inspections being carried out.
- 14. Substitution of Materials**
The Company reserves the right to substitute without prior notice or consultation other materials for any which may be specified in the Contract provided that the operating capabilities and technical properties are not, in the opinion of the Company, adversely affected.
- 15. Alterations to Design or Specification**
Any alteration to design and/or specification requested by the Buyer shall be notified to the Company in writing. Any costs incurred in complying with such alterations shall be added to the Contract Price and shall be paid by the Buyer.
- 16. Sub-Contracting**
The Company reserves the right to subcontract any part of the Contract, but in doing so the Company will not be relieved of any liabilities under the Contract.
- 17. Force Majeure**
Whilst the Company undertakes to make every endeavour to execute orders as near to the date specified for delivery as possible all orders are accepted subject to delays caused by fires, industrial disputes, non-availability of raw materials or power supply, acts of Providence or through any other cause whatsoever beyond the control of the Company shall not incur any liability or be responsible for any inconvenience, costs, losses or damages suffered by the Buyer arising from such delays (unless otherwise specifically agreed by the Company in writing no penalty shall apply.)
- 18. Statutory and By-law Approvals**
It shall be the responsibility of the Buyer to obtain all necessary permissions consents and licenses and to comply with all obligations imposed by law statute or local regulations and to any by-laws orders and regulations for the time being in force affecting any works of construction under the Contract and the Buyer shall indemnify the company against all fees payable, costs claims and actions in connection therewith.
- 19. Materials Lost or Damaged In Transit**
- 19.1 If goods have not been received within two days of dispatch the Buyer shall advise the Company in writing immediately.
- 19.2 Upon the receipt of such notice within the period specified, the Company will use its best endeavours to assist the Buyer to obtain proof of delivery or admission of damage or short delivery from the carrier.
- 19.3 Failure to comply with the requirements of paragraph 19.1 may invalidate any claim by the Buyer in respect of damaged or lost Materials. In any event, the Company's liability shall be limited at its option to the replacement, rectification of such items or the reasonable costs of repairs carried out by others on the Company's behalf.
- 19.4 No claim against Sperrin in respect of short weight or damage in transit will be entertained unless the delivery notes have been marked accordingly and Sperrin Metal has been notified in writing by recorded delivery post within 3 days of the delivery of the goods. Sperrin Metal shall be given an opportunity to re-weigh and / or inspect the total consignment, or that part which it deems necessary.
- 20. Completion/Cleaning**
- 20.1 On completion of the contract all surplus Materials supplied by the Company shall, unless otherwise agreed, remain the property of and be removed from the site by the Company together with the Company's Material, if any. Until such removal the Buyer shall continue to take reasonable precautions for the safe custody of such surplus Materials and equipment.
- 20.2 The Company will make every reasonable effort to clear the Site of all surplus materials and waste, the latter being placed on a central dump to be provided by the Buyer for subsequent disposal by the Buyer and the Company will make every reasonable effort to leave the installation clean and ready for use but it accepts no liability whatsoever for any deposits of dirt or other materials, or damage to the installation, subsequent to the completion of the Works, occasioned by the Buyer or any Third Party.
- 21. Completion/Takeover**
Upon the practical completion of the Works the Buyer shall issue to the Company a takeover certificate in the form nominated by the Company signed by the Buyer's authorised representative in which shall be certified the date on which the Works were complete and the Buyer shall be deemed to have taken over the Works on the date so certified. Where the Works are to be undertaken in defined phases the takeover of each phase shall be executed in the same manner as if it constituted the whole of the Works.
- 22. Applicable Law**
The Contract shall unless otherwise agreed in writing be governed by and constructed in accordance with the laws of The Republic of Ireland and any legal action resulting there from shall be brought in the Republic of Ireland.
- 22.1 In the event that any provision or provisions of this Agreement is or are illegal or otherwise ineffective the same shall be deemed severed from this agreement so that the remaining provisions of the agreement shall remain in full force and effect as if the offending provision was not contained herein.
- 23. Arbitration**
Any dispute or difference arising between the company any and the buyer in relation to the supply of any material shall be referred to a single arbitrator appointed by agreement or in default of agreement by the President, for the time being, of the Incorporated Law Society of Ireland, and in either case in accordance with the subject to the provisions of the Arbitration Act 1954 or any statutory modification or re-enactment thereof for the time being in force.