

CHARLES DAY (STEELS) LTD

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CHARLES DAY

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CONDITIONS OF SALE

1 GENERAL

The following conditions used by Charles Day (Steels) Ltd ("the Company") apply to any contract of which these conditions form part to the exclusion of any conditions of order or purchase of the Customer or any other standards, specifications, conditions or particulars of or adopted by the Customer, unless expressly accepted in writing by the Company as part of the contract. If subsequent to this contract, any contract for sale is concluded with the same Customer by letter, telegram, telex, telefax or orally or by any combination of these, without express reference to these conditions of sale, it shall be a term of such a contract that these Conditions of Sale shall apply to such a contract.

2. QUOTATIONS AND TENDERS

- (1) No order placed in response to the Company's quotation will be binding unless accepted by the Company in writing.
- (2) Where goods are to be supplied from stock, such supply is subject to availability of stocks at the date of delivery.
- (3) Tenders submitted by the Company shall remain open for acceptance for a period of 30 days from the date of the tender, unless in the tender some other period is specified or accepted.

3. PRICES

- (1) The prices stated in the contract are based on the cost to the Company for materials, fuel and power, transport and labour at the date of acceptance of the order or quotation (whichever is earlier). If at the date of dispatch of the goods from the Company's premises there has been any increase in all or any of such costs, the price payable for the goods may at the request of the Company be increased accordingly.
- (2) Where the price for the goods is varied in accordance with this condition the price as varied shall be binding on both parties and shall not give either party any option of cancellation.
- (3) There shall be added to the price for the goods any value added tax and any other tax or duty relating to the manufacture, transportation, export, import, sale and delivery of the goods (whether initially charged or payable by the Company or the Customer).
- (4) All goods are sold "ex works" unless otherwise stated. If the Company arranges or undertakes the carriage, freight, insurance and any other transport costs beyond the point of delivery such costs shall be for the Customer's account and shall not affect the provisions of the contract as to the passing of risk.
- (5) All prices are quoted in pounds sterling unless otherwise stated.

4. TERMS OF PAYMENT

- (1) Prices quoted are net.
- (2) Subject to credit being approved and unless otherwise expressly agreed accounts are due for payment not later than the end of the second month following the month of despatch, otherwise payment must be received by the Company before delivery.
- (3) when deliveries 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.
- (4) In the event of failure to pay for any goods or for any delivery or installment or should a Customer's credit limit be exceeded the Company shall be entitled to suspend further deliveries and work both on the same order and on any other orders from the Customer without prejudice to any other right the Company may have whether under clause 10 below or howsoever. The Company also reserves the right to charge interest on overdue accounts at the rate of 2% per month.
- (5) Without prejudice to the company's rights under clause 10 below, the Company reserves the right where genuine doubts arise as to a Customer's financial position or in the case of failure to pay for any goods or any delivery or installment or to exceed the credit limit as aforesaid to suspend delivery of any part or installment without liability until payment or satisfactory security for payment has been provided.
- (6) In the event of any dispute the Customer shall not be entitled to withhold payment of the price of the goods or any agreement payments or to any right or set-off against any payment due to the Company under this or any other contract.

5. DELIVERY AND COMPLETION DATES

- (1) The delivery or performance dates specified are approximate only and, unless otherwise stated time is not of the essence for delivery.
- (2) No delay shall entitle the Customer to damages or to reject any delivery or any further instalment or part of the order or any other order from the Customer or to cancel or repudiate the contract or the order.
- (3) The Company cannot undertake to meet any schedule of Customers requirements supplied after the date of the contract and will have no liability whatsoever for delay in meeting all or any of such requirements (howsoever such failure or delay may arise) unless and to the extent that the Company expressly agrees to meet such requirements, in which event paragraph (1) of this condition will apply.

6. FORCE MAJEURE

In the event of the performance of any obligations by the Company being prevented, delayed or any way interfered with by any act of God, fire, inclement or exceptional weather conditions, industrial action (whether at the Company's premises or elsewhere), hostilities, breakdowns, accidents, explosions, shortage of labour, materials, power or other supplies, late delivery or performance or non-delivery or non-performance by suppliers or sub-contractors, governmental order or intervention (whether or not having the force or the law) or any other cause whatever beyond the Company's control or of an unexpected or exceptional nature the Company may suspend or treat as impossible the performance of any obligation to the Customer without liability for any loss.

7. DELAYED ACCEPTANCE

If for any reason the Customer is unable to accept delivery of the goods when the goods are due and ready for delivery the Company may (but shall not be under any obligation to) arrange storage of the goods and the Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other right which the Company may have in respect of the Customer's failure to take delivery of the goods or to pay for them in accordance with the contract when payment would have been due if the goods had been delivered when due and ready for delivery.

8. CANCELLATION

Cancellation of orders in whole or in part will only be accepted by the Company in writing and on condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other losses or damages resulting to the Company by reason of such cancellation will be reimbursed by the Customer to the Company forthwith.

9. NON-STANDARD ORDERS

Where the Customer orders goods or materials of a type, size or quality not normally supplied by the Company, the Company will use all reasonable endeavours to execute the order, but if it proves impossible, impracticable or uneconomical to carry out or complete the order, the Company reserves the right to cancel the contract or the uncompleted balance thereof in which event the Customer will only be liable to pay for the part of thereof actually delivered.

10. TERMINATION

The Company shall be entitled without prejudice to the Company's other rights and remedies either to terminate wholly or in any part any or every contract between the Company and the Customer or to suspend any further deliveries in any of the following events:

- a) non-compliance by the Customer with the Company's terms of payment in accordance with this or any other contract between the Company and the Buyer; or
- b) if the Customer has failed to provide a letter of credit or guarantee, bill of exchange or other security required by the Company; or
- c) if the Company obtains unfavourable reports on the financial standing of the Customer or if the Customer becomes insolvent or is voluntarily or compulsorily wound up or made bankrupt or has had a Receiver or Administrative Receiver appointed or if the Customer makes any composition with its creditors generally.

11. LIEN

In addition to any rights of lien with the Company may have, the Company shall in any of the events described in clause 10 above, have a general lien over all goods of the Customer then in the possession of the Company for any monies due to the Company but unpaid.

12. TITLE TO GOODS

- (1) The risk in the goods shall pass to the Customer:
 - a) when the goods are dispatched from the Company's premises at the request of the Customer or,
 - b) if the goods are appropriated to the Customer but kept at the Company's premises at the request of the Customer.
- (2) Notwithstanding sub clause (1) above legal and equitable ownership of the goods shall remain with the Company until payment for the goods have been received by the Company in full or until the Customer sells the goods to its customers by way of a bona fide sale at full market value whichever shall first occur.
- (3) At any time prior to full payment (whether or not payment is then overdue) the Company may (without prejudice to any of its other rights) retake possession of the goods or any part thereof and may enter on the Customer's premises by its employees or agents for that purpose.
- (4) Until the time of full payment for the goods the Customer shall be a bailee of the goods on behalf of the Company and shall store the goods in such a way that they are separately identifiable, nevertheless prior to the time of full payment the Customer is entitled to use the goods in the normal course of its business or to sell the goods to third parties in the normal course of its business on the understanding that if it does resell the goods then it will hold on trust for the Company any proceeds of sale received by it under contracts which include any of the goods hereby sold either in their original or altered state as are necessary to discharge payment in full to the Company. The Company shall have the right to trace the proceeds of sale according to the principles of *Re Hallett's Estate* (1880) 13 CH D 696.
- (5) The Customer's right to use the goods or to resell them prior to full payment may be terminated forthwith by written notice given by the Company to the Customer and shall automatically terminate with or without such notice on the appointment of any receiver or liquidator of the customer.

13. GOODS; WARRANTY; LIMIT OF RESPONSIBILITY

The Company warrants that it will so far as it is able so to do, give the Customer the benefit of any express guarantee or warranty by the manufacturer of the goods and any other rights which the Company has against the manufacturer. The Customer's remedies in respect of any claim that the goods are defective or not in accordance with the contractor any express description in respect of any condition or warranty implied by law or any other claim in respect of the goods or any workmanship in relation thereto (whether or not involving negligence on the part of the Company) shall in all cases be limited to enforcement of the above-mentioned liabilities of the manufacturer and the Company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities, either direct or consequential, and in any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law.

14. HIREWORK; CUSTOMERS MATERIALS; WARRANTY; LIMIT OF COMPANY'S RESPONSIBILITY

Hirework and work involving the use of Customer's materials is undertaken by the Company only on the express understanding that the Company cannot be responsible for any distortion, faults or defects which appear or develop during or are caused by the work howsoever arising even if resulting from any fault, negligence or mistake of the Company. The Company gives no guarantee or warranty of any kind but subject to the availability of capacity and facilities, it will endeavour to correct any such distortions, faults or defects at the Customer's expense and risk. The Company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities whether direct or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law.

15. ADVICE GIVEN TO CUSTOMERS

The Company shall be under no liability whatsoever in respect of any advice or views it offers or expresses to a Customer expressly or by implication as to the suitability or otherwise of the goods or any process to which the goods may be subject unless such advice is requested by the Customer in writing and the Company relies in writing whereupon should such express representations be found to be wrong or inaccurate the liability of the Company will be limited to rectification or replacement of the goods and the Company shall not in any circumstances be liable for damages, compensation, costs, expenses, losses or other liabilities, whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law.

16. TOLERANCES AND TESTS

- (1) The Company will supply to the Customer whatever information it receives from the manufacturer regarding gauges, weights, chemical composition and analysis, quantities and sizes as it is liable to provide. Any requirements as to gauges, weights, chemical composition and analysis, quantities and sizes which are communicated by the Customer to the Company in writing will so far as possible be adhered to, but reasonable excess and deficiencies thereof shall be accepted by the Customer who shall not be entitled to reject any goods or to replacement of any goods on the ground that they are not precisely as specified.
- (2) Unless otherwise specifically agreed, all tests and test pieces whatsoever required by the Customer will be charged extra.
- (3) Unless otherwise specifically requested by the Customer, tests of chemical composition shall be based only on the ladle analysis which shall be final. Tests and inspections shall take place under the manufacturer's standard testing arrangements and such tests shall be final. All tests are subject to analytical tolerances.

17. QUANTITIES DELIVERED

The Company shall have performed the contract if it delivers quantities or weights within 10% (over or under) of the quantities or weights ordered by the Customer. Any discrepancy within 10% as aforesaid shall not entitle the Customer to reject any delivery or any further instalment or part of the order or any other order from the Customer or repudiate the contract of the order. Any discrepancy over 10% must be notified in writing to the Company within 10 working days from despatch of Goods.

18. CUSTOMER SPECIFICATIONS

- (1) The Company is entitled to assume that all drawings, descriptions, specifications and other information supplied by the Customer to the Company whether written or verbal, is in all respects complete, accurate and entirely suitable for the Customer's requirements.
- (2) Unless otherwise expressly agreed, the Company shall have no responsibility for the performance, suitability or durability of any goods or any materials or workmanship comprised therein to the extent that the same is manufactured in accordance with the Customer's designs, drawings, standards or specifications.

19. INDEMNITY

The Customer agrees upon demand to indemnify the Company against all actions, costs (including the costs of defending any legal proceedings) losses, damages, injury and expenses of whatever nature suffered by the Company to the extent that the same are caused by or related to :

- a) designs, drawings, descriptions, specifications and other information given to the Company by the Customer in respect of goods supplied by the Company to the Customer, and
- b) defective materials or products supplied by the Customer to the Company and incorporated by the Company in goods produced by the Company for the Customer, and
- c) the improper incorporation, assembly, use, processing, storage or handling of goods by the Customer.

20. PATENTS ETC.

The Customer shall indemnify the Company against all actions, costs (including the costs of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Customer's instructions, whether express or implied.

21. LOSS OR DAMAGE DURING TRANSIT

The risk in the goods passes to the Customer when the goods are dispatched from the Company's works and the Company accepts no responsibility for any damage, shortage or loss in transit. Claims for any damage, shortage or loss in transit should be made on the carrier, and any conditions imposed by the carrier in relation to claims for damage, shortage or loss in transit should be complied with

22. PACKING

Unless otherwise specified packing cases and packing materials will be charged extra, but where stated to be returnable will be credited in full on return to the Company's works carriage paid in good condition, within one month of receipt by the Customer.

23. SUB-CONTRACTING

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

24. APPLICABLE LAW

The contract shall in all respects be governed by and construed in accordance with English law and the Customer hereby submits to the non exclusive jurisdiction of the English Courts.