

## Terms and Conditions of Purchase

### 1. Interpretation

1.1 In these Conditions:-

“**Business Day**” means any day other than a Saturday, Sunday or bank holiday;

“**Buyer**” means Charles Day (Steels) Ltd, a private limited company incorporated and registered in England and Wales with company number 01289020 whose registered office is at 6 Downgate Drive, SHEFFIELD, South Yorkshire, S4 8BT;

“**Conditions**” means the standard terms and conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller;

“**Contract**” means the contract between the Buyer and the Seller for the sale and purchase of the Goods in accordance with these Conditions;

“**Delivery Address**” means the address stated on the Order for delivery of the Goods;

“**Goods**” means the goods (including any instalment of the goods or any part of them) described in the Order;

“**Order**” means the Buyer’s order for the Goods, as set out in the Buyer’s purchase order form;

“**Seller**” means the person so described in the Order;

“**Specification**” means and specification for the Goods, including any plans, drawings, data or other information; and

“**Usual Business Hours**” means the period from 6am – 5pm on any Business Day.

1.2 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that legislation or legislative provision.

1.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.5 A reference to **writing** or **written** includes email or fax.

## 2. Basis of Contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Seller seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Buyer to purchase the Goods subject to these Conditions.
- 2.3 The Contract shall come into existence when the Seller confirms to the Buyer the Seller's acceptance of the Order, in writing or orally.
- 2.4 Any typographical clerical or other accidental error or omission in the Order placed by the Buyer or in any drawings specifications, instructions, tools or other material supplied by the Buyer, shall be subject to correction without any liability on the part of the Buyer.
- 2.5 The Seller waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any document of the Seller that is inconsistent with these Conditions.
- 2.6 No variation to the Contract shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

## 3. The Goods

- 3.1 The Seller shall ensure that the Goods shall:
- a) be free from defects in materials and workmanship and remain so for any express warranty period provided by the Seller or, otherwise, for a period of no less than 12 months after delivery;
  - b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Seller or made known to the Seller by the Buyer, and in this respect the Buyer relies on the Seller's skill and judgement;
  - c) comply with any requirements, specifications, drawings or descriptions set out in or referred to in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in writing by the Buyer;
  - d) be free from design defects; and
  - e) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.
- 3.3 Any Specification supplied by the Buyer to the Seller, or specifically produced by the Seller for the Buyer, in connection with the Contract, together with the copyright, design rights or any other intellectual property rights in the Specification, shall be the exclusive property of the

Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

- 3.4 The Buyer may inspect and test the Goods at any time before delivery. The Seller shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Seller's obligations under the Contract.
- 3.5 The Seller shall not unreasonably refuse to take any steps necessary to comply with any request by the Buyer to inspect or test the Goods during manufacture, processing or storage at the premises of the Seller or any third party prior to despatch, and to provide the Buyer with any facilities reasonably required by the Buyer for inspection or testing.
- 3.6 If following such inspection or testing the Buyer considers that the Goods do not conform or are unlikely to comply with the Seller's undertakings at clause 3.1, the Buyer shall inform the Seller and the Seller shall immediately take such remedial action as is necessary to ensure compliance.

#### 4. **Delivery**

- 4.1 The Seller shall ensure that the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and each delivery of the Goods shall be accompanied by a delivery note correctly addressed to the Buyer.
- 4.2 Unless otherwise agreed by the Buyer, the Seller shall provide full traceability of materials in accordance with ISO9001 and BS EN 1090 as standard, including but is not limited to test certifications and certifications of conformity, upon delivery.
- 4.3 The Seller shall deliver the Goods to the Delivery Address on the date or within the period stated in the Order, in either case during Usual Business Hours.
- 4.4 Where it is agreed in writing that the date of delivery of the Goods is to be specified by the Seller after the placing of the Order, the Seller shall give the Buyer reasonable notice in writing of the specified date.
- 4.5 Unless otherwise agreed in writing, any time or period given for the performance or completion of delivery shall be of the essence. The Seller shall forthwith notify the Buyer of any anticipated delay in the performance or completion of delivery.
- 4.6 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Address.
- 4.7 If the parties agree that the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable.
- 4.8 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery.
- 4.9 The Seller shall supply the Buyer in good time with any instructions or other information to

enable the Buyer to accept delivery of the Goods.

**5. Buyer remedies**

- 5.1 If the Goods are not delivered to the Delivery Address on the date or within the period stated in the Order, or do not comply with the undertakings set out in clause 3.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, the Buyer may exercise any one or more of the following rights and remedies:
- 5.1.1 to terminate the Contract;
  - 5.1.2 to reject the Goods (in whole or in part) and return them to the Seller at the Seller's own risk and expense;
  - 5.1.3 to require the Seller to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid for);
  - 5.1.4 to refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
  - 5.1.5 to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods from a third party; and
  - 5.1.6 to claim damages for any other costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to carry out its obligations under the Contract.
- 5.2 These Conditions shall apply to any repaired or replacement Goods supplied by the Seller.
- 5.3 Where the Seller is not the manufacturer of the Goods, the Seller shall use all reasonable endeavours to transfer to the Buyer the benefit of any warranty or guarantee given to the Seller by the manufacturer.

**6. Title and risk**

- 6.1 Without prejudice to the Buyer's rights set out at clause 5, title and risk in the Goods shall pass to the Buyer on completion of delivery.

**7. Price and payment**

- 7.1 The price of the Goods shall be as stated in the Order and, unless stated otherwise, shall be:
- 7.1.1 exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a valid VAT invoice); and
  - 7.1.2 inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.
- 7.2 No increase in the Price may be made (whether on account of increased material, labour or

transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.

- 7.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.
- 7.4 The Seller shall be entitled to invoice the Buyer on or at any time after the completion of delivery of the Goods and each invoice shall quote the number of the Order.
- 7.5 Unless otherwise stated in the Order, the Buyer shall pay correctly rendered invoices within 60 days following the end of the month in which the Buyer received the Seller's invoice. Payment shall be made to the bank account nominated in writing by the Seller.
- 7.6 The Buyer shall be entitled to set off against any invoice of the Seller any sums owed to the Buyer by the Seller.
- 7.7 Invoices issued by the Seller to the Buyer later than 3 months after receipt of the Goods will not be considered and shall be deemed invalid subject to the Buyer's reasonable discretion.

## 8. Indemnity

- 8.1 The Seller shall indemnify the Buyer against all liabilities, damages, losses (including loss of profits, loss of business, loss of reputation, loss of savings and loss of opportunity), fines, expenses and costs (including all interest, penalties, legal costs (calculated on a full indemnity basis) and [reasonable] professional costs and expenses) suffered or incurred by the Buyer as a result of or in connection with:
  - 8.1.1 any claim that the supply, receipt or use of the Goods infringes the intellectual property rights of any third party, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;
  - 8.1.2 any claim by a third party for death, personal injury or damage to property arising out of or in connection with defective Goods, to the extent that the defect is attributable to the acts or omissions of the Seller; and
  - 8.1.3 any claim by a third party arising out of or in connection with the supply of the Goods, to the extent that the claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Seller.

## 9. Termination

- 9.1 The Buyer may terminate the Contract in whole or in part at any time before delivery of the Goods with immediate effect by giving the Seller written notice, whereupon the Seller shall discontinue all work on the Contract. The Buyer shall pay the Seller fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 9.2 Without limiting its other rights or remedies, the Buyer may terminate the Contract with immediate effect by giving written notice to the Seller if:

- 9.2.1 the Seller commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of it being notified in writing to do so;
- 9.2.2 the Seller takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 9.2.3 the Seller suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- 9.2.4 the Seller's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.3 Termination or expiry of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 9.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 10. Force Majeure**
- 10.1 In the event that either party is prevented from fulfilling its obligations under this Contract by reason of any supervening event beyond its control including but not limited to war, national emergency, flood, earthquake, strike or lockout (subject to clause 10.2) that party shall not be deemed to be in breach of its obligations under the Contract. The party shall immediately give notice of this to the other party and must take all reasonable steps to resume performance of its obligations.
- 10.2 Clause 10.1 shall not apply with respect to strikes and lockouts where such action has been induced by the party so incapacitated.
- 11. Assignment**
- 11.1 The Buyer may at any time assign, transfer or deal in any other manner with any or all of its rights or obligations under the Contract.
- 11.2 The Seller shall not at any time assign or transfer any or all of its rights or obligations under the Contract without the prior written consent of the Buyer.
- 11.3 The Seller may subcontract any or all of its rights or obligations under the Contract, but only with the Buyer's prior written consent. The Seller shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

## 12. Communications

- 12.1 All communications between the parties about the Contract shall be in writing and delivered by hand or sent by pre-paid first class post or sent by fax or sent by electronic mail:
- 12.1.1 (in case of communications to the Seller) to its registered office or such changed address as shall be notified to the Buyer by the Seller; or
- 12.1.2 (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Seller set out in any document which forms part of the Contract or such other address as shall be notified to the Seller by the Buyer.
- 12.2 Communications shall be deemed to have been received:
- 12.2.1 if sent by pre-paid first class post, two Business Days after posting (exclusive of the day of posting); or
- 12.2.2 if delivered by hand, on the day of delivery; or
- 12.2.3 if sent by fax or electronic mail on a Business Day prior to 4.00 pm, at the time of transmission and otherwise on the next Business Day.
- 12.3 Communications addressed to the Buyer shall be marked for the attention of [accounts@daysteel.co.uk](mailto:accounts@daysteel.co.uk).
- 12.4 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

## 13. Waiver

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

## 14. Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

15. **Entire agreement.**

The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to the subject matter of the Contract. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently).

16. **Third Party Rights**

A person who is not a party to the Contract shall have no rights under this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

17. **Governing law**

18. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

19. **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).