

**ASC METALS LINCOLN LIMITED
TERMS AND CONDITIONS OF SALE**

1. INTERPRETATION

- 1.1 Definitions** In these Conditions, the following definitions apply:-
Business Day: a day (other than a Saturday, Sunday or Public Holiday) when banks in London are open for business.
Conditions: the terms and conditions as set out in this document.
Contract: the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
Customer: the person or firm who purchases the Goods from the Supplier.
Force Majeure Event: has the meaning given to it in Clause 9
Goods: the goods (or any part of them) set out in the Order.
Order: the Customer's order for the Goods, whether given verbally or in writing.
Supplier: ASC Metals Lincoln Limited (registered in England and Wales with company number 01450113)

2. BASIS OF CONTRACT

- 2.1** These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
2.3 The Order shall only be deemed to be accepted when the Customer issues a Customer order number, at which point the Contract shall come into existence.
2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract.
2.5 Any samples, drawings, descriptive matter and indications (including, but not limited to, weights and dimensions) produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues, brochures, promotional or advertising material are produced for the sole purpose of giving an approximate idea of the Goods as described. They shall not form part of the Contract or have any contractual force.
2.6 If the Supplier provides any samples, such samples shall be for illustrative purposes only. This shall not be a sale by sample.
2.7 A quotation for the Goods given by the Supplier shall not constitute an offer. Any quotation shall only be valid for a period of 2 Business Days from its date of issue, and at all times shall be subject to the availability of stock.
2.8 All calls are recorded for training, monitoring & accuracy purposes.

3. DELIVERY

- 3.1** The Supplier shall deliver the Goods to the location as agreed at the time of the Order or such other location as the Supplier and Customer may agree. Delivery of the goods shall be completed on the Goods arrival at the agreed delivery location.
3.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
3.3 If the Supplier fails to supply the Goods, or goods of a similar or equivalent nature, its liability shall be limited to the costs and expenses incurred by the Customer, excluding delivery costs, in obtaining replacement goods of similar description and quality in the cheapest market available and subject to the prior approval of the Supplier, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such a failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
3.4 If the Customer fails to take or accept delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:
3.4.1 Delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and
3.4.2 The Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses including insurance.
3.5 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken or accepted delivery of them, the Supplier may re-sell or otherwise dispose of part or all of the Goods and charge the Customer for any shortfall below the price of the Goods, together with reasonable storage and selling costs.
3.6 The Customer shall not be entitled to reject the Goods, either in whole or in part, if the Supplier delivers up to and including 20% more or less than the quantity of Goods ordered.
3.7 If the Supplier delivers up to 20% more than the quantity of Goods ordered the Supplier shall be entitled to make a pro rata adjustment to the Order invoice to reflect the total quantity of Goods delivered. The Customer will be required to discharge such invoice.
3.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4. QUALITY

- 4.1** The Supplier warrants that on delivery the Goods:-
4.1.1 be free from visual defects;
4.1.2 be of satisfactory quality.
4.2 Subject to Clause 4.3, if:
4.2.1 the Customer gives notice in writing to the Supplier within 7 Business Days of the date of delivery that some or all of the Goods do not comply with the warranty set out in Clause 4.1;
4.2.2 the Customer returns such Goods to the Supplier's place of business at the Customer's cost; and
4.2.3 the Supplier is given a reasonable opportunity of examining such Goods;
the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
4.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in Clause 4.1 in any of the following events:
4.3.1 the Customer makes any further use of such Goods after giving notice in accordance with Clause 4.2;
4.3.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or good trade practice regarding the same;
4.3.3 the defect arises as a result of the Supplier following any instruction of the Customer;
4.3.4 the Customer alters or repairs such Goods without the written consent of the Supplier;
4.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions; or
4.3.6 the Goods differ as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
4.4 Except as provided in this Clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Clause 4.1.
4.5 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
4.6 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

5. TITLE AND RISK

- 5.1** The risk in the Goods shall pass to the Customer on completion of delivery.
5.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
5.2.1 the Goods;
5.2.2 any other goods or services that the Supplier has supplied to the Customer.
5.3 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Clause 7, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

6. PRICE AND PAYMENT

- 6.1** Subject to Clause 6.2 the price of the Goods shall be the last price communicated by the Supplier to the Customer, whether verbally or in writing, prior to the Supplier accepting any Order of the Customer.
6.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
6.2.1 any factor beyond the Supplier's control (including but not limited to currency exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
6.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification; or
6.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.

- 6.3 The price of the Goods is exclusive of amounts in respect of Valued Added Tax (VAT). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 6.4 Die, jig and tooling costs and charges shall be borne by the Customer. Dies, jigs and tools shall remain the property of the Supplier.
- 6.5 The Supplier may invoice the Customer for the Goods on or at any time after completion of delivery or upon the Customer giving notice to the Supplier that it no longer requires delivery or collection of the Goods.
- 6.6 The Customer shall pay the invoice in full and in cleared funds no later than the 20th day of the month following the month of invoice or the first Business Day prior thereto. Time of payment is of the essence.
- 6.7 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 5% per annum above Barclays Bank plc base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after Judgment.
- 6.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set-off any amount owing to it by any Customer against any amount payable by the Supplier to the Customer.

7. CUSTOMERS' INSOLVENCY OR INCAPACITY

- 7.1 If the Customer becomes subject to any of the events listed in Clause 7.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other Contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due. In addition, and without prejudice to its other rights and remedies, the Supplier shall be entitled to terminate the Contract.
- 7.2 For the purposes of Clause 7.1, the relevant events are:
- 7.2.1 the Customer is unable to pay its debts as they fall due;
- 7.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into a compromise or arrangement with its creditors;
- 7.2.3 where the Customer is a company, a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
- 7.2.4 where the Customer is an individual, the Customer is the subject of a bankruptcy petition or order;
- 7.2.5 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets;
- 7.2.6 where the Customer is a company, an application is made to court, or an order is made, for the appointment of an administrator or of a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
- 7.2.7 where the Customer is a company, a person who has become entitled to appoint a receiver or administrative receiver or has appointed a receiver or administrative receiver over the company's assets;
- 7.2.8 the Customer suspends, threatens to suspend, ceases or threatens to carry on all or substantially the whole of its business;
- 7.2.9 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 7.3 Termination of the Contract, howsoever arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

8. LIMITATION OF LIABILITY

- 8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 8.2 Subject to Clause 8.1;
- 8.2.1 the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- 8.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the price of the Goods.

9. FORCE MAJEURE

- 9.1 Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including but not limited to strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, explosions, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or the fault of suppliers or sub-contactors.

10. TESTS AND INSPECTIONS

- 10.1 All testing and inspections forming part of the Order or implied by custom and practice shall be at the Supplier's works and shall be final. The Supplier shall be entitled to make a reasonable charge to the Customer for all such tests and inspections.

11. METAL SKIP, STILLAGES AND PACKING CASES

- 11.1 Where the Supplier and Customer agree that the Goods shall be delivered in returnable metal skips, stillages or packing cases such skips, stillages and cases shall remain the property of the Supplier. The Customer agrees to notify the Supplier in writing within 60 Business Days of the date of delivery of their availability for collection by the Supplier.
- 11.2 The Customer shall make all necessary arrangements for the metal skips, stillages, or packing cases to be loaded on to the Supplier's lorry, whether at the Customer's premises or the premises of a third party. The Customer shall meet all costs in connection with such loading.
- 11.3 If the Customer fails to meet its obligations to incur the cost of loading the metal skips, stillages and packing cases and the Supplier incurs costs in connection thereto, the Supplier shall be entitled to invoice the Customer in respect of such costs for which the Customer shall be liable.
- 11.4 If the Supplier deems metal skips, stillages or packing cases as appropriate to guarantee safe transit it shall be entitled to utilise such returnable skips, stillages or packing cases as it deems appropriate. In such circumstances the Customer agrees to notify the Supplier within 7 Business Days after the date of delivery of the availability of the returnable skips, stillages or packing cases for collection.
- 11.5 The provisions of Clauses 11.2 and 11.3 shall be applicable to the loading of the metal skips, stillages or packing cases where utilised in accordance with Clause 11.4.

12. GENERAL

12.1 Assignment and Sub-contracting

- 12.1.1 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 12.1.2 The Customer may not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Supplier.

12.2 Notices

- 12.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business or such other address as the party may have specified to the other party in writing and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, facsimile or e-mail.
- 12.2.2 A notice or other communication shall be deemed to be received:
- if delivered personally, when left at an address referred to in Clause 12.2.1;
 - if sent by pre-paid first class post or recorded delivery at 9.00 am on the second Business Day after posting;
 - if delivered by commercial courier, on the date and at the time the Courier's delivery receipt is signed; or
 - if sent by facsimile or e-mail, one Business Day after transmission.
- 12.2.3 The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

12.3 Severance

- 12.3.1 If any Court or competent authority finds that any provision of the Contract (or any part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 12.3.2 If any invalid, unenforceable or legal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with minimum modification necessary to make it legal, valid and enforceable.

12.4 Variation

- 12.4.1 Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Supplier.

12.5 Governing Law and Jurisdiction

- 12.5.1 The Contract, and any dispute or claim arising out of or in connection with it or its subject or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, English Law, and the parties irrevocably submit the exclusive jurisdiction of the Courts of England and Wales.