

# Clarendon Specialty Fasteners Limited Standard Terms and Conditions of Supply

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## 1 - Definitions

In these Conditions of Supply all references to:

- (i) 'the Seller' are to Clarendon Specialty Fasteners Limited.
- (ii) 'the Buyer' are to the person, firm or company by whom the order is given to the Seller.
- (iii) 'goods' are to the goods which are the subject of the order.
- (iv) 'services' are to the services which are the subject of the order.
- (v) 'supply' are to the supply for such goods and/or services.

## 2 – Entire Agreement

2.1 All contracts for supply shall be deemed to incorporate these Conditions which represent the complete agreement of the Seller and Buyer with regards to the supply except as otherwise specifically agreed in writing by the Seller (the "Contract for Supply"). These conditions shall override any terms and conditions stipulated, incorporated or referred to by the Buyer in any order, correspondence, negotiations or any other way.

2.2 Catalogues, price lists, advertisements and other published information are only indications of the type of products and services available and shall not form part of the contract for supply or any other contract with the Buyer nor be considered an offer, a collateral warranty or a representation inducing the same.

## 3 – Acceptance of Orders

3.1 No order on the Seller will be effective until the Seller has sent an official Order Acknowledgement Form to the Buyer. If the Seller's quotation specifies that it is a bid in response to an invitation for bids the order or award shall constitute acceptance of the bid in accordance with the terms specified by the Seller.

3.2 Accepted orders are not subject to cancellation by the Buyer except upon

- (i) The written approval of the Seller and
- (ii) The payment of a fair and equitable charge to the Seller based upon the actual cost incurred by the Seller in respect of the order to the date cancellation is received and approved.

## 4 - Specifications

4.1 Where the Seller sells goods or performs services which are not its standard specification, in preparing and submitting a specification and/or written acceptance of the Buyer's order the Seller relies upon the Buyer supplying all necessary relevant and accurate particulars and information. Any errors or omissions contained in such particulars and information supplied at any time resulting in any loss or damage to the Buyer shall be the Buyer's sole responsibility.

4.2 Any drawings, illustrations, specifications or other material submitted by the Seller to the Buyer remain the property of the Seller and must not be communicated to a third party without the written permission of the Seller. A prospective Buyer has no right to disclose any information contained therein to a third party without the written consent of the Seller.

## 5 – Price and Payment Terms

5.1 The price and terms of payment for the supply shall be set out in the Seller's Order Acknowledgement Form and will be held for 30 days.

5.2 The Seller reserves the right by notice given at any time before delivery of the goods or performance of the services to vary the price if there is any increase or decrease in the Seller's general price list appertaining to such or similar goods or services or if there is any increase in the cost to the Seller due to any factor beyond its control, any change in delivery dates, quantities or specification of goods which is requested by the Buyer or any delay caused by the Buyer's instructions or failure to provide adequate information. Time of payment of the price shall be the essence of all contracts for supply.

5.3 Unless otherwise agreed in writing or set out in the quotation the Seller's prices do not include delivery charges. Where the Seller agrees to deliver the goods the Buyer will pay for the cost of transport, packaging and insurance.

5.4 All Customs and Excise duties import and/or export duties and all taxes, tariffs and surcharges of any nature whatsoever now or hereafter levied or imposed in any country or territory either directly or indirectly in respect of the supply shall be borne by the Buyer and except as stated in the Order Acknowledgement Form are additional to the prices therein stated.

5.5 The selling price of imported goods is based on exchange rates in effect at the date of the Order Acknowledgement Form and may, without prejudice to the provisions of Clause 5 above, at the Seller's discretion be increased to compensate for currency fluctuations.

5.6 Except as otherwise specified in writing by the Seller or this Condition payment for the supply shall be due in full pounds sterling within thirty days of the issue of the Seller's invoice.

5.7 The Seller reserves the right to suspend further deliveries or performance and/or to cancel allowance of further credit in the event of any payment not being made when due or if the Seller considers the financial circumstances of the Buyer have ceased to justify the terms allowed.

5.8 If the Buyer fails to make payment by or on the due date then, without prejudice to any other right or remedy, the Seller can:

- (i) Cancel the contract and suspend further deliveries to the Buyer
- (ii) Appropriate any payment made by the Buyer to such of the goods (or the goods supplied under any contract) as the Seller thinks fit
- (iii) Charge the Buyer interest (both before and after any Judgment) on the amount unpaid at the rate of 4% above the Seller's Bank base rate from time to time or the statutory rate of interest payable on judgment debts whichever is the greater.

## **6 – Delivery**

6.1 Unless otherwise expressly provided in writing in the Order Acknowledgement Form, all sales are ex works and delivery of the goods to the carrier shall constitute delivery thereof to the Buyer, and thereafter such goods shall be at the Buyer's risk. Any claim for shortage or damage occurring after such delivery or for transportation overcharges should be directed by the Buyer to the carrier. Any period or date for delivery or for the performance of services stated in the contract for supply or elsewhere is the Seller's best estimate when stated, but is not a contractual statement.

6.2 If the Buyer fails to take delivery of the goods or fails to give adequate delivery instructions then without prejudice to any other right or remedy the Seller may:

- (i) Invoice for all the goods ordered, store the goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage and interest as provided in Clause 8.3 until payment is made in full; or
- (iii) Sell the goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price due under the Contract or charge the Buyer for any shortfall below the price under the Contract.

## **7 – Invoicing**

7.1 Unless a proforma invoice is supplied the Seller may invoice the Buyer in respect of the supply of goods at the earlier of the following dates: the date the goods are shipped or the date the goods are ready for shipment (if they are held at the Seller's warehouse awaiting instructions from the Buyer).

7.2 The Seller may invoice the Buyer for the supply of services at the earlier of the following dates: the date of the commencement of performance thereof or the date indicated in the Order Acknowledgement Form if performance is delayed by the instructions of the Buyer, or by some reason beyond the control of the Seller.

## **8 – Passing of Property**

8.1 No property in or title to the goods shall pass to the Buyer until their full price has been duly paid in cash to the Seller. Failure to pay the purchase price as aforesaid when due shall, without prejudice to any other remedies the Seller may have, entitle the Seller to repossess the goods or so much thereof as the Seller may determine from any premises where they may be stored or to which they may be attached. For the purpose of repossessing the goods or any part thereof the Buyer shall permit the Seller, its employees or agents upon such premises and the Buyer shall pay to the Seller the cost of removal and transport of the goods or any part thereof. Nothing in this Condition shall confer any right on the Buyer to return any of the goods or to refuse or delay payment.

8.2 The Buyer shall not sell, purport to sell or part with possession of the goods until the property therein shall have passed to the Buyer provided that with the prior written consent of the Seller the Buyer may contract to re-sell the goods. In any such re-sale the Buyer shall as regards the sub-purchaser act as principal but shall hold the proceeds of such re-sale in trust for the Seller in a separate bank account until the Seller has received the full purchase price due to the Seller.

## **9 – Statutory Liability**

9.1 The Seller does not exclude or restrict any legal liability it may have for death, or personal injury resulting from the negligence of the Seller, its employees, agents or sub-contractors.

9.2 The Seller does not exclude or restrict any of its legal obligations arising under Section 12 of the Sale of Goods Act 1979 (as amended by the Sale and Supply of Goods Act 1994) and Section 2 of the Sale of Goods and Services Act 1982 and Part 1 of the Consumer Protection Act 1987.

## **10 – Warranties**

10.1 The Seller warrants the goods against defects in design, materials and workmanship which become apparent within, the shorter of, the balance remaining of the warranty given by the manufacturer to the Seller or 12 months of the date of delivery of the goods to the Buyer.

10.2 The Seller warrants that it will perform services with reasonable care and skill but this warranty shall not apply to any deficiency in such performance unless it becomes apparent within 1 month of the date of performance by the Seller.

10.3 The periods referred to in Clauses 10.1 and 10.2 shall hereinafter be called “ the warranty period”.

10.4 The Seller’s obligation under this warranty is limited:-

- (i) In the case of goods: to repairing or at its option supplying on an exchange basis replacements for any defective goods or parts thereof and making good any defect or defects in the goods which may develop under normal and proper use within the warranty period.
- (ii) In the case of services: to the re-performance of the services or part or parts thereof shown to be deficient hereunder within the warranty period.

10.5 In the event of the Buyer becoming aware of a defect in goods or of a deficiency in the performance of service during the warranty period the Buyer shall promptly supply the Seller with written particulars of such defect or deficiency, use its best endeavours to provide all information and particulars necessary to enable the Seller or its agents to verify the notified particulars and to ascertain the nature and cause of the defect or deficiency claimed and shall afford the Seller and/or its agent full and proper access and facilities for the making good of the defect or deficiency.

10.6 The above warranty shall not apply to any defect in the goods or deficiency in the services where such defect or deficiency is caused in whole or in part by:

- (i) The installation, storage, use, maintenance or repair of the goods in a manner reasonably considered by the Seller to be improper;
- (ii) The Buyer and/or any user of the goods or of products incorporating the goods and/or any third party called in by the Buyer and/or such user as aforesaid changing or adding to the goods without the express permission in writing of the Seller;
- (iii) Any other act of the Buyer or any third party

10.7 The Seller shall be under no liability whatsoever for any loss or damage which results from or is caused by erroneous information or lack of information supplied by the Buyer as to the Buyer's requirements in relation to the specification or use of the goods or services.

10.8 The Seller shall be under no liability whatsoever to repair, replace or make good any loss which results from defects or depreciation caused by damage in transit in circumstances outside the Seller's control; wear and tear, accidents, neglect, misuse, dampness, abnormal temperature or other conditions or circumstances beyond the Seller's control as stipulated in Clause 12 below.

(i) When any defective goods are replaced upon an exchange basis or defective goods are replaced or services are re-performed the provisions of this warranty clause shall apply to the re-performed services or replacement or repaired goods for the unexpired balance of the warranty period or the period of six months from the date of re-performance replacement or repair as the case may be whichever is the longer.

10.9 The above warranty provisions do not apply to any goods or services where it is impracticable or unsafe for the Seller to comply with the same.

10.10 All liability under the warranty provisions ceases at the expiration of the warranty period.

## **11 – Exclusions and limitations on warranties**

11.1 The Buyer shall be entitled to the benefit of the aforementioned warranty which is given in lieu of and replaces, excludes and extinguishes all and every condition, representation or warranty whatsoever whether express or implied by statute, common law, trade usage, custom or otherwise.

11.2 It shall be the responsibility of the Buyer to determine the suitability of the goods and any services for their intended purpose and for actual application and their compliance with applicable laws, regulation codes and standards and the Buyer assumes all risks pertaining thereto.

11.3 Notwithstanding the exclusion of any warranty as to fitness for purpose contained in these Conditions, as a separate Condition the Buyer agrees that in circumstances where the Seller relies on the skill of the Buyer to judge whether goods or services are fit for the purpose for which they are purchased or provided the Seller shall accept no liability whatsoever with regards to that judgement or any matter arising from that judgement the Buyer will indemnify the Seller against any loss, damage, costs, claims or expenses arising therefrom.

11.4 If not withstanding the Seller's attempts to comply with the warranty the Seller is unable to do so the Seller shall pay monetary damages to the buyer not exceeding the amount received by the Seller for the defective goods, or as the case may be, the deficient services.

11.5 The Seller shall not be liable in respect of any loss or damage of whatsoever kind or howsoever caused whether by reason of the negligence of the Seller or otherwise, to premises, plant or other physical property. In the event of legal liability being established the Seller shall not be liable to pay damages arising from the aforesaid loss or damage.

11.6 Save as expressly provided for in the contract for supply the Seller shall in no circumstances be liable for the following loss or damage howsoever caused and howsoever arising whether by reason of the Seller's negligence or otherwise, even if such loss or damage was or ought reasonably to have been, in the contemplation of the parties at the date of the contract for supply as being likely to occur;

- (i) Economic loss, which shall include, without limitation, loss of profits, reputation, goodwill, business use, use of interest, services of employee or agent, anticipated savings, expenses rendered futile by the breach and expenses caused by the breach;
- (ii) Any other consequential or indirect loss or damages;
- (iii) Any claim made against the Buyer by any other party; In the event of legal liability being established the Seller shall not be liable to pay damages arising from the aforesaid loss or damage.

11.7 If, notwithstanding the provisions of Clauses 11 and 12 inclusive and Clauses 21 and 22, the Seller shall in any circumstances whatsoever be held legally liable to the Buyer then;

- (i) The buyer's sole rights of redress against the Seller shall be limited to damages;
- (ii) The Seller's total liability in respect of any goods and/or services notwithstanding the number of incidents for which the Seller is found legally liable shall in no circumstances exceed the amount received by the Seller for goods or services as the case may be.

11.8 If and insofar as the Seller may be held to be legally liable to the Buyer, the sole right of redress of the Buyer against the Seller shall be as expressly provided for in these Conditions or any other conditions expressly agreed to in writing by the Seller, and the Buyer shall have no other remedies of any kind whatsoever against the Seller.

11.9 For the purposes of the contract for supply the expression 'legal liability' shall include the legal liability of the Seller, its employees, agents or sub-contractors as found by any court or competent authority and, without prejudice to the generality of the foregoing, shall include:

- (i) Breach of any contractual obligation by virtue of the express or implied terms of the contract for supply and any fundamental breach and/or breach of fundamental term;
- (ii) Negligence arising by virtue of any act or omission which amounts to a failure to take reasonable care or exercise reasonable skill;
- (iii) Any misrepresentation or misstatement made by or on behalf of the Seller;
- (iv) Any other breach of duty and the expression 'legally liable' shall bear a corresponding meaning.

11.10 This clause shall not confer any rights or remedies on the Buyer to which the Buyer would not otherwise be entitled.

## **12 – Events Beyond the Control of the Seller.**

12.1 The Seller does not accept liability incurred under the contract for supply wherever and to the extent to which the fulfilment of the Seller's obligations is prevented frustrated impeded and/or delayed as a consequence of any 'force majeure' and/or any occurrence whatever beyond the control of the Seller, such to include, without prejudice to the generality of the foregoing;

- (i) Act of God, fires, floods or other casualties;
- (ii) Wars, riots, civil commotion, embargoes, governmental regulations inability to obtain necessary materials from the Seller's usual sources of supply;
- (iii) Shortage of transport facilities or delays in transit;
- (iv) Existing or future strikes or other labour troubles affecting the performance thereof whether involving the Seller's employees, or employees of other parties and regardless of the responsibility or fault on the part of the employers;
- (v) Failure in whole or in part of power supplies.

12.2 The Seller undertakes however to make every reasonable endeavour within its power to overcome difficulties arising in connection therewith but reserves the right to cancel suspend or vary its obligations under the contract of supply and in the event of shortages of goods or of available resources for their production storage or delivery or continued difficulty in rendering services arising from any of the events or circumstances referred to in Clause 19, the Seller reserves the right to allocate as it may think fit its available goods and resources and performance of services between customers and whom it has contractual obligations in respect thereof and shall not be obliged to purchase goods from third parties or sub-contract services to make good such shortages, or performance.

## **13 – Insurance**

13.1 The precise limits of any appropriate insurance cover are primarily within the Buyer's knowledge thereby enabling the Buyer to effect his own insurance cover at more economic rates than the Seller. The Buyer agrees that insofar as the Buyer may require any insurance cover the Buyer shall effect the same, such to include without prejudice to the generality of the foregoing;

- (i) Damage to the physical property of any kind;
- (ii) Economic and other consequential or indirect loss or damage; therefore the Buyer acknowledges and accepts that it is reasonable for the Seller to limit its legal liability and its liability to pay damages as set out in these conditions.

13.2 The Buyer hereby agrees and acknowledges that it will procure that the Buyer's insurers shall in no circumstances whatsoever have any rights or remedies against the Seller additional to those of the Buyer.

#### **14 – Indemnity**

The Buyer agrees to indemnify the Seller against any loss, damage, costs, claims or expenses incurred by the Seller in respect of liability established against the Seller by a third party arising out of or in connection with the contract of supply.

#### **15 – Change in Buyer's Financial Circumstances**

If the Buyer makes any composition or arrangement with creditors or, being in a company, goes into liquidation whether voluntary or compulsory or, being an individual or firm, if he or any partner commits any act of bankruptcy or if a Receiver is appointed in respect of any assets of the Buyer or if the Buyer fails duly to pay for any goods or services or to comply with any other requirement under any contract for supply or if the Seller considers in its absolute discretion that the financial circumstances of the Buyer do not justify any payment or credit terms or arrangement previously agreed the Seller may at its option either require payment in cash before despatch of goods remaining to be delivered or performance of services remaining to be performed any may cancel further deliveries or work without prejudice to any other rights or remedies of the Seller and the Buyer shall remain liable for completed and partially completed deliveries and work to the same extent as required under Condition 3 (C) of these Conditions in the event of cancellation.

#### **16 – Health and Safety.**

16.1 The Buyer agrees to use the goods and obtain services for uses specified in the Seller's current sales literature or for other uses which the Seller has specifically notified in writing to the Buyer as being in the Seller's opinion free from risk to health and safety.

16.2 The Buyer agrees to pay due regard to any information or advice relating to the use of the goods or product of the services which the Seller may at any time furnish to it and agrees that before the goods are used it will, if requested by the Seller, furnish the Seller with a written undertaking to any steps which the Seller may specify with a view to ensuring that the goods will be safe and without risk to health when used.

16.3 Any written undertaking given pursuant to Clause 16.2 above shall be deemed to have as if it formed part of the contract for supply.

#### **17 – Delivery by Instalments.**

Each delivery or part delivery of any order shall be deemed to be sold under a separate contract. Neither failure on the Seller's part to make any delivery or part delivery in accordance with the contract for supply nor any claim by the Buyer in respect of such delivery or part delivery shall entitle the Buyer to reject the balance of the order.

#### **18- Quantities**

On all orders the Seller shall have the right to ship and bill for quantity of goods greater or less than the exact quantity up to a variation of 10% unless otherwise expressly provided for the Order Acknowledgement Form.

#### **19 – Patent Indemnity**

When goods are made or adapted by the Seller in accordance with the Buyer's specifications, the Buyer shall indemnify the Seller against all costs, claims and expenses incurred by the Seller in respect of the infringement or alleged infringement by such goods of any patents, registered designs, trademarks or other rights belonging to third parties.

#### **20- Reels**

The Seller shall retain title to all reels on which a deposit is required. Deposits will be returned when reels are returned in good order to the Seller, at the Buyer's expense within one year from the date of shipment. Return freight will be allowed on shipments of returnable reels over 100 kilos.

## **21 – Engineering Charges**

21.1 The Seller reserves the right to charge the Buyer for engineering charges and expenses (whether internal or to third parties) incurred by the Seller in relation to the design or manufacture of the goods, such to include (without limitation) design costs and the cost of tools. Such charges and expenses shall be payable by the Buyer in addition to the purchase price for the goods.

21.2 The Seller shall remain the owner of tools and designs and all copyright and other rights relating thereto whether or not such charges are paid by the Buyer.

## **22- Buyer's Property**

Any material or property of the Buyer or material or property supplied to the Seller by or on behalf of the Buyer is supplied entirely at the Buyer's risk and the Seller will not be liable or held responsible for any loss or damage to such material or held responsible for any loss or damage to such material or property whether or not attributable to the acts, defaults, or negligence of the Seller or any of the Seller's employees or agents.

## **23 - Export Contracts**

23.1 All export contracts for supply by the Seller are subject to any necessary licences and Exchange Control authorisations being obtained.

23.2 We reserve the right not to supply certain customers or countries and to require full details of intended use and final destination of the goods.

23.3 The Buyer is responsible for complying with any legislation or regulation governing the export of goods from the United Kingdom and importation of goods into the country of origin and the payment of any duties, taxes or other expenses in connection therewith.

23.4 The Seller is under no obligation to give notice under Section 32 (3) of the Sale of Goods Act 1979.

23.5 The Seller reserves the right to charge VAT at the prevailing rate until the Buyer provides proof of export of goods from the United Kingdom.

## **24 - Assignment**

The Buyer shall not assign or otherwise transfer any contract for supply or any part thereof or any benefit or interest therein or thereunder without the prior written consent of the Seller. Any such attempted assignment or transfer by the Buyer without the written consent of the Seller is void.

## **25- Waiver**

The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver of any breach shall operate as a waiver of any subsequent breach and shall only apply to the individual contract for supply in relation to which it is made.

## **26- Severability**

If any term or condition herein or part thereof is held to be invalid for any reason by any Court or competent authority it is to that extent to be deemed removed from the contract for supply without prejudice to the validity or other effectiveness of the remaining terms and conditions thereof.

## **27 – English Law**

The formation, construction and performance of all contracts for supply shall be governed in all respects by English Law. The Buyer and the Seller hereby agree to submit to the non-exclusive jurisdiction of the English Courts.

**28 – Headings**

The headings of these Conditions do not form part of the Conditions and shall not affect the interpretation thereof.

**29 – Third Parties**

The Buyer acknowledges and agrees that these Terms shall not, nor purport to, confer on any third party a right to enforce any term of the Contract. This provision confirms the intention of the parties for the purposes of the Contracts (Rights of Third Parties) Act 1999.

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