

SSS SUPER ALLOYS LIMITED - CONDITIONS OF SALE

In these conditions "the Company" means SSS Super Alloys Limited and any subsidiary of the Company by which the goods are sold. "The Customer" means any person, firm, company, or other organisation placing an order with the Company. "Goods" means the subject matter of the contract and includes materials, commodities, and articles in whatever state of completion or manufacture. "Incoterms" means Incoterms 1990 and any revision or replacement thereof in force from time to time.

1. GENERAL

1.1 The Company's quotations are not binding on the Company and a contract ("the contract") will only come into being upon acceptance by the Company of the Customer's order and the following conditions shall be deemed to be incorporated therein.

1.2 The Contract will be subject to these conditions. All terms and conditions appearing or referred to in the Customer's order or otherwise stipulated by the Customer shall have no effect.

1.3 In the event that these general conditions are inconsistent with the express terms of the contract the express terms shall prevail.

1.4 Any variation of the contract must be confirmed in writing by the Company.

2. PRICES

2.1 Unless fixed prices have been expressly agreed by the Company the price payable by the Customer shall be the Company's price ruling at the date of despatch.

2.2 Prices exclude delivery unless otherwise stated and are subject to the addition of value added tax and any other relevant tax or duty.

2.3 Irrespective of prices being fixed or variable, the Company reserves the right to add surcharges (such as for alloy or scrap content or any other factor) as imposed by the producer of the goods, and with immediate effect whenever a charge is made.

3. TERMS OF PAYMENT

3.1 Prices quoted are net and are in Sterling unless otherwise agreed.

3.2 Subject to credit being approved, accounts are due for payment not later than the end of the month following the month of Delivery, otherwise payment must be received by the Company before delivery.

3.3 When deliveries are spread over a period, each consignment will be invoiced as despatched, and each month's invoices will be treated as a separate account and be payable accordingly.

3.4 Failure to pay for any goods or for any delivery or instalment shall entitle the Company to suspend further deliveries to the Customer without prejudice to any other right the Company may have.

3.5 The Company also reserves the right to charge interest on overdue accounts. Such interest to be calculated on a day-to-day basis on the amount outstanding from the due date of payment at the rate of 8% above the Bank of England base rate from time to time.

3.6 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 instalment as aforesaid to suspend delivery of any order or any part or instalment without liability until payment or satisfactory security for payment has been provided.

3.7 Payment must be made by bank transfer and in the currency designated on the invoice. Cheques are not accepted.

4. TITLE TO GOODS

4.1 Notwithstanding clause 10, legal and beneficial ownership of the goods shall remain with the Company until payment in full has been received by the Company:

4.1.1 for those goods.

4.1.2 for any other goods supplied by the Company.

4.1.3 for any other monies due from the Customer to the Company on any account.

4.2 Until property in the goods passes to the Customer under clause 4.1 above the Customer shall:

4.2.1 be bailee of the goods.

4.2.2 keep the goods separately and readily identifiable as the property of the Company.

4.2.3 not attach the goods to real property.

4.3 Notwithstanding clause 4.1 above, the Customer may (as between it and its customer only) as principal in the ordinary course of its business sell the goods by bona fide sale at full market value or in the ordinary course of its business use the goods.

4.3.1 Any resale by the Customer of goods in which property has not passed to the Customer shall (as between the Company and the Customer) be made by the Customer as agent for the Company.

4.3.2 Goods shall be deemed sold or used in the order delivered to the Customer.

4.4 At any time prior to property in goods passing to the Customer (whether any payment to the Company is then overdue or the Customer is otherwise in breach of any obligation to the Company) the Company may without prejudice to any other of its rights:

4.4.1 retake possession of all or any part of the goods and enter any premises for that purpose (or authorise others to do so) which the Customer hereby authorises.

4.4.2 require delivery up to it of all or any part of the goods.

4.4.3 terminate the Customer's authority to resell or use the goods forthwith by written notice to the Customer which authority shall automatically terminate (without notice) upon any insolvency of the Customer or it going into liquidation (as defined in the Insolvency Act 1986) or it having a receiver or administrative receiver appointed or calling a meeting of its creditors or any execution or distress being levied on goods in its possession.

4.5 The Company may at any time appropriate sums received from the Customer as it thinks fit notwithstanding any purported appropriation of the Customer.

4.6 Each paragraph and sub-paragraph of this clause is separate severable and distinct.

5. LIEN

In addition to any rights of lien which the Company may have, the Company shall have, in the events described in clause 17, a general lien over all goods of the Customer then in possession of the Company for any monies due to the Company but unpaid.

6. CANCELLATION

The contract and any orders cannot be cancelled except with the Company's consent and on terms which will indemnify the Company against all loss and expenses incurred. Any goods returned without the Company's consent will not be accepted for credit.

7. DELIVERY AND COMPLETION DATES

7.1 The delivery dates specified in the contract are approximate only and time is not of the essence for delivery. The Company will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver.

7.2 No delay shall entitle the Customer to reject any delivery or any further instalment or part of the order or any other order from the Customer or to repudiate the contract or the order.

8. FORCE MAJEURE

In the event of the performance of any obligation by the Company under the contract being prevented, delayed or in any way interfered with by war, riot, civil commotion, strikes, lockouts, accidents, flood, fire, explosion or by any other cause beyond its control, the Company may suspend or treat as impossible the performance of any obligation to the Customer without liability for any loss.

9. 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 arrange storage of the goods at the Customer's risk 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 pay for them in accordance with the contract.

10. DAMAGE, SHORTAGE OR LOSS IN TRANSIT

10.1 The risk in the goods (but not ownership) shall pass to the Customer upon delivery and delivery shall be deemed to take place:

10.1.1 in the case of goods to be collected from the Company's premises by the Customer or by the Customer's agent (including any independent carrier engaged by the Customer) at the time when the loading of the goods on to the vehicle collecting them is completed.

10.1.2 when goods are delivered by the Company's transport (including any independent carrier engaged by the Company) at the moment the goods are lifted from the delivery vehicle.

10.1.3 in the case of goods to be delivered outside the United Kingdom in accordance with the provisions of the specified Incoterms.

10.2 Where the contract provides for delivery by the Company the Company will entertain a claim by the Customer in respect of loss or damage in transit only if the Customer:

10.2.1 gives written notice to the Company within 21 days of non-delivery, or within 7 days of the delivery of the goods by road or within 21 days of the delivery of the goods by rail in any other case, and

10.2.2 where the goods are transported by an independent freight carrier, complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.

10.3 All goods are sold on the basis of weighed weight or calculated weight or quantity according to the Company's practice for that product. Sizes are supplied within the rolling tolerances as laid down by the producers. Where weighed weight is chargeable, the count is not guaranteed, and claims based solely upon count cannot be accepted.

10.4 The Company shall be deemed to have fulfilled the contract if the goods delivered are within a tolerance of 10 per cent above or below the quantity ordered.

11. ACCEPTANCE

The Customer shall be deemed to have accepted the goods and it shall be conclusively agreed that the goods are in accordance with the contract unless:

11.1 within 7 days after receipt of the goods and prior to their use or resale the Customer serves on the Company a written notice specifying the alleged defect in the quality or state of the goods which would be apparent upon careful inspection or by such testing as it is reasonable in all the circumstances for the Customer to undertake and thereafter provides the Company with a reasonable opportunity of inspecting or testing the goods before they are used or resold.

11.2 if the alleged defect in the quality or state of the good would not be apparent upon careful inspection or reasonable testing the Customer serves on the Company written notice of such defect forthwith upon its discovery and in any event not more than 6 months after receipt of the goods specifying the matters complained of and affording the Company a reasonable opportunity of inspecting the goods before any making good or replacement is undertaken.

12. DEFECTIVE GOODS

12.1 Provided that the Customer has complied with clause 11 and subject to the provisions of clause 13, if the goods or any part thereof are defective in quality or state or (except for any discrepancy in weight or quantity) otherwise not in accordance with the contract then if the Company and Customer do not agree that the Customer shall accept the goods at an agreed value or that the goods should be made good at the Company's expense the Company will accept the return of the goods by the Customer and at the Customer's option either:-

12.1.1 repay or allow the Customer the invoice price thereof and any reasonable costs incurred by the Customer for the purpose of transporting the goods back to the Company; or

12.1.2 replace the goods by delivering replacement goods as soon as reasonably practicable and in all other respects in accordance with the contract.

12.2 The obligations of the Company under clause 12.1 are in substitution for any other legal remedy of the Customer and the liability of the Company shall for all purposes be limited to the cost of making good, the giving of any appropriate credit or repayment or the replacement of the goods in accordance with that clause. Under no circumstances shall the Company be liable for any other loss, damage or expense occasioned by any breach of contract, negligence, or breach of any duty of the Company whatsoever and howsoever such loss or damage or expense may have been caused. The Company shall not be liable for any loss or damage the Customer may suffer by reason of the use or sale of the goods after the Customer has become aware of a defect therein or ought in all the circumstances to have become so aware.

12.3 Where processing of the goods has been carried out by a third party, the Company's liability is limited to the processor's warranty as to the process or the effect the process may have had on the goods themselves.

12.4 In no circumstances will the Company be responsible for loss or damage beyond that expressly referred to in this clause 12 (other than non-excludable liability for death or personal injury resulting from negligence on the part of the Company) and in particular, liability for any form of consequential loss is excluded.

13. NON-PRIMES, SCRAP, ETC

13.1 Goods sold as "non-primers", "scrap" or any other similar description or goods accepted by the Customer under clause 12.1 which the Company and the Customer agree to be "non-prime" are sold in their actual state, as seen, without warranty and with all faults whether the goods have been inspected by the Customer prior to delivery. Any statement, specification, description, or other information provided by the Company in respect of such goods is given in good faith, but the Company can accept no responsibility for its accuracy. In no circumstances will the Company be under any obligation to replace or make good such goods or entertain any claim whatsoever in respect thereof.

13.2 If the Customer shall resell such goods the Customer shall ensure that a provision in similar form to this condition is incorporated in the contract for such resale unless prior to reselling such goods the Customer has caused the goods or such part thereof as the Customer resells to comply with a recognised specification or standard.

14. WAIVER

The Company's rights and remedies shall not be prejudiced or restricted by any indulgence or forbearance to the Customer and no waiver by the Company of any breach of the contract by the Customer shall operate as a waiver of any subsequent breach.

15. ASSIGNMENT AND SUBCONTRACTING

15.1 The contract shall not be assigned by the Customer to any third party without the prior written consent of the Company.

15.2 The Company shall be entitled to subcontract any work relating to the contract without obtaining the consent of, or giving notice to, the Customer.

16. HIRE WORK

16.1 Hirework and work involving the use of the 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, however arising, even resulting from any fault or 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 distortion, faults or defects at the Customer's expense and risk. 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.

16.2 Unless it is otherwise expressly agreed in writing any waste material resulting from the performance of any hirework shall become the property of the Company, but it is herein expressly agreed between the Company and the Customer that the Company may at any time order the Customer to remove any such waste material and the Customer hereby agrees that on receipt of any such order from the Company it will forthwith comply with such order.

16.3 The Customer agrees that it will reimburse the Company for any damage caused to any plant or machinery of the Company by the material supplied by the Customer to the Company.

16.4 The Company will have a lien on all the Customer's goods and materials in the possession of the Company for hirework in respect of all sums owing to the Company for such hirework.

17. TERMINATION

If the Customer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or (being a company) it shall pass a resolution or the Court shall make an order that the Customer shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the Customer or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the Court to make a winding up order or if the Customer takes or suffers any similar action in consequence of debt or if the financial responsibility of the Customer shall, in the opinion of the Company become impaired or if the Customer shall commit any breach of any part of the contract the Company may without prejudice to its rights and remedies hereunder stop all goods in transit and suspend further deliveries and by notice in writing to the Customer may forthwith determine the contract.

18. STANDARDS

Any condition, warranty or undertaking as to fitness or suitability of the goods for any purpose known by the Company or which may be implied by custom of the trade or by statute or otherwise is hereby excluded and any statement in any British, European or any other applicable standard as to suitability of the goods for any purpose shall give rise to no legal liability on the part of the Company.

19. TEST CERTIFICATES

The Company shall not be required to supply test certificates unless the same are requested a reasonable time before delivery and the Company may charge a reasonable fee for any certificates supplied.

20. PATENTS

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

21. INDEMNITY

The Customer agrees upon demand to indemnify the Company against all losses, damages, injury, costs, and expenses of whatever nature suffered by the Company to the extent that the same are caused by or related to:

21.1 designs, drawings or specifications given to the Company by the Customer in respect of goods produced by the Company for the Customer, or

21.2 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, or

21.3 the improper incorporation assembly, use, processing, storage, or handling of goods by the Customer.

22. PACKING

22.1 Goods shall be supplied without packing unless otherwise specified in the contract and packing materials will be charged extra.

22.2 Where the goods are packed or protected as specified in the contract or in the event of no such specification the goods are delivered without any or sufficient packing or protection the Company shall not be liable for any deterioration or damage suffered by the goods during carriage or delivery and no claim will be accepted by the Company for breakage or damage in transit on the ground of alleged unsuitability of packing.

23. 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 exclusive jurisdiction of the English Courts.

24. NOTICES

24.1 Any notice or other communication to be given under these conditions must be in writing and may be delivered or sent by pre-paid first-class letter post or facsimile transmission.

24.2 Any notice or document shall be deemed served, if delivered by hand, at the time of delivery; if posted, 48 hours after posting, and if sent by facsimile transmission, at the time of transmission.