

# GENERAL TERMS AND CONDITIONS OF SALE

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**Any and all sales by the Seller of products and/or accessories ("Products") shall be subject to the terms and conditions set forth below to the extent that these terms and conditions are not incompatible with the provisions agreed upon by and between the Buyer and the Seller in a specific written agreement. No other terms and conditions that may be referred to in the orders of the Buyer or his representative shall apply, even if these have not been rejected explicitly by the Seller.**

## 1. DELIVERY

The delivery dates set forth in the order acknowledgement are not binding and the Seller accepts no responsibility for any delay, except when the delivery dates were confirmed by the Seller in writing and without any reservation in a separate document. Unless otherwise stipulated in the order acknowledgement, the Products are sold ex-Sellers plant (loaded onto arriving vehicle). The Products will be delivered in the Seller's standard packaging with the Seller's standard labels and markings.

The trade terms (such as for instance "ex-Sellers plant") will be interpreted according to the Incoterms 2010 as published by the International Chamber of Commerce, which are made an integral part of these terms and conditions (the "Incoterms").

## 2. OWNERSHIP AND RISK

Title to the Products shall pass to the Buyer once the price and the integral accessories have been paid in full to the Seller. Until the Buyer has obtained title to the Products, the Buyer shall ensure that the Products in its possession shall at all times be available and readily identifiable to the Seller or appointed staff, as the Seller's property at the Buyer's premises. In case of resale by the Buyer, the Seller has the right to claim an amount equal to the value of the resold goods and the eventual accessories. This retention of title remains in force even when Products are in the possession of third parties. On the Seller's request, the Buyer will draw up all documentation and manage all actions required for the enforcement of the Seller's retention of title in the country of his buyer. Regardless of any retention of title by the Seller, Independent of any reservations of ownership, the responsibility of safekeeping and the risk of damages, destruction or loss of the sold Products or any part thereof shall in any event pass to the Buyer as from the moment when the Products are delivered to the Buyer in accordance with the agreed upon Incoterms and irrespective of the identity of the transporter.

## 3. PRICES

The Buyer will pay the price for the Products as agreed upon with the Seller without any deductions or rebates, unless the Seller has agreed differently in writing. Notwithstanding the aforementioned, the Seller shall be entitled, without any written prior notification or the Buyer's agreement, to index the agreed price, to invoice that price, and the Buyer will pay the indexed price. The indexed price will be equal to the product of (a) the agreed price and (b) a fraction of which (i) the numerator is equal to the MEPS EU Carbon Steel Price Index HD Galv. Coil (ref 1997) as applicable in the third month before delivery of the Products and (ii) the denominator is equal to the MEPS EU Carbon Steel Price Index HD Galv. Coil (ref 1997) as applicable in the third month before the date of the order confirmation. Unless otherwise specifically agreed in writing, the agreed price at the time of the order confirmation will be invoiced, if after the aforementioned indexing the indexed price is lower than the agreed price at the time of the order confirmation.

## 4. FEES AND CHARGES

**4.1.** All fees, taxes, excises, duties, levies and other charges that may be levied now or in the future regarding the Products, will be borne by Buyer, unless these fees, taxes, excises, duties, levies and other charges which should be paid by the Seller prior to the delivery of the Products pursuant to the agreed upon Incoterms.

**4.2.** In case the Products deliverable are exempt from VAT because of an intra-community character of the supplies or because of the ex-

port destination of the supplied goods, and the Buyer transports the Products on his own risk and for his own account (Incoterm EXW, FOB, FCA, etc. ...), then the Seller will only be able to apply the VAT exemption when the Buyer provides him sufficient proof of transport to and arrival at the destination country of the supplied Products.

## 5. INVOICING PAYMENT DEFAULT

Seller will invoice Buyer, and Buyer will pay to Seller, the invoice amount in British Pound ("£" or "GBP") on the base of "shipment per shipment". Buyer will pay Seller's invoice(s) within thirty (30) days from date of issuance of Seller's invoice. If the payment is not done on the due date, Buyer will pay to Seller default interests on all overdue amounts as per the applicable legislation on late payment in commercial transactions. The default interest will also be applicable during any extension of the agreed payment term which the Seller which may have granted the Buyer specifically in writing, or awarded to Buyer by a court decision. Payment of this default interest does not give the Buyer the right to delay the payment of the total outstanding amount. An extension on the payment term will under no circumstances result in novation. Even if the Buyer may have been granted or awarded an extension of the payment term, the Seller may still charge a fixed compensation amount of 40.00 GBP per late invoice, to cover its own collection costs, without any default notice being required for this purpose, and without prejudice to the Seller's right to charge an additional fixed compensation amount of 10 %, on the overdue amount, with a minimum of 250.00 GBP, as compensation for increased administrative costs and expenses (including reasonable compensation for out of court legal fees) in connection with the collection of the overdue amount(s). In addition, non-payment of an invoice on its due date shall without summons automatically nullify the payment terms of prior invoices and shall render all invoices payable immediately. Moreover, under such circumstances and in the event that the Buyer is unable to pay or when his credit becomes impaired (for example by emission of a draft or cheque with insufficient funds), or when questions may arise at any given time, regarding the Buyer's creditworthiness, on account of court decisions and/or any other demonstrable event, the Seller will be entitled to change the payment terms, with immediate effect, and to request cash payment for pending deliveries, or to request (other forms of) collateral, even if the items have already been sent out entirely or partially. If the Buyer fails to comply with the request, the Seller reserves the right to choose to suspend all deliveries until full payment is received and/or until such time as sufficient collateral is provided, or to cancel all current orders for Products, in accordance with Article 9 of the current agreement, or to dissolve this agreement immediately, unilaterally, without any compensation being owed. In an occurring case, the Buyer will owe the Seller a fixed compensation amount of 10% of the overall price for the (part still to be executed for the) relevant order. No complaints on the Buyer's will entitle the Buyer to withhold payment of the invoice or the amounts that are due. In case Buyer does not take delivery of the Products on the agreed date of delivery, due to a fact not attributable to the Seller, the Seller will, without formal notice or without any further notification, be entitled to charge storage costs at a rate of 0.5% of the invoiced value of the Products per commenced week after the original delivery date. If the Products have not been collected by the Buyer after a period of ninety (90) days after the original delivery date, the Seller may cancel the agreement or have it cancelled, without prejudice to the stipulations in Article 9 below.

## 6. FORCE MAJEURE

No party will be liable to the other party for any default or delay in the performance of any of its obligations as a result of Acts of God, fire, explosion, strikes, wild cats, commotion, civil or international war, invasion, epidemics, storms, earth quakes, refusal by the authorities to grant import / export licenses or the cancellation thereof, inability to obtain the goods and/or the raw materials and/or parts in a timely manner and/or in sufficient quantities because of force majeure at third parties, or any other cause beyond the reasonable control of the other party.

## 7. GUARANTEE

**7.1.** Seller warrants (i) that at the time of delivery the Products will conform to the specifications contained in the order acknowledgement taking into account the usual divergences in accordance with the existing and generally accepted euro standards and customary usages applicable to the Products, (ii) that for a period of 10 years from date of delivery no rusting will occur (the "Guarantees"), to the extent the conditions set forth herein are complied with.

**7.2.** All technical advice given by the Seller before and/or during the use of the Products, whether verbal or written, is given in good faith in the then known state of the art. The advice given does not exempt the Buyer of his responsibility to evaluate the Products delivered by the Seller as to their suitability and fitness for Buyer's envisaged processing and/or applications and to only use them therefore. The use and the processing of the Products for the specific application fall entirely under the exclusive responsibility of the Buyer.

**7.3.** Conditions for the Guarantees to apply

The Guarantees shall only apply to the extent that the Products or any component thereof:

(i) are always transported and stored in the original packaging under the circumstances such as indicated by the Seller (such as inter alia covered and a safe location, minimum temperature, maximum humidity grading, neutral atmosphere, ...) or in the absence thereof, at least in conditions consistent with generally accepted practice for these type of products;

(ii) are handled at all times in accordance with Seller's instructions and directives, or, in the absence thereof, at least with the care and caution generally accepted for this type of product;

(iii) were installed strictly in accordance with the instructions and directives of the Seller (such as for Products with protective foil, to remove the protective foil from the 5 panels at the time of installation in order to immediately detect any form of irregularity and to report same) or, in the absence thereof, at least with that care and caution generally accepted for this type of product;

(iv) have not been subject to incorrect storage prior to the processing or placement or to any non-permitted adjustment, amendment or repair or attempts thereto;

(v) have at all times been "normally used" for the intended purpose and not have been used, misused, damaged, or incorrectly used in any way whatsoever. For the purpose hereof, "normally used" shall mean, a regular, ordinary and routine usage of the Product in question as intended and/or recommend by the Seller;

(vi) have been maintained in accordance with Seller's instructions or, in the absence thereof, at least with intervals and in a manner consistent with generally accepted practice for this type of product;

In addition and supplemental to the rules, usages and practices generally accepted for this type of Product, the Buyer, and in the case of resale, the client and eventually its consumer must, (taking into consideration all the rules and usages of good workmanship and all safety and precautionary measures when executing the underlying instructions) :

(i) when cutting edges are not coated or when corrosion takes place, take immediate steps for the retouching with the material and in accordance with the methods which are set forth by the Seller; and

(ii) check the Products and coatings of the building regularly and at least once a year; and

(iii) regularly clean and touch up the Products where necessary so as to conform to the directives and instructions of the Seller or, in the absence thereof, in the manner and with the same care and diligence as is generally accepted for this type of Product.

**7.4.** In no event shall the Seller be liable for any defect, shortage, loss or damage to the Products or any component thereof which arises as a consequence of (i) condensation, mould or any stains attributable to the storage conditions prior to the processing or placing not in accordance with the directives and instructions of the Seller or in the absence thereof, in accordance with generally accepted practices for this type of product, or (ii) the corrosion of cutting edges which were not coated or corrosion or the blowing off of steam as a result of the reaction of the Products and/or covering to corrosive substances and fumes, containing acids, bases or detergents of abrasive substances, or (iii) exposure to extreme temperatures, or (iv) wear and tear, or (v) corrosion (due to salt and/or sand) or other effects resulting from causes within the building, or as a result of the presence of contaminating substances between the covers or of abnormal atmospherically pollution or contact with aggressive fumes or chemicals, or (vi) the emission of harmful gases, fumes or chemicals from natural or artificial sources on or within 500 meters from the location where the Products have been placed or (vii) the accumulation of dirt, or forming of pools on roofs and/or insufficient closed off covering areas through which water and other polluted substances are trapped, or (viii) any force majeure conditions such as described in article 6 or damage caused by phenomena's such as i.e. earthquake, hail, storm, hurricanes, explosions, fire, commotion, war threats or other similar circumstances beyond the control and therefore falling outside the responsibilities of the Seller, or (ix) because of any action or omission on the part of the Buyer or from any third party (including inter alia the workers, appointed staff, clients, agents, transporters and contractors of the Buyer). Any Product or component thereof made by a third party and delivered by the Seller, falls under the original warranty of the particular manufacturer and the Seller will provide the same warranty that the Seller received from the manufacturer for that product.

**7.5.** Tints and colours

Unless specifically agreed to in writing, the Seller does not guarantee the uniformity of the tints and the colours. In the event of the aforementioned stipulation being agreed upon, said uniformity will be judged in accordance with the local practices acceptable in the sector at that time and will only apply for all Products or any part confirmed as such by the Seller and ordered by the Buyer in 1 order. Colour charts and/or colour photos of Products in Sellers catalogue, prospectus and other canvassing material is merely for the use of illustration and could deviate from the actual colours and tints delivered.

**7.6.** Claims for repair or replacement under the Guarantees

Any claim under the Guarantees must be notified to Seller in a detailed and motivated way per registered letter with acknowledgement of receipt within eight (8) days from date the defect or fault has been discovered or noticed or could be noticed for the first time.

**7.7.** Remedies under the Guarantees

**7.7.1.** For unprocessed Products or Products not yet installed

In the event that the Seller acknowledges that the delivered Product or any component thereof does not comply with the Guarantee, the Seller shall at his own expense and choice, at the request of Buyer either: (i) repair, correct or adjust the Product or the involved component; or (ii) replace the Product or component(s) or (iii) refund their price or (iv) in the event that the price has not been paid fully or partially by the Buyer, reduce the price or (v) dissolve the contract with restitution of the corresponding purchase price.

A replacement component shall at least be a functional equivalent to the original component. The replaced Product and/or component/components will become the property of the Seller and will, at the request of the Seller, be returned by the Buyer to the Seller at the risk and cost of the Seller.

**7.7.2.** The repair, adjustment and the correction of the placed or processed Products and/or components under Guarantee does not cover the cost of the material and work and does not extend the duration of

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the original Guarantee. The replacement of the placed and processed Products and/or components under the Guarantee does cover the cost of material and labour and does extend the original duration of the Guarantee.

**7.7.3.** Return of defective Product or component to Seller and back to Buyer

**(a)** In no event shall Buyer return a defective Product or any component thereof to Seller without Seller's prior written approval.

**(b)** Prior to the return of any defective Product or part thereof to the Seller, Seller will, in common consent with Buyer, determine whether the repair or replacement of the defective Product will be carried out on the location where the Product is installed or at Seller's or any other location appointed by the Seller.

**(c)** The cost for the packing, transport and insurance with regard to the dispatch of the alleged defective Product or part thereof to Seller for repair or replacement will be borne by Buyer if it should appear that no repair or replacement was necessary. These costs will be the responsibility of the Seller if it is established that there were essential repairs required or replacements to be made.

**7.8.** The remedies set forth in article 7.7.1 & 7.7.2

**7.8.1.** The remedies set forth in article 7.7.1 shall constitute the sole and exclusive possibility for the Buyer and be the sole and exclusive liability of the Seller regarding the Guarantee, which in no event will exceed the selling price of the Product to be replaced so that compensation for any derivative damage is excluded.

**7.8.2.** The remedies set forth in article 7.7.2 will only entitle Buyer to additional compensation for the costs for placement or removal against market related tariffs, if it is established that the deficiency did not exist and was not detectable prior to the mounting or installation of the Product and under the condition that the Buyer complied with its obligation to limit damages as well as strictly followed all mounting/ installation procedures and under the express condition that compensation for any derivative damage is excluded.

**7.9.** The guarantees included in these conditions are not applicable to the Products bought by the Buyer in the state as was known to the Buyer with any visible defects and deformities and/or for Products which are specifically marked as "non-prime" or any other equivalent, and sold as such.

## 8. COMPLAINTS

**8.1.** At the moment of the delivery the Buyer will inspect the Products and compare inter alia the amounts, measurements, weight, and conformity thereof with the details set forth in the order acknowledgment and will in a contradictory manner note down all the visible damage to the Products on the delivery document. The unconditional acceptance by the Buyer means that the delivery is accepted by him in its entirety and is in accordance with the order acknowledgement. Any reservation made by the Buyer on the order acknowledgement must be followed by a motivated complaint to the Seller within five (5) days after the delivery of the Product by means of registered mail.

**8.2.** In the event the Products are not transported for the account and/or risk of the Buyer, then Buyer must send a registered, motivated complaint to the Seller, and in the case of transport under CMR, also to the transporter for any loss of and/or transport damage to the Products.

**8.3.** Contested Products must be kept free of charge at Seller's disposal so that the Seller can ascertain any contradictory survey (in or out of court) and can only be returned to the Seller with Seller's prior written consent.

## 9. CANCELLATION

**9.1.** The Seller is entitled to dissolve the agreement with the Buyer at all times, with immediate effect, without the need for a court order and without owing any form of compensation, in the event of (i) suspension of payment or (a petition for) bankruptcy, or (ii) in the event of liquidation or termination of the Buyer's activities, or (iii) in the event that (part of) the client's assets are seized, or (iv) if the Buyer fails to comply with the conditions set out in Article 5 of these terms and conditions, in other words, the request to pay in advance and/or to pay in cash or to provide sufficient collateral, or (v) if the Buyer, at any given time, despite having received a written default notice with due consideration of a 7-day notice period, still fails to meet its obligations towards the Seller, including (but not limited to) the financial obligations or (vi) if it has been established that the company's majority shareholder(s) is (are) no longer the same as when this agreement was entered into, and this could harm the interests of the Seller. In occurring cases all of the Seller's claims will become claimable immediately, and the Buyer will owe the Seller a fixed compensation amount of 10% of the overall price for the (part still to be executed for the) relevant order. This without prejudice to the Seller's right to implement the agreement in exchange for cash payment in the cases described above. In case the Seller already delivered the Products, he will be entitled, without prejudice to all its rights, to take possession of the identifiable Products, without the interference of a court and whereby the Buyer or appointed curator, liquidator or representative ad hoc will assist the Seller.

**9.2.** If the Buyer cancels an order, the Buyer will still be liable to pay the Seller 20 % of the order amount as a fixed compensation, without prejudice to the right of the Seller to claim a higher compensation corresponding to its proven loss and damages. Should the Buyer not take delivery of a produced order, the Seller will be entitled to payment of the full amount of the order as a fixed compensation, without prejudice to a compensation for storage limited to ninety (90) days. Advances already received will be applied by the Seller as a compensation for the aforementioned. Parties agree that for the purpose hereof production shall include also raw materials/materials purchased by the Seller which are not often used.

## 10. LIMITATION OF LIABILITY

Without prejudice to the stipulations of article 7, the Seller will not be liable for indirect or consequential damages, even if these were just coincidental, and he will not be liable for punitive damages.

## 11. THIRD PARTIES' RIGHTS

**11.1.** The Seller shall hold harmless and will indemnify the Buyer from and against direct damages, losses and expenses arising from infringement or alleged infringement of any patent, license, trademark, logo or copyright property of or used by a third party, by a Product of the Seller and the Seller will at his own expense defend a claim, complaint, summons, action or procedure brought against the Buyer, provided that (i) the Buyer immediately, in writing, in detail and by registered letter notifies the Seller of any such claims brought against him, or that there is an intention to initiate such a claim, complaint, action, summons or procedure against him, and (ii) the Seller shall assume the sole control of the defence and any settlement or similar negotiations relating to the concerned claim, complaint, action, summons or procedure, and (iii) the Buyer will not negotiate or enter into agreements regarding the applicable claim, complaint, action, summons or procedure, without Seller's prior written consent and only if (iv) the Buyer proactively/actively cooperates with the Seller to provide him the required correct assistance and cooperation which could be expected of the Seller in the framework of the dispute or alleged dispute.

**11.2.** The Seller will have no liability nor any obligation to indemnify for any Product or any part thereof that (i) is based on the specifications, drawings, models or other data provided by the Buyer or (ii) has been unilaterally adjusted by a party other than the Seller or (iii) to the extent that Buyer continues with the infringing activities after having been provided with adjustments to avoid the infringement or (iv) when the use of the Product or the combination thereof with other products,

processes or materials or the mutual composition thereof, rather than the Product itself, is the primary cause of the infringement.

**11.3.** In case it has been determined by a finally awarded judgment that the Seller has infringed or misappropriated third party rights or at Sellers discretion upon realization of improper use or infringement, the Seller may, at his option and own expense (i) modify the Product in a way that will no longer infringe or misappropriate the rights of third parties or (ii) attempt to obtain a license or other right to use the Product or (iii) replace the applicable Product by a non-infringing product. If the aforementioned options are not available under commercially reasonable terms and conditions and/or within a reasonable period, the Seller may demand the return of the Product and refund the Buyer the amount it paid for the Product excluding any additional compensation.

**11.4.** The remedies set forth in this article 11 are the sole and exclusive remedies available to the Buyer for indemnification. Seller will not be liable for direct and indirect damages.

## **12. CONFIDENTIALITY – INTELLECTUAL PROPERTY RIGHT**

**12.1.** Except as otherwise specifically agreed in writing by the Seller, the Buyer will under no circumstance disclose to the public or any third parties any confidential information or information that is owned by or under the control of Seller.

**12.2.** All patents, trademarks, copyrights and/or any other intellectual property rights and/or any property- or confidential information regarding the Products will remain the property of the Seller or his licensor. Nothing herein shall be construed as conferring on the Buyer any rights, title or interest in or any license under an intellectual property right belonging to or in the possession of the Seller, and Buyer is not allowed to disclose any confidential information, even when it is of commercial nature regarding the intellectual property rights, under penalty of compensation of proven damages.

## **13. TRANSFER**

Neither party may, without prior written consent, transfer the benefits or obligations arising from the agreement, partially or completely in one way or another to third parties, except for the Seller that may assign the agreement, without Buyer's consent, (i) to an affiliated company or to a third party pursuant to an assignment, splitting, merger or exchange of a department/branch of the Seller or (ii) pursuant to factoring. The contract will be valid and binding and shall inure to the benefit of the legal successors of either party hereto.

## **14. APPLICABLE LAW AND COMPETENT COURTS.**

All sales are deemed to be entered into at Sellers registered office, even in the event of any other contradicting stipulation. English law will thus be applicable for implementation, interpretation and eventual disputes. All disputes between the Seller and the Buyer will thus be adjudicated by the competent court of the place where the Seller has its registered office, without prejudice to the enforcement of any judgment or order in any other jurisdiction. The provisions of the United Nations Convention on contracts for the International Sales of Goods, known as "Vienna Convention", will not apply.

The current text is an electronic version which can be consulted and to which consulting possibilities is specifically referred to on the front side of the standard order documents, the order acknowledgements and the invoices of the Seller as well as in Sellers product catalogue.