

C5-1(2)

**CONDITIONS OF TRADING**

**1. INTERPRETATION**

1.1 In these conditions:

BUYER means the person, firm or company entering into the Contract to purchase the Goods and/or Services from the Seller;

CONDITIONS means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in Writing between the Buyer and the Seller;

CONTRACT means the contract for the purchase and sale of the Goods and/or Services.

DELIVERY DATE means the earlier of the time of actual delivery of the Goods or performance of the Services or, if the Goods are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Goods, the date that the Seller notifies the Buyer that the Goods are ready for collection or, as the case may be, the Seller tenders delivery of the Goods or, if the Buyer wrongfully fails to allow performance of the Services, the date that the Seller notifies the Buyer that it is in a position to perform the Services;

GOODS means the goods (including any instalment of the Goods or any parts for them) which the Seller is to supply in accordance with these Conditions;

SELLER means Armstrong Fastenings Ltd trading as Armstrong Fastening Systems.

SERVICES means the services which the Seller is to supply in accordance with these Conditions;

TOOLING includes patterns, tooling and dies;

WRITING includes telex, cable, facsimile transmission, electronic mail and comparable means of communication.

**2. BASIS OF THE CONTRACT**

2.1 These Conditions shall govern the Contract to the exclusion of any other terms and conditions.

**3. ORDERS AND SPECIFICATIONS**

3.1 No order submitted by the Buyer shall be accepted or deemed to be accepted by the Seller unless and until confirmed in Writing by the Seller's authorised representative upon its printed form of acknowledgement.

3.2 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) and for giving the Seller any necessary information relating to the Contract within a sufficient time to enable the Seller to perform the Contract. Where the Goods are to be supplied to the Buyer's specification, the Buyer warrants that the Goods are capable of production.

3.3 The quantity, quality and description of and any specification for the Goods and/or the description of the Services shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.4 The Seller reserves the right to make any changes in the specification of the Goods or Services which are required to conform with any applicable safety or other statutory or EU requirements or, where the Goods or Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

3.5 No Contract may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs, damages, charges and expenses.

3.6 The Buyer shall indemnify and keep indemnified the Seller against any claim or liability in respect of any infringement of intellectual or industrial property rights resulting from compliance with the Buyer's instructions express or implied.

3.7 Drawings, illustrations and specifications prepared by or on behalf of the Seller in connection with the Contract shall remain the property of the Seller and shall not be communicated to third parties without the Seller's prior written consent.

3.8 The Seller reserves the right to undertake credit references and may suspend delivery of Goods or performance of the Contract or any other contract with the Buyer if such references are unsatisfactory.

3.9 Each performance or delivery schedule submitted by the Buyer shall constitute an order capable of acceptance by the Seller. If the Seller agrees that any such schedule shall not constitute an order in circumstances where it is reasonably necessary for the Seller to act in reliance upon such schedule so as to enable the Seller to perform the schedule in accordance with its terms if such schedule becomes an order accepted by the Seller, the Buyer shall indemnify and keep the Seller indemnified against all costs, damages, charges and expenses arising from such reliance by the Seller if such schedule does not become an order capable of acceptance by the Seller.

**4. PRICE**

4.1 The price shall be the Seller's quoted price, or where no price has been quoted or a quoted price is no longer valid a reasonable price. All prices quoted are valid for 30 days or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice.

4.2 The Seller reserves the right to increase the price to reflect any increase in the cost to the Seller which is due to any factor beyond the Seller's control, any change in delivery or performance dates, quantities or specifications which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 All prices are given by the Seller on an ex-works basis, unless otherwise agreed.

4.4 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller.

4.5 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price but full credit will be given to the Buyer provided they are returned undamaged to the Seller within 28 days of the date of delivery.

**5. TERMS OF PAYMENT**

5.1 The Seller shall be entitled to invoice the Buyer for the price of the goods and/or the services on or at any time after the Delivery Date.

5.2 The Buyer shall pay the price of the goods and/or the services without any deduction or set-off on or before the last day of the month following the Delivery Date and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Buyer and/or the Services have not been performed. The time of payment of the price shall be of the essence of the Contract.

5.3 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy the Seller shall be entitled to:

5.3.1 suspend all or any further deliveries to the Buyer or the provision of all or any services made under that or any other contract with the Buyer and in such event the Buyer shall not be released from its obligations to the Seller under that or any other contract or cancel the Contract or any other contract with the Buyer and to claim damages from the Buyer for breach of contract;

5.3.2 appropriate any payment made by the Buyer to such part of the Contract or Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.3.3 charge the Buyer interest (both before and after any judgement) on the amount unpaid, at the rate of 4 per cent per annum above Barclays Bank base rate from time to time accruing daily, until payment in full is made.

5.4 The Seller may without notice set off any sums from time to time owed to the Buyer in or towards the satisfaction of all and any liabilities of the Buyer to the Seller whether or not under this Contract.

5.5 The Seller shall have a general lien over all goods and property of the Buyer (whether worked on or not) in the possession of the Seller for all unpaid debts due from the Buyer and the Seller reserves the right upon the expiration of fourteen days written notice to dispose of such goods or property and to apply the proceeds of sale (net of costs of sale) towards the payment of such debts.

**6. DELIVERY AND PERFORMANCE**

6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Buyer's premises or such other place as may be specified in the Buyer's order. The Buyer shall be responsible for the unloading of Goods and where the Seller or its employees or agents carries out or assists the Buyer, its employees or agents in such unloading the Buyer shall indemnify and keep indemnified the Seller against all liabilities including without limitation all loss, costs, damages, charges and expenses arising from such unloading.

6.2 Any dates quoted for delivery of the Goods or performance of the Services are approximate only and the Seller shall not be liable for any delay howsoever caused. Time for delivery and/or performance shall not be of the essence. The Goods may be delivered and/or Services may be performed by the Seller in advance of the quoted date upon giving reasonable notice to the Buyer.

6.3 If and whenever goods are manufactured specially or to the design, pattern and specification of the Purchaser, the Company reserves the right to supply such goods in a quantity not exceeding 10% more or less than the exact quantity ordered by the Purchaser and the purchase price payable by the Purchaser for the quantity of goods actually supplied be calculated pro rata and, in case of supply by the Company of a less quantity of goods than the exact quantity ordered by the Purchaser, the Company shall not be obliged to make good the difference.

6.4 Where the Goods are to be delivered or Services performed in instalments, each delivery or performance shall constitute a separate contract and failure by the Seller to deliver or perform any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

6.5 If the Seller fails to deliver the Goods (or any instalment) or perform any Services (or any instalment) for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess, if any, of the reasonable cost to the Buyer (in the cheapest available market) of similar goods and/or services to replace those not delivered over the price of the Goods and/or Services.

6.6 If the Buyer fails to take delivery of the Goods or to allow performance of the Services or fails to give the Seller adequate delivery or performance instructions at the time stated for delivery or performance (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available, the Seller may:-

6.6.1 store the Goods until actual delivery and charge the Buyer for the reasonable cost of storage, including insurance;

6.6.2 after the expiration of 3 months from the Delivery Date dispose of the Goods in such manner as the Seller may determine; or

6.6.3 suspend any further performance of the Services or services under the Contract or any other contract.

6.7 The Company shall be under no liability for failure to attain any performance figures quoted by the Company or stated or referred to in the Contract unless the Company shall have specifically guaranteed them in writing subject to any tolerance specified or agreed by the Company in an agreed sum as liquidated damages.

6.8 The Services shall be performed at the Seller's premises.

**7. RISK AND PROPERTY**

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer on the Delivery Date.

7.2 The property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods sold or agreed to be sold by the Seller to the Buyer under any other contract.

7.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall have a fiduciary duty to the Seller to account for the proceeds of sale or otherwise of the Goods.

7.4 Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods and for that purpose the Buyer hereby authorises and licences the Seller, its officers, employees and agents to enter upon any land or building upon which the Goods are situated to recover those Goods.

**8. WARRANTIES AND LIABILITIES**

**THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 8.**

8.1 The Seller warrants that the Goods will be free from defects in material and workmanship for a period of 3 months from the Delivery Date and that the Services will be performed with reasonable care and skill.

8.2 The above warranties are given by the Seller subject to the following Conditions:

8.2.1 the Seller shall be under no liability in respect of any failure or defect arising from any Tooling, drawing, design or specification supplied by the Buyer;

8.2.2 the Seller shall be under no liability in respect of any defect or failure arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Goods without the Seller's approval;

8.2.3 if the total price has not been paid by the due date, the Seller shall be under no liability until the total price has been paid;

8.2.4 the above warranties do not extend to parts, materials or equipment not manufactured by the Seller, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to the Seller;

8.2.5 the Seller shall be under no liability in respect of any failure or defect if such failure or defect is within any applicable commercial tolerances established by the British Standards Institution from time to time, or in the absence of such tolerances, within reasonable commercial tolerances.

8.3 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Any claim by the Buyer which is based on any defect in the quality or condition of the Goods or any failure to exercise reasonable care and skill shall, whether or not delivery is refused by the Buyer, be notified to the Seller within 7 days from the Delivery Date or, where the defect or failure was not apparent on reasonable inspection, within a reasonable time after discovery of the defect or failure and in any event within 7 days of discovery. If delivery is not refused, and the Buyer does not so notify the Seller, the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Contract had been performed in accordance with its terms.

8.5 Where any valid claim in respect of any of the Goods, which is based on any defect in the quality or condition of the Goods or any failure to exercise reasonable care and skill, is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) or to re-perform the Services free of charge or, at the Seller's sole discretion, refund to the Buyer the price (or a proportionate part of the price) but the Seller shall have no further liability to the Buyer.

8.6 The Seller shall not be liable to the Buyer by reason of any representation, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any consequential loss or damage (whether for loss of profit, production or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods and/or the Services and the entire liability of the Seller under or in connection with the Contract shall not exceed the price under the Contract, except as expressly provided in these Conditions.

8.7 The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations, if the delay or failure was due to any cause beyond the Seller's reasonable control.

8.8 Any goods which have been supplied in accordance with the Customer's orders, but which are subsequently returned will only be credited provided that :-

- (1) The Company's prior written agreement has been obtained.
- (2) The amount credited shall be £25 or 15% (whichever is the greater), less than the value at which the goods were invoiced.

8.9 Nothing in these Conditions shall exclude or limit the Seller's liability for death or personal injury caused by the Seller's negligence.

**9. INDEMNITY**

**THE BUYER'S ATTENTION IS IN PARTICULAR DRAWN TO THE PROVISIONS OF THIS CLAUSE 9**

9.1 The Buyer shall take or procure the taking of all such steps as may be necessary to ensure the safety of the Seller's employees, agents and contractors on any premises at which the Service is to be provided including, without limitation, notifying such representatives of any relevant hazards.

9.2 The Buyer shall indemnify and keep indemnified the Seller, its employees, agents and sub-contractors against any loss or damage to any property or injury or death of any person caused by any negligent act or omission or wilful misconduct of the Buyer, its employees, agents or sub-contractors, including all and any costs and expenses relating thereto.

**10. TOOLING**

- 10.1 Any Tooling supplied by the Buyer shall remain the property of the Buyer and at the Buyer's risk. The Buyer shall be responsible for the repair and maintenance of such Tooling. The Seller shall not use such Tooling in connection with any contract with a third party without the Buyer's prior consent in Writing.
- 10.2 All Tooling used, manufactured or procured in connection with the Contract and which is not supplied by the Buyer shall be the property of the Seller.
- 10.3 All and any intellectual or industrial property rights comprised in any Tooling shall vest in the party owning such Tooling.
- 10.4 The Seller reserves the right to charge the Buyer for the cost of storage of the Buyer's Tooling and to require the Buyer to remove such Tooling from the Seller's premises upon not less than 3 months notice in Writing.

**11. INSOLVENCY OF BUYER**

- 11.1 This clause applies if:
- 11.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order (or being an individual or firm) becomes bankrupt or (being a company) goes into liquidation, otherwise than for the purpose of amalgamation or reconstruction; or
  - 11.1.2 an encumbrancer takes possession, or a receiver is appointed, of the Buyer's undertaking or any of its property or assets; or
  - 11.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
  - 11.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 11.2 If this clause applies then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend performance and/or any further deliveries under the Contract without any liability to the Buyer, and if the Goods have been delivered and/or Services performed, but not paid for, the price shall become immediately due and payable.

**12. EXPORT TERMS**

- 12.1 Where the Goods are supplied for export from the United Kingdom, the provisions of this clause 12 shall apply notwithstanding any other provisions of these Conditions.
- 12.2 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
- 12.3 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

**13. GENERAL**

- 13.1 Neither the Buyer nor the Seller shall be entitled to assign the whole or any part of the Contract without the prior written consent of the other provided that the Seller shall be entitled to sub-contract the whole or any part of its obligations.
- 13.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 13.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby unless such provision goes to the root of the Contract.
- 13.4 The Conditions shall constitute the entire agreement in relation to its subject matter and no modification or waiver thereof shall be valid unless made in Writing expressly for the purpose and signed by an authorised officer of the Seller and of the Buyer provided that nothing in these Conditions shall exclude or limit liability for fraud.
- 13.5 The Contract shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English courts.