

Welding Electrode Store Ltd and Hardmetal Engineering (Cornwall) Ltd.

STANDARD TERMS AND CONDITIONS OF SALE

1. General

- (a) These Conditions apply to all tenders and quotations made and all orders and contracts for the sale of goods accepted by us. Special or additional terms of Purchaser contained in his order or otherwise shall be of no effect unless separately brought to our notice and accepted in our written acceptance.
- (b) Any variation or addition to any contract shall only be binding upon us if contained in writing and signed on our behalf by a director or other duly authorised person. Contracts may be cancelled only with our written consent and on terms which indemnify us for all loss.
- (c) All orders are subject to our being able to obtain and use the necessary raw material.

2. Documents and Specifications

- (a) Unless otherwise stipulated in our acknowledgement all catalogues, illustrations, drawings, estimates, dimensions or other specifications published or submitted with quotations by us are not warranted or guaranteed and shall not form part of the contract.
- (b) We reserve the right at any time to correct clerical or technical errors in the contract documents.
- (c) Purchaser shall furnish us with all necessary specifications with his order. We take no responsibility for goods manufactured, priced or delivered not in accordance with the order or the specification unless Purchaser's order and specifications are clear and correctly set out in our acknowledgement and any drawings submitted by us, which it is Purchaser's duty to check..

3. Prices

- (a) All prices in our quotations and acknowledgements are according to specified incoterms exclusive of VAT. They are made up of the cost of raw material and basic conversion charges; in appropriate cases they include an additional charge for the cost of size, shape, special quality and other extras.
- (b) We reserve the right to increase the cost of the raw material element of goods, delivery of which has not been accepted by Purchaser for any reason within a period of 30 days from our receipt of Purchaser's order, to the cost of such raw material on the London Metal Exchange on the date of the actual delivery.
- (c) We reserve the right to increase or decrease the basic conversion charges and additional charges comprised in our selling price of goods, delivery of which has not been accepted by Purchaser for any reason within a period of 30 days from our receipt of Purchaser's order, to take account of variations in such charges at the date of actual delivery.
- (d) Purchaser shall pay the selling price as so increased or decreased in accordance with paragraphs (b) and (c) of this Condition.
- (e) The cost of packaging, carriage, insurance and freight will be charged extra where appropriate.

4. Terms of Payment

- (a) Payment is due in full by the date specified in our acknowledgement or by the last day of the calendar month following the month in which the goods were despatched, or on the expiry of 30 days from the date on which we notify the purchaser that the goods are ready for despatch, whichever is the earliest.
- (b) Where the Contract is to be or may be fulfilled in separate deliveries or parts, payment for each such delivery or part shall be made as if the same constituted a separate contract.

5. Termination and Partial Deliveries

In the event of Purchaser for any reason whatsoever failing within one calendar month to effect any payment which may be due under the or any contract with us, or if he commits any breach of the Contract, or if he becomes insolvent or enters into a composition with or for the benefit of his creditors, or being a body corporate has a receiver appointed of its undertaking or assets or any part thereof, or save for the purpose of reconstruction or amalgamation, goes into liquidation, we shall thereupon be entitled, without prejudice to our other rights, forthwith to terminate the Contract or any unfulfilled part thereof, or at our option to make partial deliveries.

6. Delivery

- (a) When delivery is arranged by us, Purchaser shall be bound to accept delivery on arrival at his works, when risk shall pass to Purchaser. Purchaser must notify us and the carrier in writing (otherwise than upon the carrier's documents) of damage in transit, mis-delivery or quality discrepancy immediately on arrival. Goods accepted without checking must be signed for as "not examined" otherwise no claim whatsoever will be accepted. Purchaser must notify us and the carrier in writing (otherwise than upon the carrier's documents) of non-delivery within 6 days where delivery is effected through the post or on our own vehicles, 10 days where delivery is effected by road transport or British Rail, in all cases from the date of despatch advised to Purchaser.
- (b) Where delivery is arranged by Purchaser, risk shall pass to Purchaser on delivery to his carrier.
- (c) Without prejudice to our other rights, should Purchaser, for any reason fail to collect or take delivery of goods within 30 days of our notification that they are ready for collection or despatch, we shall be entitled at Purchaser's risk and expense to store or effect storage of the goods elsewhere.
- (d) Purchaser warrants that any necessary unloading facilities will be available at the place of delivery.
- (e) Where goods are sold FOB the risk in the goods shall pass to Purchaser immediately the goods are over the ship's rail, and we shall be under no obligation to give Purchaser the notice specified in Section 32(3) of the Sale of Goods Act 1893.

7. Faults and Defect and Exclusion of Liability

- (a) On arrival of goods Purchaser must immediately examine them and any visual faults or defects must be notified to us in writing within 3 days. Non-visual faults and defects must be notified within 30 days.
- (b) We shall not replace goods or make up shortages:-
 - i. If faults or defects are not notified in accordance with clause 7(a) or if damage in transit, mis-delivery or quantity discrepancy is not notified in accordance with clause 6(a).
 - ii. In respect of which Purchaser or any third party has without our previous written consent effected modifications or repairs;
 - iii. If the faults or defects were caused by incorrect or negligent handling, disregard of operating instructions, overloading, unsuitable work, faulty erection or any other default by Purchaser or any third party;
 - iv. If the faults or defects were caused by fair wear and tear, accident, or any other matter beyond our reasonable control occurring after the date of arrival.

Welding Electrode Store Ltd and Hardmetal Engineering (Cornwall) Ltd.

STANDARD TERMS AND CONDITIONS OF SALE

- (c) The terms of this condition are in lieu of all conditions, warranties or other terms as to description, fitness for purpose, condition, merchantability, quantity or otherwise in respect of the goods or packing, whether expressed in the Contract or implied by Common Law, custom or statute and notwithstanding that such purpose or condition may be, may become or may have been known to us. Apart from our obligation to replace goods in accordance with the terms of this Condition, we accept no liability either for faults or defects in goods or for any loss or damage to Purchaser or others arising directly or indirectly from any breach by us of the terms of the Contract or of the general law, and defects in quality or dimension shall not be a ground for the cancellation of the Contract or for the balance of the Contract by Purchaser.
- (d) Without prejudice to the generality of the foregoing:-
 - i. We shall not be liable for any consequential loss or damage suffered by Purchaser, including but without limitations, delay, loss of production, loss of profits or loss of or damage to other property or goods, nor shall we be liable for any loss or damage capable of being covered by insurance;
 - ii. We shall not be liable for damages in excess of the total price stated in the Contract, even if Purchaser's loss or damage results from fundamental breach or repudiation and even if further performance of Contract is frustrated. Purchaser shall also indemnify us against all actions, claims or demands by third parties in tort or otherwise arising directly or indirectly in connection with faults or defects in the goods to the extent that the same exceeds the limitations of liability aforesaid.
- (e) The provisions of this Condition 8 shall apply, subject to any relevant limitations imposed by the Unfair Contract Terms Act 1977.
- (f) We reserve the right to deliver goods to within +10% or -5% of the quantity or weight specified in Purchaser's order, and payment shall be made for the actual quantity supplied pro rata.

8. Indemnity

We shall not be liable for, and Purchaser shall indemnify us against all claims by any person in tort or for infringement or alleged infringement of industrial property rights directly connected with goods manufactured by us or with work done by us on goods in accordance with Purchaser's specifications or with the sitting or installation of goods.

9. Health and Safety at Work

The Supplier shall at all times during the course of the contract comply with the provisions of the Health and Safety at Work etc. Act 1974 and the Environmental Protection Act 1990 and any regulations made there under or any subsequent modifications or re-enactments thereof currently in force and shall indemnify the Purchaser against any consequences of the Supplier's non-compliance therewith.

10. Legal Construction

The Contract and these Conditions shall in all respects be construed and operate in conformity with English Law. If any of these Conditions or any part thereof is rendered void or unenforceable by any legislation to which it is subject, it shall be so void and unenforceable to that extent only.

11. Data Protection notices to Partnerships and Sole Trader Debtors

- i. We may transfer information about you to our bankers, in order for them to provide their services to us and other customers of theirs and to help them to (a) obtain credit insurance (b) undertake assessment and analysis (including credit scoring, market, product and statistical analysis (d) securitise debts and (e) protect their interest.
- ii. We or our bankers may make credit reference agency searches in respect of your business and its principals. Please note that credit reference agencies make a record of searches which may be used to prevent fraud or money laundering or by other subscribers to make credit decisions about you.
- iii. Our bankers may give information about you and your indebtedness to the following for the purposes stated:
 - a Any other divisions or associated companies of theirs – for the business purposes of such divisions or companies;
 - b Our or their insurers – to quote for and issue any credit policy or to deal with any claims;
 - c Any advisers acting on our or their behalf – so the advisers can carry out their services;
 - d Any business to whom your indebtedness or our financing arrangements with them may be transferred – to facilitate such transfer;
 - e To any person to whom they have a duty of disclosure or to whom the law permits disclosure;
- iv. Our bankers may make decisions about you solely using an automated decision making process, such as credit scoring; however they will tell us (and in turn we will tell you) if they make a significant decision only using such a process. Through us you can then request a review of their decision using other means;
- v. Our bankers may monitor and/or record your phone calls to them for training and/or security purposes.
- vi. We will provide you with details of our bankers on request, including a contact telephone number from where you can obtain details of the credit reference agencies used by them and any third parties to whom information is transferred.