

# TERMS AND CONDITIONS OF SALE (Revised January 2006)

All Goods and Services are quoted for sold and provided subject to the following Conditions: -

## 1. Interpretation

a) 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 Harris (Steels) Limited (company number 674976)

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

**Writing** includes fax, electronic mail and any comparable means of communication.

b) Any reference in these conditions to any provision of a statute shall be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

c) The headings in these Conditions are for convenience only and shall not affect their interpretation.

## 2. Basis of Contract

a) The Seller shall sell and the Buyer shall purchase the Goods and Services in accordance with any written quotation of the Seller which is accepted by the Buyer or any written order of the Buyer and which is accepted by the Seller, subject in either case to these Conditions which shall govern the Contract to the exclusion of all other terms and conditions.

b) These Conditions shall apply to all of the Company's sales and any variation to them shall have no effect unless expressly agreed in writing by the Company.

c) The Seller's employees or agents are not authorized to make any representations concerning the Goods and/or Services unless confirmed by the Seller in Writing. In entering into the Contract, the Buyer acknowledges that it does not rely on, and waives any claim for breach of any such representations which are not so confirmed.

d) All prices shall be contract for an unnamed principal.

e) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 3. Orders and Specifications

a) 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.

b) 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.

c) The quantity, quality and description of 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).

d) The Goods will be supplied within the rolling tolerances stated within the Seller's price list current at the time of making the Contract or (where there is no current Seller's price list specifying rolling tolerances) within the rolling tolerances customary within the trade, unless otherwise expressly agreed in writing.

e) 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 and/or Services are required to meet the relevant British Standards or the standards of some foreign country or otherwise or, where the Goods and/or Services are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

f) 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.

g) 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.

h) 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.

## 4. Price

a) The price payable shall be the Seller's quoted price current at the Delivery Date.

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

c) All prices shall be valid for 30 days or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice.

d) 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.

e) Prices may be given by the Seller on an ex works basis or on a delivered basis. Where prices are given by the Seller on an ex works basis and the Seller agrees to deliver the Goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging and insurance.

f) Where the Goods are sold by weight, the amount payable for each delivery will be determined at the option of the Seller either from the actual weight, or from the calculated weight shown in the Seller's current published price list, but where there is no weight shown in the price list or where there is no current published price list, in accordance with the maker's practice.

## 5. Terms of Payment

a) The Seller shall be entitled to invoice the Buyer for the price including, without limitation any costs of transport, packaging and insurance on or at any time after the Delivery Date.

b) Unless otherwise specified in the Contract, the Buyer shall pay the purchase price without any deduction or set-off by the end of the month following the month in which the Delivery Date falls and the Seller shall be entitled to recover the price, notwithstanding that delivery may not have taken place and 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.

c) 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:

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;
2. appropriate any payment made by the Buyer to such part of the Contract or the 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).

d) 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.

## 6. Interest

Interest will be payable from the due date for payment to the actual date of payment at the rate of 4% per annum above the Bank of England base rate from time to time accruing daily on any part of the purchase price remaining unpaid after the due date.

## 7. Delivery

a) Where the Buyer and Seller agree delivery shall be made by the Buyer collecting the Goods at the Seller's premises the Buyer shall be responsible for the loading of Goods and where the Seller or its employees or agents carry out or assists the Buyer, its employees or agents in such loading, 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 loading.

b) Where the Buyer and Seller agree delivery shall be made by the Buyer delivering the Goods to the Seller's premises the Seller shall be responsible for the unloading of Goods and where the Seller or its employees or agents carry 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.

c) Any date specified by the Seller for delivery although made in good faith is not an express term of the Contract 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 delivery date upon giving reasonable notice to the Buyer.

d) The Seller reserves the right to under- or over-deliver the ordered quantity of any Goods by up to 5% more or less without any adjustment in price and the quantity so delivered shall be deemed to be the quantity ordered.

e) Each part delivery or instalment of the Goods or Services shall be deemed to be sold under a separate Contract and no default by the Seller in respect of any part delivery or instalment shall entitle the Buyer to treat the Contract as repudiated in regard to any balance or instalment remaining deliverable.

f) 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 or performed over the price of the Goods and/or Services.

- g) 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: -
  1. store the Goods until actual delivery and charge the Buyer for the reasonable cost of storage, including insurance;
  2. after the expiration of 3 months from the Delivery Date dispose of the Goods in such manner as the Seller may determine; and
  3. suspend any further performance of the Services or services under the Contract or any other contract.
- h) The risk of damage to or loss of the Goods shall pass to the Buyer on the Delivery Date.

## 8. Short Count/Weight

- a) No claim for short weight will be considered unless notice is given to the Seller within 24 hours and confirmed in writing within five days of the date of its advice note and the Seller, if it so requests, is given a reasonable opportunity of seeing the material weighed before being used processed or sold.
- b) The number of pieces stated in the Seller's invoice shall not be binding where Goods are charged according to weight.

## 9. Warranties and Liabilities

The Buyer's attention is in particular drawn to the provisions of this clause.

a) Quality of Goods and Services;

Save as expressly provided in these Conditions all conditions, warranties or statements, whether express or implied by statute, custom of the trade or otherwise, are hereby excluded to the fullest extent permitted by law.

b) Defective goods;

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 three 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 seven 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.

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.

c) Liability

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

2. Subject to condition c (1):-

- (a) The Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
- (b) The Seller shall not be liable to the Buyer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

## 10. Force Majeure

The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of 28 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.

## 11. Reservation of title

a) Until full payment has been received by the Seller for;

1. the Goods and Services rendered; and

2. all other sums which are or which become due to the Seller from the Buyer on any account.

Legal and beneficial title in the Goods shall remain in the Seller.

b) Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's agent or bailee and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property.

c) The Buyer shall not be entitled to or in any way charge by way of security for any indebtedness, any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall without prejudice to any other right or remedy of the Seller forthwith become due and payable to the Seller.

d) Subject to (e) and (f) below, the Buyer shall be at liberty to sell or use the Goods in the ordinary course of business on the basis that the proceeds of sale shall belong to the Seller to whom the Buyer shall account.

e) The Seller may at any time revoke the Buyer's power of sale referred to in (d) above by notice to the Buyer, if the Buyer is in default in the payment of any sum whatsoever due to the Seller (whether in respect of the Goods or any other Goods supplied) or Services rendered at any time by the Seller to the Buyer or for any other reason whatsoever (or if the Seller has any bona fide doubt as to the solvency of the Buyer).

f) The Buyer's power of sale shall automatically cease if a Receiver or Administrative Receiver is appointed over any of the assets, of the undertaking of the Buyer or a winding up order is made against the Buyer, or the Buyer goes into voluntary liquidation (otherwise than for the purpose of reconstruction or amalgamation) or is compulsorily liquidated or makes any arrangement or composition with creditors or commits any act of bankruptcy or allows execution to be levied against its or his Goods.

g) Until such time as the property in the goods passes to the Buyer, the Seller shall be entitled to enter upon any premises of the Buyer for the purpose of removing such Goods and to repossess such Goods from the premises.

## 12. Lien

In addition to any right of lien which the Seller may have by law the Seller will also have a general lien over all goods belonging to the Buyer then in the Seller's possession for the unpaid price of Goods sold and delivered by the Seller to the Buyer on the same or any other Contract and for any other money then owed by the Buyer to the Seller.

## 13. Waiver

The rights of the Seller shall not be prejudiced or restricted by any indulgence or forbearance extended by the Seller to the Buyer and no waiver by the Seller in respect of any breach shall operate as a waiver in respect of any subsequent breach.

## 14. Determination

a) This clause applies if: -

1. the Buyer shall make default in or commit a breach of this or any other Contract with the Seller or of any other of his obligations to the Seller; or
2. any distress or execution shall be levied upon the Buyer's property or assets, or if the Buyer shall make or offer to make any arrangement or composition with creditors, or commit any act of bankruptcy, or if a petition or receiving order in bankruptcy shall be presented or made against him; or
3. the Buyer is a Limited Company and any resolution or petition to wind up such company's business (other than for the purpose of amalgamation or reconstruction) shall be passed or presented, or if a receiver of such company is appointed, of the Buyer's undertaking, or any of its property or assets.

b) The Seller shall have the right forthwith to determine any Contract then subsisting and upon written notice of such determination being posted to the Buyer's last known address any subsisting Contract shall be deemed to have been determined without prejudice to any claim or right the Seller may otherwise make or exercise and without compensation to the Buyer.

## 15. General

a) 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 assign the Contract or any part of its obligations.

b) 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.

c) The Conditions shall constitute the entire agreement in relation to the subject matter and no modification or waiver 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.

d) Unless expressly provided in these Conditions, no term of the Contract is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

e) 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.