

## **Conditions of Sale**

**SPI (Materials) Ltd  
38 Amber Close  
Amington Industrial Estate  
Tamworth  
B77 4RP  
United Kingdom**

### **1. DEFINITIONS.**

In these Conditions:

"The Seller" means SPI (Materials) Ltd, a private company registered in England with limited liability under company registration number 03533716, and whose registered address is Kingfisher Court, Plaxton Bridge Road, Woodmansey, HU17 0RT.

"The Purchaser" means the person firm or company to be supplied with Goods by the Seller;

"Goods" means the goods which the Seller is to supply in accordance with these Conditions;

"Contract" means the contract for sale and purchase of Goods made between the Seller and the Purchaser;

"Export Sales" means a Contract by which the Seller supplies Goods to a Purchaser who takes delivery the Goods outside of the United Kingdom.

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

### **2. SCOPE**

These Conditions apply to all sales of Goods by the Seller and shall prevail over and apply to the exclusion of any inconsistent terms or conditions contained or referred to in the Purchaser's order or in correspondence or elsewhere or implied by trade custom practice or course of dealing unless specifically agreed to in writing by the Seller.

In the event that any sales or technical literature prepared by the Seller shall contain any terms or conditions which purport to govern the sale of Goods inconsistent with these Conditions such terms and conditions shall not be effective and shall be superseded by these Conditions. The Seller shall not be responsible for or be held liable in respect of any term condition statement or representation relied upon by the Purchaser which is not attached to or endorsed upon the Purchaser's order and subsequently confirmed in writing by the Seller.

If the Contract is an Export Sales Contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the Contract save that in the event of any inconsistency between Incoterms and any express term of the Contract the latter shall prevail. The Seller shall be under no obligation to give the Purchaser the notice specified in section 32(3) of the Sale of Goods Act 1979.

### **3. QUOTATIONS**

A quotation by the Seller does not constitute an offer and the Seller reserves the right to withdraw or revise a quotation at any time prior to the Seller's acceptance of the Buyer's order

### **4. FORMATION OF CONTRACT**

(a) No Contract shall come into effect until the Seller delivers acknowledgement of the order to the Purchaser.

(b) The acknowledgement of order shall only be effective for the purpose of sub-clause 4(a) if made on the Seller's official acknowledgment form or a faxed copy thereof.

### **5. PRICES**

- (a) The prices payable for Goods shall be those charged by the Seller at the time of despatch. Unless otherwise stated the price is exclusive of any applicable value added tax.
- (b) Any special packaging requested by the Purchaser shall be the subject of an additional charge at the Seller's discretion
- (c) Unless otherwise agreed all prices quoted are exclusive of delivery charges and where the Seller agrees to deliver the Goods to an address specified by the Purchaser the Purchaser shall pay any reasonable delivery charge invoiced by the Seller.
- (d) The Seller shall be entitled to add to the Contract price, where applicable, a charge for packing, delivery, insurance, testing costs and any other reasonable cost associated with the supply of the Goods.

## 6. TERMS OF PAYMENT

- (a) Unless otherwise specified in writing by the Seller payment for Goods or any instalment thereof shall be made by the Purchaser within 30 days of the date upon which the Goods are delivered to or collected by the Purchaser notwithstanding that property in the Goods has not passed to the Purchaser.
- (b) Subject to Condition 9 (Export Sales) and unless otherwise agreed by the Seller in writing, payment shall be due and payable without any deduction or set off.
- (c) The Seller shall be entitled to submit its invoice with its delivery advice note or at any time afterwards save that where delivery has been postponed at the request of or by the default of the Purchaser, then the Seller may submit its invoice at any time after the Goods are ready for delivery or would have been ready in the ordinary course, but for the request or default of the Purchaser.
- (d) No dispute arising under the Contract nor delays beyond the reasonable control of the Seller shall interfere with prompt payment in full by the Purchaser.
- (e) In the event of default in payment by the Purchaser, the Seller shall be entitled, without prejudice to any other right or remedy:
  - (i) To suspend all further deliveries under this Contract and any other contract or contracts between the Seller and the Purchaser then current without notice; and/or
  - (ii) To charge interest on any amount outstanding at the rate of 2% per month, such interest being charged as a separate continuing obligation and not merging with any judgment; and/or
  - (iii) To serve notice on the Purchaser requiring immediate payment for all Goods supplied by the Seller under this and all other contracts with the Purchaser whether or not payment is otherwise due or invoiced.
- (f) If it reasonably appears to the Seller that the Purchaser may be unable to pay his debts, the Seller will be entitled to demand proper security for payment of the Contract price prior to delivery, either by payment in cash or by a bank guarantee. If the Purchaser fails to give such security the Seller shall be entitled, without prejudice to its other rights or remedies, to cancel the Contract or to suspend deliveries at the Seller's option. The Seller shall not be liable in these circumstances for any damages, claims or expenses whatsoever.

## 7. DELIVERY

- (a) Delivery times are not guaranteed. The Purchaser shall have no right to damages or to cancel the Contract for failure to meet any delivery time stated whatsoever the cause
- (b) If the Purchaser refuses or fails to take delivery of Goods in accordance with the Contract the Seller shall be entitled to immediate payment in full for the Goods. The Seller shall be entitled to store at risk of the Purchaser any Goods which the Purchaser refuses or of which he fails to take delivery and the Purchaser shall become liable for the payment of all costs of such storage and any additional costs or carriage incurred as a result of such refusal or failure. Refusal by the Purchaser to take delivery will relieve the Seller from the obligation to make further deliveries without prejudice to the Seller's right to recover damages for such refusal. The Seller shall be entitled after the expiration of 28 days from the date on which the price became payable to dispose of the Goods in such manner as it may determine.
- (c) Subject to the provisions of sub-Condition 7(e) (where applicable) the Goods shall unless delivered by the Seller's own transport or by a haulage company on behalf of the Seller be deemed to have been delivered and the risks therein to have passed to the Purchaser upon their transfer to a haulage company named by the Purchaser or two days after the Seller notifies the Purchaser that the Goods are available for collection whichever is the earlier.
- (d) Where the Goods are to be delivered by the Seller's own transport or by a haulage company on behalf of the Seller the risk therein shall pass to the Purchaser upon delivery to the designated point of delivery.

(e) In any case where Goods are sold CIF or FOB or on the basis of any other international trade term the meaning of such term contained in INCOTERMS (1990 edition) shall apply as if expressly incorporated herein except insofar as any part of the same may be inconsistent with any of the provisions contained in these Conditions.

(f) Where Goods are sold FOB the Seller shall be under no obligation to give to the Purchaser the notice specified in section 32(3) of the Sale of Goods Act 1979.

(g) Goods may be delivered by instalments in which event the Seller may invoice each instalment separately and the Purchaser shall pay such invoices in accordance with these Conditions. If the Purchaser fails to make any payment in respect of any instalment when it becomes due then, without prejudice to any other rights of the Seller, the Seller may withhold deliveries of further instalments of the Goods. Any failure by the Seller to comply with its obligations in respect of any one or more instalments shall not affect the other instalments under the Contract.

## 8. TITLE

(a) Title to Goods or any part thereof shall pass to the Purchaser only upon the happening of any one of the following events:

(i) The Purchaser has paid to the Seller all sums due from it to the Seller under the terms of the Contract;

(ii) When the Seller serves on the Purchaser notice in writing specifying that title in the Goods or such part thereof has passed.

(b) The Seller may recover Goods in respect of which title has not passed to the Purchaser at any time and the Purchaser hereby licences the Seller, its officers, employees and agents to enter upon any premises of the Purchaser for the purpose either of satisfying itself that sub-Condition 8(c) below is being complied with by the Purchaser or of recovering any Goods in respect of which title has not passed to the Purchaser. This right shall continue to subsist notwithstanding the termination of the Contract through the happening of any of the events specified in Condition 18 or otherwise and without prejudice to any accrued rights of the Seller thereunder.

(c) The Purchaser shall ensure that Goods in respect of which title has not passed are stored separately from other goods and that they are clearly identifiable as belonging to the Seller. If the Goods are combined by the Purchaser with other items or materials or utilised or consumed in the production of other items or materials the Seller shall retain title to the Goods if they remain capable of removal or separation from the resulting items. Until title to the Goods has passed to the Purchaser pursuant to this Condition it shall possess the Goods as a bailee of the Seller on the terms of this Contract. If the Seller so requires the Purchaser will return the Goods in good condition and will meet any cost of the Seller incurred in recovering or repairing the Goods in the event of the Purchaser's failure to comply with this sub-Condition.

(d) Without prejudice to the foregoing sub-Conditions and in the event that the Purchaser shall in the course of its business dispose of the Goods to a customer being a bona fide purchaser without notice of the Seller's rights then the Purchaser shall have a fiduciary duty to the Seller to account to the Seller for the proceeds (which shall be kept separate and identifiable from the Purchaser's own monies) but may retain therefrom any excess of such proceeds over the amount outstanding under this or any other contract between them.

(e) Save in the case of Export Sales Contracts and subject to any agreement in writing by the Seller, the risk in Goods shall pass to the Purchaser at the time at which:-

(i) The Goods are delivered to the Purchaser's premises for off-loading; or

(ii) The Purchaser takes delivery of the Goods at the Seller's premises; or

(iii) The Goods being ready for delivery, delivery is postponed at the Purchaser's request;

whichever shall occur first. In relation to Export Sales, risk shall pass as provided in Incoterms. All other Goods shall be at the Purchaser's sole risk at all times, and the Seller shall not be liable for any loss of or damage sustained by any Goods left with the Seller howsoever caused and whether or not attributable to negligence on the part of the Seller or negligence or wilful default on the part of any servant or agent of the Seller.

## 9. EXPORT SALES

Notwithstanding Condition 6 hereof in the case of export sales the price of Goods shall if required by the Seller be secured by an irrevocable letter of credit satisfactory to the Seller established by the Purchaser in favour of the Seller immediately upon receipt of the Seller's acknowledgement of order and confirmed by a United Kingdom bank acceptable to the Seller. The letter of credit shall be for the full Contract price inclusive of any tax or duty payable by the Purchaser and the Seller shall be entitled to payment on presentation to such United Kingdom bank of the documents specified by the Seller on the acknowledgement of order.

## 10. INSPECTION

If any testing and/or inspection is required by the Purchaser it shall be carried out at the Purchaser's expense at the Seller's works or such other place or places as the Seller may appoint.

#### **11. VARIATIONS**

(a) When Goods are ordered by reference to quantity the Seller reserves the right to under or over deliver the quantity by 10% and the Purchaser shall pay for the quantity delivered.

(b) All weights per unit and dimensions quoted are approximate only and subject to recognised tolerances.

#### **12. DISCLOSURE OF INFORMATION**

(a) All technical advice data or information given by the Seller its employees or agents in respect of the Goods is made in good faith on the basis of test data and field experience and is provided for general guidance only. No such information advice or data shall form any part of the Contract.

(b) The Purchaser shall be solely responsible for ensuring that all drawings, information, advice and recommendations given to the Seller either directly or indirectly by the Purchaser or by the Purchaser's agents, employees, consultants or advisers is accurate, correct and suitable. Examination or consideration by the Seller of such drawings, information, advice or recommendations shall in no way limit the Purchaser's responsibility hereunder unless the Seller specifically agrees in writing to accept responsibility.

(c) Any material specifications, designs, calculations and any other information or documentation produced by the Seller which are expressed to be given on a confidential basis are returnable on demand, and shall not be disclosed to a third party without the Seller's written consent and, unless otherwise agreed in writing, title to such material specification, designs, calculations and other information or documentation (whether or not it is expressed to be given on a confidential basis) and any copyright or design right therein, any rights to apply for registered design in respect thereof and any other intellectual property rights therein shall at all times remain vested in the Seller.

#### **13. THIRD PARTY RIGHTS**

(a) The Purchaser shall indemnify the Seller against any and all claims costs demands and expenses incurred by or made against the Seller as a direct or indirect result of the carrying out of any work required to be done on or to the Goods in accordance with the requirements or specifications of the Purchaser involving any infringement or claims of infringement of any intellectual or industrial property right vested in any third party.

(b) In any case where the Goods are or are capable of becoming the subject of any industrial or intellectual property rights of any third party the Seller shall be obliged to transfer to the Purchaser only such title as it may have to the Goods and Services.

#### **14. INSURANCE**

In any case where the Purchaser wishes the Seller to insure any specific consignment of Goods the Purchaser must so advise the Seller in writing within a reasonable time prior to delivery quoting the full value to be insured. The premium chargeable for such insurance shall be paid by the Purchaser.

#### **15. LIABILITY**

(a) The Seller shall not be liable to the Purchaser for

(i) Subject to condition 11(a) and (b) any discrepancy in quantity or weight delivered unless the Purchaser notifies the Seller of any claim for short delivery within 96 hours of receipt of the Goods;

(ii) Damage to or loss of the Goods or any part thereof in transit or non-delivery of the Goods unless the Goods are carried by the Seller's own transport or by a carrier on behalf of the Seller and the Purchaser notifies the Seller of any such claim within 96 hours of receipt of the Goods (in the case of loss or damage) or within 96 hours of the scheduled date for delivery (in the case of non-delivery);

(iii) Defects in the Goods caused by any act neglect or default of the Purchaser or of any third party;

(iv) Other defects in the Goods unless notified to the Seller within 96 hours of receipt of the Goods by the Purchaser or where the defect would not be apparent on reasonable inspection within one month of delivery.

(b) In the event of any shortage or non-delivery and/or damage or defect in respect of which the Seller accepts liability under Condition 15(a) the sole obligation of the Seller shall be at its option to make good any such shortage or non-delivery and/or as appropriate replace or repair any Goods found to be damaged or defective or repay the price of the Goods in respect of which

the complaint is made (less such allowance as the Seller may determine in respect of the scrap value of such Goods in the event that the same are retained in the possession of the Purchaser). In no circumstances shall the Seller's aggregate liability to the Purchaser whether for negligence breach of contract misrepresentation or otherwise exceed the cost of the defective damaged or undelivered Goods determined by net price invoiced to the Purchaser in respect of any occurrence or series of occurrences.

(c) Unless the Contract is an international supply contract as defined in section 26 of the Unfair Contract Terms Act 1977 the Seller shall accept liability for death or bodily injury caused by the negligence of the Seller its employees or agents.

(d) The Seller's liability under this Condition 15 shall be to the exclusion of all other liability to the Purchaser whether contractual tortious or otherwise for defects in the Goods and Services or for any loss or damage to or caused directly or indirectly by the Goods whether or not (save in the circumstances of sub-Condition 15(c)) caused by the negligence of the Seller its employees or agents.

(e) Without prejudice to the generality of the foregoing the Seller shall have no liability for loss of profits or contracts or other economic, indirect or consequential loss, whether arising from negligence, breach of contract, breach of statutory duty or otherwise however.

(f) The Seller's prices are determined on the basis of the limits of liability set out in this Condition. The Purchaser acknowledges that the limitations and exclusions of liability provided herein are reasonable in all the circumstances of the sale of Goods envisaged hereunder including without limitation the prices charged by the Seller for Goods. The Seller shall not accept any greater liability to the Purchaser above that which is provided herein unless the parties shall otherwise agree in writing and also on condition that the price for Goods shall be increased to take account of the Seller taking out insurance against the additional risks associated with any such greater liability accepted by the Seller.

## **16. LICENCES AND CONSENTS**

If any licence or consent of any government or other authority shall be required for the acquisition or use of the Goods by the Purchaser the Purchaser shall obtain the same at its own expense and if necessary or so required produce evidence of the same to the Seller on demand.

## **17. FORCE MAJEURE**

(a) The Seller shall not be liable to the Purchaser for any loss or damage which may be suffered by the Purchaser as a direct or indirect result of the supply of the Goods by the Seller being prevented hindered delayed or rendered uneconomic by reason of any Force Majeure Circumstances.

(b) In this Condition "Force Majeure Circumstances" shall mean any Act of God riot strike lock out trade dispute or labour disturbance accident breakdown of plant or machinery fire flood difficulty or increased expense in obtaining workmen materials or transport or other circumstances whatsoever outside the reasonable control of the Seller.

(c) If due to Force Majeure Circumstances the Seller has insufficient stock to meet all its commitments the Seller may apportion available stock between its customers at its sole discretion.

## **18. INSOLVENCY**

If the Purchaser shall become bankrupt or under the provisions of Section 123 of the Insolvency Act 1986 is deemed to be unable to pay its debts or compounds with creditors or in the event of a resolution being passed or proceedings being commenced for the administration or liquidation of the Purchaser (other than for a voluntary winding up for the purposes of reconstruction or amalgamation) or if a Receiver or Manager is appointed of all or any part of the Purchaser's assets or undertaking the Seller shall be entitled to cancel the Contract in whole or part by notice in writing without prejudice to any right or remedy accrued or accruing to the Seller.

## **19. CONSUMER PROTECTION ACT 1987 ("THE ACT")**

In circumstances where the Seller supplies Goods to the Purchaser for incorporation with, or use ancillary to, any composite products to be produced, manufactured, processed or supplied by the Purchaser (referred to below as "Purchaser Composite Products") or by any sub-purchaser from the Purchaser or other third party (referred to below as "Third Party Composite Products") then:

(a) The Purchaser shall in the case of Purchaser Composite Products forthwith on demand produce for inspection by the Seller copies of all written instructions, information and warnings to be supplied therewith or in relation thereto and in the case of Third Party Composite Products shall use its best endeavours to produce such items Provided nevertheless that such inspection or right to inspect on the part of the Seller shall not of itself constitute acceptance or approval of such items; and

(b) The Purchaser shall indemnify, reimburse and compensate the Seller for all losses and damages (including costs, expenses and charges for legal actions in which the Seller may be involved) that the Seller may incur in the event that any claim or claims

are made against the Seller pursuant to the Act relating to Purchaser Composite Products or Third Party Composite Products in circumstances where the Goods supplied by the Seller.

(i) Were not the defective part of the said Purchaser or Third Party Composite Product; or

(ii) Were only rendered the defective part or became a defective product by reason of actions or omissions of the Purchaser or a third party; or

(iii) Were only rendered the defective part or became a defective product by reason of instructions or warnings given by the Purchaser or other supplier of the said Products, or by reason of the Seller's compliance with drawings or specifications furnished by or on behalf of the Purchaser.

(c) For the purposes of this Condition only the word "defective" shall be interpreted in accordance with the definition of "defect" contained in Part 1 of the Act.

(d) The Purchaser hereby acknowledges that it is under a duty to pass on to its customers (where appropriate) all instructions, information and warnings supplied to it by the Seller with the Goods.

## **20. WAIVER**

The failure by either party to the Contract to exercise or enforce any rights conferred by the Contract shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof at any time or times thereafter.

## **21. NOTICES**

Any notice hereunder shall be in permanent readable form and shall be deemed properly addressed if addressed to the party concerned at its principal place of business or last known address. Any such notice shall be taken to be received by the addressee two working days following the date of despatch of the notice by post or when the notice is sent by hand or given by facsimile or other electronic medium simultaneously with the delivery or transmission.

## **22. SEVERABILITY**

In the event of any provision of these Conditions being or becoming void in whole or in part the other provisions shall remain fully valid and enforceable and void provisions shall where appropriate, be replaced in accordance with the meaning and purpose of these Conditions.

## **23. LAW**

The Contract shall be governed by the laws of England and save for injunctive relief which may be sought by the Seller in any jurisdiction the parties hereby submit to the exclusive jurisdiction of the English courts as regards any claim or matter arising hereunder.