

USHA MARTIN UK LIMITED

In these conditions the "Company" means USHA MARTIN UK Limited and any subsidiary or division or trading unit of the Company by which goods or services are sold and or by which equipment is hired out.

CONDITIONS OF SALE

These conditions of sale shall govern all contracts for the sale of goods or services by the Company. In these conditions of sale "goods" means the subject matter of the contract including (but not limited to) raw materials, finished or semi-finished materials or articles, machinery, parts, spares, commodities etc. and whether one or a number of items whether or not identical or similar.

1 GENERAL

- 1.1 The Company's quotations are not binding on the Company and a contract (the "contract") will only come into being upon acceptance by the Company of the Customer's order and the following conditions shall be deemed to be incorporated herein.
- 1.2 The contract will be subject to these conditions and will constitute the entire agreement between the parties. All terms and conditions appearing or referred to in the Customer's order or otherwise stipulated by the Customer shall have no effect. Any variation of the contract must be confirmed in writing by the Company.
- 1.3 Where goods are to be supplied from stock, such supply is subject to availability of stocks at the date of delivery.
- 1.4 Tenders submitted by the Company shall remain open for acceptance for a period of 30 days from the date of the tender, unless in the tender some other period is specified or accepted and unless the tender is withdrawn by the Company.
- 1.5 These conditions apply to services provided by the Company in the same way as they apply to goods supplied by the Company.

2 PRICES

- 2.1 Where the goods are sold by reference to the Company's published price list the price payable for the goods shall be the ruling price as published in the price list current at the date of despatch of the goods from the Company's works.
- 2.2 In other cases the price stated in the contract is based on the cost to the Company of raw materials, fuel and power, transport and labour and all other costs at the date of acceptance of the order or quotation (whichever is earlier). If at the date of despatch of the goods from the Company's works, or if at the date of carrying out the work, in either case there has been any increase in all or any of such costs the price payable for the goods or services may at the request of the Company be increased accordingly.
- 2.3 Where the price for the goods or services is varied in accordance with this condition the price as varied shall be binding on both parties and shall not give either party any option of cancellation.
- 2.4 There shall be added to the price for the goods or services any value added tax and any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery of the goods or performance of the services (whether initially charged on or payable by the Company or the Customer).
- 2.5 The price for the goods includes delivery to any destination in the United Kingdom mainland (excluding Northern Ireland and any islands) EXCEPT where the order value is insufficient to cover the actual cost of transport or where expedited delivery an extra charge may be applied which shall be borne by the Customer and added to the price of the goods. In the case of orders from outside the United Kingdom mainland (excluding Northern Ireland and any islands) the price includes packing and delivery Ex-Works and if any other commercial terms are agreed they shall be in accordance with the definitions and rules of INCO TERMS 2000 except as expressly provided for in these conditions or in the contract. If the Customer requests the Company to deliver goods all costs in delivering the goods will be for the account of the Customer.
- 2.6 When the contract is for the provision of services in the event of stand-down or demobilisation the Customer shall pay the Company the rate agreed by the parties for such events and all costs incurred the Company.

3 TERMS OF PAYMENT

- 3.1 Price quoted are net and are in Sterling unless otherwise agreed. Subject to credit being approved accounts are due for payment not later than the end of the month following the month of despatch unless other arrangements have been made in writing, otherwise payment must be received by the Company before delivery. All payments shall be made without deduction or set-off. When deliveries are spread over a period each consignment will be invoiced as despatched and each month's invoices will be treated as a separate account and be payable accordingly. Where contract work is to be performed over a period in excess of one month the value of work carried out shall be ascertained by the Company at the end of each month and (unless the contract otherwise expressly provides) a sum equal to such value (or any percentage thereof specified in the contract) shall be invoiced and such invoice shall be paid in accordance with the foregoing provisions of this clause. Failure to pay any invoice in accordance with the foregoing terms or other terms specified in the contract shall entitle the Company to suspend further deliveries and work both on the same order and on any other order from the Customer and by notice in writing to the Customer to forthwith determine the contract without prejudice to any other right the Company may have. The Company also reserves the right to charge interest on overdue account such interest to be calculated on a day to day basis on the amount outstanding at the rate of 2% per annum above the current base lending rate of Barclays Bank plc accruing on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgement, and compounding quarterly and to claim immediate payment in full of all monies owing for any goods supplied by the Company to the Customer or owing by the Customer on any other account (whether or not such monies have otherwise become due). The Company reserves the right where genuine doubts arise as to a Customer's financial position or in the case of failure to pay for any goods or services or any delivery or instalment as aforesaid, to suspend delivery or performance of any order or any part or instalment without liability until payment or satisfactory security for payment has been provided. Where goods are to be delivered outside the United Kingdom, the terms of payment shall be agreed between the Company and the Customer.
- 3.2 In the case of FOB United Kingdom port, unless otherwise agreed, the Customer shall upon request by the Company nominate a vessel willing to receive the goods. Failing such a nomination within (30) days (or such longer period as may be agreed by the Company) the Company shall be entitled to require immediate payment for the goods and to place the goods in store at the risk and the expense of the Customer or to treat the contract as discharged and dispose of the goods.
- 3.3 If the contract stipulates that payment is made by letter of credit it shall be an express condition of the contract that the letter of credit is irrevocable and is drawn on or confirmed by a first class United Kingdom bank paid over United Kingdom counter and all appropriate documentation is presented to the Company when requested by the Company or otherwise in accordance with the contract.

4 TITLE TO GOODS

- 4.1 Legal and beneficial ownership of goods shall remain with the company until payment in full has been received by the company:-
- 4.1.1 For those goods;
 - 4.1.2 For any other goods supplied by the company;
 - 4.1.3 Of any other monies due from the customer to the company on any account.
- 4.2 Until property in the goods passes to the customer under paragraph 4.1 above the customer shall:-
- 4.2.1 Be bailee of the goods;
 - 4.2.2 Keep the goods separately and readily identifiable as the property of the company;
 - 4.2.3 Not attach the goods to real property without the company's consent;
 - 4.2.4 Not remove, deface or obscure any identifying mark or packaging on or relating to the goods;
 - 4.2.5 Maintain the goods in satisfactory condition any keep them insured against all risks for their full price on the company's behalf from the date of delivery;
 - 4.2.6 Give the company such information relating to the goods as the company may require from time to time; and
 - 4.2.7 Notify the company if it becomes subject to any event listed in clause 9.
- 4.3
- 4.3.1 Notwithstanding paragraph 4.1 above the customer may (as between it and its customer only) as principal in the ordinary course of its business sell the goods by bonafide sale at full market value or in the ordinary course of its business use the goods.
 - 4.3.2 Goods shall be deemed sold or used in the order delivered to the customer.
 - 4.3.3 Any resale by the customer of goods in which property has not passed to the customer shall (as between the company and the customer) be made by the customer as agent for the company.
- 4.4
- 4.4.1 If goods in which property has not passed to the customer are mixed with or incorporated into other goods the property in those other goods shall be held on trust by the customer for the company to the full extent of the sums recoverable by the company under paragraph 4.1 above.
 - 4.4.2 The proceeds of sale of any goods and any other goods referred to in paragraph 4.4.1 or the proceeds of any insurance claim by the customer in respect of goods in which property has not passed or proceeds of above shall be held by the customer in trust for the company to the full extent of all sums recoverable by the company under paragraph 4.1 above.
 - 4.4.3 The customer shall keep any proceeds of sale as referred to in paragraph 4.4.2 above in a separate account and the company shall have right to trace such proceeds (according to the principles in re halletts estate (1880) 13 ch d 696).
 - 4.4.4 Upon accounting to the company for the entire proceeds of sales made under paragraph 4.3.3 and 4.4.1 or above, the company will pay to the customer a commission equivalent to the difference between the sums owed to the company and the value of such proceeds.
- 4.5 The customer assigns to the company all rights and claims the customer may have against its own customers and others in respect of goods specified in paragraphs 4.3.3 and 4.4.1 above.
- 4.6 At any time prior to property in goods passing to the customer (whether or not any payment to the company is then overdue or the customer is otherwise in breach of any obligation to the company) the company may without prejudice to any other of its rights:-
- 4.6.1 Retake possession of all or any part of the goods and enter any premises for that purpose (or authorise others to do so) which the customer hereby authorises.
 - 4.6.2 Require delivery up to it of all or any part of the goods.
 - 4.6.3 Terminate the customer's authority to resell or use the goods forthwith by written notice to the customer which authority shall automatically terminate (without notice) upon any insolvency of the customer or it going into liquidation (as defined in the insolvency act 1986) or it having a receiver or administrative receiver appointed or calling a meeting of its creditors or any execution or distress being levied on goods in its possession.
- 4.7 The company may at any time appropriate sums received from the customer as it thinks fit notwithstanding any purported appropriation of the customer.
- 4.8 Any goods repossessed by the company may be resold on such terms as the company may determine and the customer shall remain liable to the company for the difference between the net proceeds of such resale and all outstanding sums due to the company in respect of such goods and for all costs and expenses incurred by the company in repossessing storing and reselling the same.
- 4.9 Each paragraph and sub-paragraph of this clause is separate severable and distinct.

5 WARRANTY; LIMIT OF RESPONSIBILITY

The company warrants that it will (at the company's choice) either repair or replace, or refund the full purchase price of any goods which are accepted by the company as being defective or not in accordance with the contract or any express description or representation given or made by or on behalf of the company in respect of the goods within a period of 3 months from despatch of such goods from the company's works (the "warranty period") save that this warranty shall not apply where the defect or fault is attributable to defective materials supplied by third parties where the customer's only remedy will be against that third party. In respect of services, if the company accepts within the warranty period that it has failed to execute the services in accordance with the express terms of the contract the company may at its option perform again such of the services as have not been carried out in accordance with the express terms of the contract or repay the customer the charge for such of the services as have not been so performed (provided such shall have been paid to the company by the customer). The customer's remedies in respect of any claim under the foregoing express warranty or any condition or warranty implied by law or any other claim in respect of the goods or services or any workmanship in relation thereto (whether or not involving negligence on the part of the company) shall in all cases be limited to repair, replacement reperformance or refund of the purchase price as aforesaid and any condition or warranty implied by law shall cease to apply after the expiry of the warranty period; and the company shall not in any circumstances be liable for any damages, compensation, costs, expenses, losses or other liabilities, whether direct, indirect or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law. A claim in respect of any defect or failure to comply with the specification or in respect of any delivery of or payment for any other order, delivery

or instalment or any part of the same order, delivery or instalment: the company's total liability to the customer in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the amount received by the company in consideration for the goods or services supplied.

6 DELIVERY AND COMPLETION DATES

- 6.1 The delivery dates or the dates for carrying out the services specified in the contract are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery or performance. The Company will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform its obligations under the contract if the duration of the delay is not substantial or if the delay or failure to perform its obligations under the contract is due to any Act of God, fire, inclement or exceptional weather conditions, industrial action (whether at the Company's premises or elsewhere), hostilities, shortage of labour, materials, power or other supplies, late delivery or performance or non-delivery or non-performance by suppliers or sub-contractors, governmental order or intervention (whether or not having the force of law) or any cause whatever beyond the Company's control or of an unexpected or exceptional nature.
- 6.2 No delay shall entitle the customer to reject any delivery or performance or any further instalment or part of the order or any other order from the Customer or to repudiate the order.

7 DAMAGE, SHORTAGE OR LOSS IN TRANSIT

- 7.1 Unless the contract otherwise stipulates, the risk in the goods passes to the customer when:
- 7.1.1 The goods are despatched from the company's works and the company accepts no responsibility for any damage or loss in transit.
- 7.1.2 Where the goods are appropriated to the customer at the company's premises upon collection of the goods by the customer or upon the expiry of 7 days from the company's written notice to the customer that such goods are ready for delivery whichever is the earlier.

8 DELAYED ACCEPTANCE

If for any reason the customer is unable to accept delivery of the goods when the goods are due and ready for delivery the Company may arrange storage of the goods at the Customer's risk and the Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other right which the Company may have in respect of the Customer's failure to take delivery of the goods or pay for them in accordance with the contract.

9 TERMINATION

If the Customer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or (being a company) it shall pass a resolution or the Court shall make an order that the Customer shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the Customer or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the Court to make a winding up order or if the Customer takes suffers any similar action in consequence of debt or if anything analogous to or having the substantially similar effect to the aforementioned events occurs in any other jurisdiction or if the financial responsibility of the Customer shall, in the opinion of the Company become impaired or if the Customer shall commit any breach of any part of the contract the Company may without prejudice to its rights and remedies hereunder stop all goods in transit and suspend further deliveries and by notice in writing to the Customer may forthwith terminate the contract.

10 HIREWORK

- 10.1 Hire work and work involving the use of the Customer's materials is undertaken by the Company only on the express understanding that the Company cannot be responsible for any distortion, faults or defects which appear or develop during or are caused by the work, howsoever, arising even resulting from any fault or negligence or mistake of the Company. The Company gives no guarantee or warranty of any kind but subject to the availability of capacity and facilities it will endeavour to correct any such distortion, faults or defects at the Customer's expense and risk. The Company shall not in any circumstances be liable for damages, compensations, costs, expenses, losses or other liabilities, whether direct, indirect or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law.
- 10.2 Unless it is otherwise expressly agreed in writing any waste material resulting from the performance of any hire work shall become the property of the Company but it is herein expressly agreed between the Company and the Customer that the Company may at any time order the Customer to remove any such waste material and the Customer hereby agrees that on receipt of any such order from the Company it will forthwith comply with such order.
- 10.3 The Customer agrees that it will reimburse the Company for any damage caused to any plant or machinery of the Company by the material supplied by the Customer to the Company.
- 10.4 The Company will have a lien on all the Customer's goods and materials in the possession of the Company for hire work in respect of all sums owing to the Company for such hire work.

11 TOLERANCES AND TESTS

- 11.1 Gauges, weights, chemical composition and analysis, quantities and size will so far as possible be adhered to but reasonable excesses and deficiencies thereof shall be accepted by the Customer, who shall not be entitled to reject any goods or to require replacement of any goods on the ground that they are not precisely specified.
- 11.2 Unless otherwise specifically agreed all tests, test pieces, and inspections whatsoever required by the Customer will be charged extra. Unless otherwise specifically requested by the Customer, tests of chemical comparison shall be based only on the steelmaker's analysis which shall be final. Tests and inspections shall take place under the Company's stated testing arrangements, and such test shall be final. All tests are subject to analytical tolerances.

12 NON-PRIME GOODS

- 12.1 Goods sold as agreed by the Company and the Customer to be sold as "other than prime", "non-prime" or by any similar description or with a specified deviation are sold in their actual state as seen without warranty and with all faults whether or not the goods have been inspected by the Customer prior to delivery. Any statement, specification, description or other information provided by the Company in respect of such goods is given in good faith but the Company can accept no responsibility for its accuracy, under no circumstances will the Company be under an obligation to replace or make good such goods or entertain any claim whatsoever in respect thereof.
- 12.2 If the Customer shall re-sell such goods sold as "other than prime", "non-prime" or with a specified deviation or under any description which implies that the goods do not comply with any recognised specification or standard without processing or otherwise altering their state, save by decoiling, cutting or rebuilding the same, the Customer shall ensure that provisions in similar form to those set out in this paragraph are incorporated in the re-sale agreement.

13 PATENTS AND CONFIDENTIALITY

- 13.1 The Customer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings) claims proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, unregistered design, design right, copyright, trademark or other industrial or intellectual property rights resulting from compliance by the Company with the Customer's instructions, whether express or implied.
- 13.2 Any intellectual property rights in or arising out of or in connection with the services provided shall be owned by the Company.
- 13.3 A party ("Receiving Party") shall keep in strict confidence all technical or commercial know-how, specification, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other Party ("Disclosing Party"), its employees, agents or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligation under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. This clause shall survive termination of the Contract.

14 INDEMNITY

The Customer agrees upon demand to indemnify the Company against all losses, damages, injury, costs and expenses of whatever nature suffered by the Company to the extent that the same are caused by or related to:-

- 14.1 designs, drawings or specifications given to the Company by the Customer in respect of goods produced by the Company for the Customer' or
- 14.2 defective materials or products supplied by the Customer to the Company and incorporated by the Company in goods produced by the Company for the Customer; or
- 14.3 The improper incorporation assembly, use, processing, storage or handling of goods by the Customer.
- 14.4 Any act, neglect or breach of statutory duty done or committed by the Customer, his agents, servants or other contractors (not being employed by the Company).

15 NON-STANDARD ORDERS

Where the Customer orders goods or materials of a type, size or quality not normally produced by the Company or services not normally performed by the Company, the Company will use all reasonable endeavours to execute the order, but if it proves impossible, impracticable or uneconomical to carry out or complete the order, the Company reserves the right to cancel the contract or the uncompleted balance thereof, in which event the Customer will only be liable to pay for the part thereof actually delivered or performed.

16 DRAWINGS, INFORMATION AND SAMPLES

- 16.1 The Company is entitled to assume that all drawings, descriptions, specifications and other information supplied by the Customer to the Company, whether written or verbal, are in all respects complete, accurate and entirely suitable for the Customer's requirements.
- 16.2 Unless otherwise expressly agreed, the Company shall have no responsibility for the performance, suitability or durability of any goods or any materials or workmanship comprised therein to the extent that the same is manufactured in accordance with the Customer's designs, drawings, standards or specifications.
- 16.3 Notwithstanding that sample goods be exhibited to and inspected by the customer such sample goods are so exhibited and inspected solely to enable the customer to judge for himself the quality of the bulk and not so as to constitute a sale by sample. The customer shall take goods at his own risk as to their corresponding with the said samples and subject to the normal variation between bulk and sample accepted by the trade.
- 16.4 The Company will take all reasonable care of the Customer's drawings, standards or specifications while in the Company's possession but does not accept liability for loss or damage thereto howsoever arising except where neglect on the part of the Company or its agents was the direct cause of loss or damage and in those circumstances, the Company's liability shall be limited to the actual cost of replacement or repair to the exclusion of all other expenses, consequential loss, loss of profits and other expenses, liabilities and losses howsoever arising.
- 16.5 The Company reserves the right to destroy or otherwise to dispose of drawings, standards or specifications in its possession or custody (whether or not the property of the Customer) from which the Customer has not required goods to be made for a period of 12 months.

17 PACKING

- 17.1 Unless otherwise specified, reels and packing materials will be charged extra, but where stated to be returnable, will be credited in full on return to the Company's works carriage paid in good condition. Where not returnable, the Customer will dispose of all packing in accordance with all regulations (whether statutory or otherwise) relating to the protection of the environment.
- 17.2 The Company uses all reasonable endeavours to ensure, where necessary, suitability of packing before despatch, but no claim will be accepted by the Company for breakage or damage in transit on the grounds of alleged unsuitability for packing.

18 ASSIGNMENT AND SUBCONTRACTING

- 18.1 The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner or all of its obligations under the Contract to any third party.
- 18.2 The Customer shall not, without the prior written consent of the Company, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

19 WAIVER AND CUMULATIVE REMEDIES

- 19.1 A waiver of any right under the contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 19.2 Unless specifically provided otherwise, rights arising under the contract are cumulative and to not exclude rights provided by law.

20 PARTNERSHIP, THIRD PARTIES AND VARIATION

- 20.1 Nothing in the contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of another party for any purpose (unless specifically stated in the contract). No party shall have authority to act as agent (unless otherwise stated in the contract, or to bind, the other party in any way.
- 20.2 A person who is not a party to the contract shall not have any rights under or in connection with it.
- 20.3 Any variation, including the introduction of any additional terms and conditions to the contract shall only be binding when agreed in writing and signed by the Company.

21 HEALTH AND SAFETY AT WORK ETC.

The Company's duties under the Health & Safety at Work Act 1974.

- 21.1 Insofar as the Company is under a duty pursuant to section 6 of the Health & Safety at Work Act 1974 in respect of the design, manufacture and supply of any goods for use at work, the Customer shall be deemed to have been afforded by the Company:
- (a) Reasonable opportunity for the testing and examination of the goods or materials prior to delivery to the Customer in respect of their safety and any risk to health;
 - (b) Adequate information about the goods and materials in respect of the use for which they are designed and have been tested and of any conditions necessary to ensure that when put to use they will be safe and without risk to health whether or not the said information has been requested by the Customer;
- 21.2 Where the Customer receives information from the Company about:
- (a) the use for which the goods are designed or have been tested;
 - (b) Any conditions necessary to ensure the goods will be safe and without risk to health when being set, used, cleaned or maintained by any person at work or when the goods are being dismantled, or disposed of,
 - (c) Revisions to information supplied under (a) and (b) above as is necessary because of it becoming known that anything that gives rise to a serious risk to health and safety.
- The Customer is deemed to have read and understood the above information and agrees to pay due regard to it and hereby undertakes to take such steps as may be specified by the above information to ensure that so far as is reasonable practicable, the goods will be safe and without risk to health.

22. PERMITS

Where appropriate, the Customer shall obtain within fourteen (14) days of making the contract or such other period as the Company may agree and shall maintain in force all necessary permits:

- (i) To enable goods to be imported into the country of destination.
- (ii) To enable payment to be affected in accordance with the contract. Written confirmation thereof, including the permit number, date and period of validity, shall be furnished to the Company which shall be under no obligation to manufacture or supply the goods before receipt thereof. In the event of any breach of this obligation, the Company shall be entitled without prejudice to any of their remedies to cancel the contract; and
- (iii) To enable in the case of services the work to be performed in accordance with the contract.

22 FORCE MAJEURE

The Company shall not be responsible for any loss or damage suffered as a result of nor be obliged to reduce its prices or charges to take account of any strike, bad weather conditions or any event outside the reasonable direct control of the Company.

23 APPLICABLE LAW

The contract any proceedings (whereby one party might be entitled to join the other as a third party) shall in all respects be governed by and construed in accordance with English Law and the parties hereby submit to the exclusive jurisdiction of the English Courts.