

# D & J Steels Ltd - CONDITIONS OF SALE

## THE ATTENTION OF THE BUYER IS DRAWN IN PARTICULAR TO THE PROVISIONS OF CLAUSE 9.

In these Conditions, "Conditions" means the conditions of sale set out in this document, "Contract" means the contract between the Company and the Buyer for the sale and purchase of the Goods in accordance with these Conditions, "Order" means the Buyer's order for the Goods as set out in the Buyer's purchase order form, the Buyer's written and signed acceptance of the Company's quotation, or overleaf, as the case may be, "the Company" means D & J (Steels) Ltd "the Buyer" means the purchaser of the Goods pursuant to the Contract of which these Conditions form part and "the Goods" or "Goods" means the goods items materials and/or services to be supplied pursuant to the contract of which these conditions form part and which are described in the Company's catalogue as modified by any applicable specification.

### 1. General

- (1) The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. The Buyer is responsible for ensuring that the terms of the Order and any applicable specification are complete and accurate.
- (2) The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- (3) A quotation is not an offer, and no Contract shall come into existence unless and until the Company has accepted in writing the Buyer's Order to supply the Goods specified in any quotation.
- (4) If on any point these Conditions are inconsistent with any special terms of the Contract agreed by the Company and the Buyer in writing, such special terms shall prevail subject only to clauses 6 and 7 hereof.
- (5) If, subsequent to the Contract, any contract of sale is concluded between the Company and the Buyer by any method whatsoever without express reference to these Conditions, it shall be a term of such a contract that these Conditions apply to such contract.
- (6) The Conditions shall apply and take precedence over all other conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- (7) Any typographical, clerical or other omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- (8) The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or regulatory requirements under UK or EU law or, in any event, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- (9) The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that the Company's employees and agents are not authorised to make any representations concerning the Goods and that it does not rely on any such representations that are not expressly confirmed by the Company in writing and set out in the Contract.

### 2. Prices

- (1) Where fixed prices have not been expressly agreed by the Company the price payable by the Buyer shall be based upon the Company's list price at the date of despatch of each delivery.
- (2) Where prices have expressly been agreed the Company reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in cost to the Company which is due to any factor beyond the control of the Company (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in insurance costs, significant increase in the labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate information or instructions).
- (3) Prices include delivery unless otherwise stated and are subject to the addition of VAT.

### 3. Payment

- (1) The Company may invoice the Buyer for the Goods on or at any time after completion of delivery. Payment of the Company's invoice is due by the end of the month following the month of delivery of the Goods to which the invoices relates unless otherwise agreed in writing at the time of entry into the Contract. Time of payment is of the essence.
- (2) In the case of sums paid to the Company by cheque, banker's draft or direct inter-bank transfer, payments shall be deemed to have been made when the Company's bank account has been credited with the full amount, and not before.
- (3) The Company reserves the right to charge interest on a monthly basis at a figure equivalent to the current base rate of Lloyds Bank Plc plus six per cent (6%) on all monies due but unpaid until such payment has been made.
- (4) In no circumstances shall the Buyer be entitled to withhold payment of the price of the goods or any other agreed payments which have fallen due or to raise any deduction set off or counterclaim in respect thereof relating to this or any other contract.

### 4. Security

The Company shall be entitled, without prejudice to the Company's other rights and remedies, to require the Buyer to supply to it such security for the Buyer's liabilities under this contract as the Company shall require including, without limitation, a letter of credit, guarantee, bill of exchange or any other security.

### 5. Termination

The Company shall be entitled, without prejudice to the Company's other rights and remedies, either to terminate the contract or to suspend any further deliveries in any of the following events:-

- (a) Non-compliance by the Buyer with the Company's terms of payment;
- (b) Failure by the Buyer to provide a letter of credit or guarantee, bill of exchange or any other security requested by the Company.

### 6. Insolvency of buyer

If the Buyer becomes subject to any of the events listed in clause 6(2), or the Company reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Company, the Company may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Company without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due.

(2) For the purposes of clause 6(1), the relevant events are:

- (a) the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
  - (b) the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
  - (c) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
  - (d) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
  - (e) a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
  - (f) (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
  - (g) (being a company) a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
  - (h) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
  - (i) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 6(2)(a) to clause 6(2)(h) (inclusive);
  - (j) the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
  - (k) the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
  - (l) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- (3) Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

### 7. Title

All terms of the Contract shall be read subject to this clause 7 and in the event of any terms being inconsistent with this clause, this clause 7 shall prevail.

(2) Title to the Goods shall not pass to the Buyer until the Company has received payment in full (in cash or cleared funds in accordance with clause 3(2)) for:

- (a) the Goods; and
  - (b) any other goods or services that the Company has supplied to the Buyer.
- (3) Until title to the Goods has passed to the Buyer:
- (a) the Goods so supplied shall be held by the Buyer on a fiduciary basis as bailee for the Company.
  - (b) The Buyer shall permit the servants or agents of the Company to enter on the Buyer's premises (or any other location where the Goods are located, insofar as the Buyer is entitled to or is able to procure such access) and to repossess the Goods at any time prior to such payment.
  - (c) Although title to the Goods shall not pass to the Buyer until the Buyer has paid their price to the Company, the Company shall be entitled to sue for their price once payment has become due.
  - (d) The Goods shall not be fixed into the ground or attached to or incorporated into (in any way) any other property or goods until title has passed to the Buyer.
  - (e) The Buyer shall keep the Goods separate and distinct from all other goods and property so that they remain readily identifiable as the Company's property and shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods.
  - (f) The Buyer shall keep the Goods in satisfactory conditions and keep them insured to their full replacement value with the Company's interest noted on the policy.
  - (g) The Buyer shall notify the Company if it becomes subject to any of the events listed in clause 6.2.
  - (h) The Buyer shall only be at liberty to mix the goods with others or use them in the process of manufacture prior to the passing of title with the consent of the Company in writing, which consent shall not be unreasonably withheld providing that suitable guarantees are given by the Buyer to discharge payment in full at the due date under the Contract for sale to the Buyer.
- but the Buyer may resell or use the Goods in the ordinary course of its business.

### 8. Time of Delivery

- (1) Any date specified by the Company or the Buyer for delivery is not in any way a guaranteed delivery date;
- (2) Delivery will be to the place of delivery agreed and specified by the Company and the Buyer will ensure that delivery is accepted at such place of delivery, and will indemnify the Company in respect of all costs and liabilities incurred by the Company as a result of any delay in or refusal of acceptance of delivery or unloading;
- (3) Time of delivery shall not be of the essence of the contract;
- (4) The Buyer shall not be entitled to serve any notice purporting to make time of the essence. Any such notice will be ineffective.
- (5) The Buyer shall have no right to damages or to terminate the contract for failure for any cause to meet any delivery date
- (6) The Company will endeavour to comply with any reasonable request by the Buyer for postponement of delivery but shall be under no obligation to do so and the Buyer is obliged to take delivery as agreed under the Contract. Where postponement of delivery is not agreed by the Company in writing the Buyer shall if required pay all costs and expenses occasioned thereby including a reasonable charge for storage and any increased costs of delivery and any costs incurred by the Company in relation to any insurance payments reasonably made by it.

### 9. Limitation on Liability

(1) Every effort is made to ensure sound material and good workmanship, but there shall be no condition, warranty or other term either express or implied, as to material, workmanship or fitness of goods for any particular purpose, whether such purpose be known to the Company or not (save for any statutorily implied terms).

(2) Subject to clause 9(3), if:

- (a) the Buyer gives notice in writing to the Company within a reasonable time of discovery that some or all of the Goods are not of sound material and good workmanship and/or do not comply with any statutorily implied terms;
- (b) the Company is given a reasonable opportunity of examining such Goods;
- (c) the Buyer (if asked to do so by the Company) returns such Goods for examination to the Company's place of business at the Buyer's cost; and
- (d) in the event any material or workmanship proves to be defective, the Company will rectify or replace such Goods, or if rectification or replacement is not practicable, will credit the value of the Goods at the invoice price, if required in writing to do so, provided always that the claim is made and admitted and such Goods are which are to be replaced or credited are returned permanently within 6 months from the date of invoice.

- (3) The Company shall not be liable for the rectification or replacement, or to credit the value, of the Goods in any of the following circumstances:
- (a) the Buyer makes any further use of such Goods after giving notice in accordance with clause 9(2);
  - (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
  - (c) the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer;
  - (d) the Buyer alters or repairs such Goods without the written consent of the Company;
  - (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - (f) the Goods differ from their description or specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- (4) These Conditions shall apply to any rectified or replacement Goods supplied by the Company.
- (5) The Company does not seek to exclude liability for death or personal injury resulting from the negligence of itself, its servants or its agents, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979, defective products under the Consumer Protection Act 1987 or any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.
- (6) Subject to clause 9(5) the Company shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:
- (a) direct loss;
  - (b) loss of profit;
  - (c) indirect or consequential loss arising under or in connection with the Contract.
- (7) Without limitation to the preceding provisions hereof in no circumstances shall the Company's liability whether in respect of one claim or all claims arising out of the Contract exceed the purchase price payable under the Contract.
- (8) Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Buyer's own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

#### **10. Risk**

Risk in respect of the Goods shall pass to the Buyer upon delivery.

#### **11. Delivery**

(1) When the Goods or any of them are delivered by the Company's own transport, delivery shall be deemed to take place at the moment the Goods are lifted from the Company's delivery vehicle. When the Goods or any of them are delivered by other means of transport delivery shall be deemed to take place when they are loaded on to the vehicle used to transport the Goods from the Company's premises.

(2) Delivery shall at all times be on hard roads or rail, only to the address stated on the Buyer's order.

#### **12. Defective Delivery and Damage in Transit**

(1) No claim for damage to the Goods in transit will be considered by the Company unless:-

(a) An identified and authorised signatory on behalf of the Buyer clearly indicates on the delivery note relevant to the Goods that they are defective or damaged e.g. "Goods received damaged, (signed)" is clearly made by the Customer on the delivery note; and

(b) The Company is advised in writing of the precise particulars of the damage, in addition to (a) above, within seven days of the arrival of the Goods at the address specified in the Buyer's Order.

(2) Claims will not be considered for short weight measure or delivery or unsuitability unless the Company is notified in writing and given an opportunity for verifying the same within seven days of the arrival of the Goods at the address specified in the Buyer's Order.

#### **13. Force Majeure**

The Company shall not be liable to the Buyer or be deemed to be in breach of any contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control. Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:-

- (1) Act of God, explosion, flood, tempest, fire or accident;
- (2) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (3) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any European Union, governmental, parliamentary or local authority;
- (4) import or export regulations or embargoes.
- (5) labour disputes, strikes, lock-outs, fuel shortages, contagious diseases.

#### **14. Indulgence to Buyer**

(1) Any indulgence or forbearance to the Buyer or any waiver by the Company of any breach of contract by the Buyer shall only be of legal effect if expressly stated in writing.

(2) The Company's rights and remedies shall not be prejudiced by an indulgence or forbearance to the Buyer and no waiver by the Company of any breach of the contract by the Buyer shall operate as a waiver of any subsequent breach.

#### **15. Despatch Abroad**

(1) Goods despatched abroad shall be deemed to have been inspected by the Buyer's agent or representative prior to despatch from the Company's works as no responsibility can be accepted by the Company after Goods are consigned for shipment and the Company shall be under no obligation to give the Buyer the notice specified in Section 32(3) of the Sale of Goods Act 1979

(2) The Buyer shall be responsible for complying with any legislation or regulations governing export of the Goods from the UK or the importation of the Goods into the country of destination and for the payment of any duties on them.

#### **16. Assignment and Subcontracting**

(1) The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

(2) The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Company.

#### **17. Indemnity**

The Buyer shall indemnify the Company against all actions, costs, (including the cost of defending any legal proceedings) claims, proceedings, accounts and demands in respect of any infringement or alleged infringement of patent rights, registered design or similar protective rights resulting from compliance with the Buyer's instructions requirements or specifications, whether express or implied.

#### **18. Lifting and Unloading**

(1) Bundling of materials is carried out only as a means of identification and/or separation and for safety reasons the bundling wires or strapping must not be used for lifting purposes

(2) The Company will not be liable for any loss or damage arising from the use of the bundling wires or strapping for lifting purposes

#### **19. Testing and Inspection**

(1) The Buyer acknowledges that it cannot require testing of the Goods or any of them unless it is purchasing the Goods from and for delivery outside the United Kingdom and only if specified prior to or at the time the contract for the supply of Goods is entered into.

(2) Testing and inspection if specified by the Buyer or his agent shall be at the Company's works and such testing and inspection shall be final and conclusive as to the results thereof.

(3) The Company shall not be obliged to produce test and performance certificates or safety critical certificates unless requested (in advance of the testing or inspection) by the Buyer and accepted by the Company in writing. The Company may charge a reasonable fee for any such certificate supplied.

(4) The Buyer shall pay for all test pieces which comply with specification.

(5) Testing shall be carried out in such manner as the Company shall specify and any other testing shall only be carried out by the Company at the Buyer's cost and paid for prior to such testing regardless of result.

#### **20. Contact Divisibility**

The contract is divisible. Each delivery made hereunder:

(1) Shall be deemed to arise from a separate contract.

(2) Shall be invoiced separately and any invoice for a delivery shall be payable in full in accordance with the terms of payment provided herein without reference to and notwithstanding any defect of default in the delivery of any other instalment.

#### **21. Literature**

Illustrations, weights, measures, performance capabilities, application suitability information and other data set out in the sales literature of the Company are statements of opinion and are provided for information only and form no part of the Contract.

#### **22. Cancellation**

Cancellation of orders cannot be accepted without the consent in writing of the Company and on condition that all costs and expenses incurred by the Company up to the time of cancellation, and/or all loss of profits and other loss or damage resulting to the Company by reason of such cancellation will be reimbursed by the Buyer to the Company forthwith

#### **23. Notices**

(1) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax or e-mail.

(2) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 22(1); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or e-mail, one business day after transmission

(3) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

#### **24. Severance**

(1) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

(2) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### **25. Third Party Rights**

(1) A person who is not a party to the Contract shall not have any rights under it or in connection with it.

#### **26. Applicable Law and Jurisdiction**

This agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto each expressly submits to the exclusive jurisdiction of the Courts of England and Wales.

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