

# **KIVETON PARK STEEL LIMITED CONDITIONS OF PURCHASE**

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## **1. Definitions**

- 1.1 "The Company" means Kiveton Park.
- 1.2 "The Supplier" means the supplier to whom the Order is issued.
- 1.3 "The Order" means the Company's order printed overleaf to the Supplier in respect of the Goods.
- 1.4 "The Goods" means the goods specified in the Order and all parts or components of them and/or all work and services to be done by the Supplier as specified in the Order.
- 1.5 "The Contract" means any contract for the purchase of the Goods by the Company from the Supplier and shall incorporate the Order any specifications drawings or conditions referred to in it the conditions set out below and all terms and conditions implied by law.

## **2. Existence of Contract**

- 2.1 The Order is liable to cancellation unless accepted by the Supplier within 10 working days of the date of the Order. Acceptance shall be by means of any written acknowledgment whether or not it seeks to impose new conditions (unless clearly stated on its face to be a counter-offer) or delivery of the goods.
- 2.2 These conditions shall be incorporated in the Contract to the exclusion of any terms or conditions stipulated or referred to by the Supplier.

## **3. Delivery**

- 3.1 The Supplier shall adequately pack and protect the Goods against damage and deterioration and at its own risk and expense deliver them not earlier or later than the time or times specified in the Order at the delivery point or points specified in the Order or as the Company directs. Time shall be of the essence.
- 3.2 Without prejudice to other rights or remedies of the Company the Supplier shall forthwith as the Company shall instruct replace or repair goods lost or damaged in transit or reimburse the price of goods so lost or damaged.
- 3.3 Where applicable the Supplier shall furnish such programmes of manufacture or completion as the Company requires and shall promptly advise the Company in writing if such programmes are or are likely to be delayed.
- 3.4 The Supplier shall be responsible for any expenses incurred to deliver any incorrectly delivered Goods to the correct delivery point or return any items delivered in excess of the quantity specified in the Order.
- 3.5 The Company shall have no responsibility for packing materials or cases.

#### **4. Inspection and testing**

- 4.1 The Company's representative and any representatives of the Company's purchaser, sub-purchaser regulatory or statutory authority shall have the right of access on the Company's authority to inspect or test the Goods or applicable records at any reasonable time at the premises of the Supplier.
- 4.2 The Supplier shall give adequate notice of all tests and furnish such test certificates as the Company requires payment may be withheld until the Goods have been tested and successfully pass the tests.
- 4.3 No inspection or test or failure to inspect or test shall constitute acceptance of the Goods or affect any liability of the Supplier under the Contract.

#### **5. Passing of title and risk**

- 5.1 Title in all components and materials for the Goods and tools to be used exclusively in connection with the Goods shall pass to the Company as soon as they are allocated by the Supplier to the Contract and is in all documents of any kind including drawings, designs, test certificates, certificates of quality, parts lists and manuals as soon as they are prepared or obtained by the Supplier. The Supplier shall clearly mark and store all such items so that they can be identified as the property of the Company, make them available for inspection by the company at any time and comply with all instructions of the Company with regard to them.
- 5.2 Notwithstanding the passing of title risk in the Goods shall not pass to the Company until delivery.

#### **6. Price**

- 6.1 No increase in price from that stated in the order will be accepted by us without prior written agreement of a Manager or Director on behalf of the Company.
- 6.2 A separate invoice shall be rendered for each individual consignment and subject to the right of the Company herein contained payment will be made 60 days after end of month of receipt of the invoice unless otherwise agreed in writing by a Manager or Director of the Company.

#### **7. Free issue materials**

All materials including without limitation any drawings patterns gauges samples and specifications made available by the Company in connection with the contract shall be and remain the Property of the Company and the Supplier shall:

- 7.1 keep those materials in good order and condition and clearly mark the same so that they may be readily identified and be responsible for any loss of or damage to them;
- 7.2 use those materials only for the purposes of the Contract and shall not disclose or permit or suffer them to be disclosed to any third party.
- 7.3 return those materials carriage paid to the Company upon the Company's request at any time or if no request is made upon completion of the Contract.

7.4 The Supplier shall waive any lien he might otherwise have on any Company property for work done thereon or otherwise.

## 8. Termination/rejection

- 8.1 If the Supplier defaults in any of its obligations under the Contract becomes insolvent has a receiver appointed of its business or is compulsorily or voluntarily wound up or if the Company bona fide believes that any of such events may occur the Company shall be entitled at its discretion without prejudice to any other remedy to suspend the performance of or terminate the Contract and in the event of termination to keep or take possession of any Goods or of any items belonging to the Company and to enter any premises of the Supplier for that purpose.
- 8.2 If either on inspection before delivery, on delivery or after delivery any Goods do not conform to the Contract on any grounds at all including without limitation by reason of quality quantity specification or being unfit for the purpose for which they are required the Company shall be entitled at its discretion without prejudice to any other remedy it may have (whether before during or after machining cutting or otherwise dealing with the Goods) at any time within 18 months of delivery or 12 months of date of supply to the

Company's customer whichever is the later to exercise any one or more of the following rights:

- 8.2 (i) reject the Goods in whole or in part at the Suppliers risk and expense;
- 8.2 (ii) permit the Supplier to replace repair or reinstate the Goods so that they conform to the Contract; and
- 8.2 (iii) carry out or have carried out at the Supplier's expense such work as is necessary to conform the Goods to the Contract.

8.3 If the Company terminates the Contract the Supplier shall return to the Company all payments made and if the Company rejects any Goods the Supplier shall return all payments already made for the rejected Goods. Where upon termination the Company elects to keep or take any Goods it shall account to the Supplier for them at a proportion of their price or their value to the Company whichever is less but otherwise no compensation shall be payable to the Supplier on termination or rejection.

9. **Waiver** No failure or delay on the part of the Company to exercise any of its rights under the Contract shall operate as waive thereof. No waiver by the Company of any default by the Supplier under the Contract shall prejudice its rights in connection with the same or any subsequent default.

10. **Warranty** The Supplier warrants that the Goods will conform as to quality quantity and specification with all relevant British and International Standards and the details included in the Company's order or otherwise advised to the Supplier or its Agents or included in the Suppliers literature and will be fit for the requirement of the Company of good design material and workmanship merchantable and free

from defects. Where the Goods include work to be carried out to materials supplied by the Company the Supplier warrants that the quality quantity or specification of such materials will not be prejudiced by the work to be carried out pursuant to the Order and that the said materials will be returned to the Company in at least the same quality quantity and specification as originally provided and will conform in all respects with the provisions of this condition.

## **11. Indemnity**

11.1 The Supplier shall indemnify the Company against any loss damage or injury to the Company, any claim in respect of loss damage or injury made against the Company by third parties and any costs and expenses arising in connection with them (including that which may arise pursuant to the Consumer Protection Act 1987) and which result from (a) the Supplier's failure to comply with the terms of the Contract whether expressed or implied (whether negligent or otherwise) (b) in particular resulting from any defect in the Goods or their materials construction workmanship or design (to the extent that the Supplier is responsible for design) including a defect in the design or manufacture of a subsequent product (as defined in Section 4 Consumer Protection Act 1987 (c) any error defect in any test certificate or (d) any claim that any Goods prepared or supplied under the Contract otherwise than exclusively in accordance with a design or instruction given by the Company infringe or are alleged to infringe the rights of any third party claimed under or in connection with any patent registered design copyright or breach of confidence. This indemnity shall apply whether or not the Company is able to prove or rely upon the statutory defence contained in Section 4(i)(f) Consumer Protection Act 1987.

11.2 The Supplier shall be at all times adequately insured with a reputable insurer against all insurable liability under the Contract.

11.3 The Supplier shall provide all facilities, assistance and advice required by the Company or its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance or purported performance of or failure to perform the Contract.

## **12. Designs**

12.1 The Goods and copyrights designs drawings and other documents and materials prepared in connection with the Order or the contract or supplied to the Company shall belong to the Company.

12.2 The Supplier shall use those documents only for the purposes of the Contract and shall return them carriage paid to the Company upon the Company's request at any time or if no request is made upon completion of the Contract.

12.3 The Supplier shall be responsible for any errors or omissions in any drawings calculations or particulars supplied by it whether or not such information has been approved by the Company.

13. **Confidentiality** The Contract and its subject matter are confidential and shall not be disclosed to any third party or used for any purpose without the written authority of the Company.

14. **Statutory and other requirements** The Supplier undertakes that the Goods are safe and without risk to health when properly used and comply in all respects with all relevant statutes regulations byelaws and standards in force at the date of delivery including without prejudice to the generality of the foregoing the Factories Act 1961 and the Health and Safety at Work etc. Act 1974. The Supplier shall supply in respect of the goods such information about the use of them as complies with the Health and Safety at Work etc. Act 1974 and proper evidence of all tests and examinations and research made in compliance with the provisions of that Act.

15. **Assignment and sub-letting** The Supplier shall not assign or without the written consent of the Company sub-let the Contract in whole or in part and it shall be a condition of any such consent to any sub-letting of the Contract that the Supplier shall:

15.1 ensure and be responsible for the compliance by any sub-contractor with the terms of the Contract;

15.2 include in the sub-contract provisions consistent with these conditions for the benefit of and enforceable by the Company; and

15.3 furnish the Company with copies of any sub-contract upon the Company's request at any time.

15.4 where work is sub-contracted to a third party, the supplier shall flow down to the sub-contractor all applicable requirements of the purchase order and associated documentation including any identified key characteristics.

## 16. Law and construction

16.1 The Contract shall be governed by English Law and the Supplier consents to the exclusive jurisdiction of the English courts in all matters regarding the contract except to the extent that the company invokes the jurisdiction of the courts of any other country

16.2 The headings of conditions are for convenience of reference only and shall not affect their interpretation.

17. **Notices** Any notice to be given under the Contract shall be in writing and telexed sent by facsimile transmission or forwarded by registered or recorded delivery letter post to the receiving party at its business address as last notified in writing to the other party and shall be deemed to have been given on the date of the telex or facsimile transmission or on the day following that on which the notice was posted.

18. **Force Majeure** The Company shall have no liability whatsoever for any failure to perform or in performance of its duties under the Contract arising wholly or in part by reason of any factor beyond its direct control.

19. **Non-conforming product** The supplier shall notify Kiveton Park Steel Ltd of any non-conforming material prior to despatch. Such material shall not be despatched without written consent from Kiveton Park Steel Ltd.
20. **Control of product/process changes** Prior to implementation, the supplier shall notify Kiveton Park Steel Ltd of any changes to products or processes including re-siting of plant. Written approval of such changes shall be obtained from Kiveton Park Steel prior to despatch.