

KIVETON PARK STEEL LIMITED
CONDITIONS OF SALE (July 2010 Edition)

In these Conditions the following definitions apply:

'Business Day' means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

'the Company' means KIVETON PARK STEEL LIMITED (company number 00209151);

'Conditions' means the terms and conditions set out in this document as amended from time to time in accordance with condition 16(7);

'Contract' means the contract between the Company and the Customer for the sale and purchase of the Goods in accordance with these Conditions;

'Customer' means the person or firm who purchases the Goods from the Company;

'Goods' means the goods (or any part of them) set out in the Order;

'Hirework' means the processing by the Company of Materials in accordance with the requirements of the Customer, as set out in the Contract;

'Materials' means the materials owned by the Customer in respect of which Hirework is to be provided;

'Order' means the Customer's order for the Goods, as set out in the Customer's purchase order or the Customer's written order, (based on the Company's quotation, following receipt of the same);

'Specification' means any specification for the Goods or the Hirework, including any related plans and drawings, that is supplied to the Company by the Customer, or produced by the Company and agreed in writing by the Customer.

In these Conditions, the following rules apply:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

(b) A reference to a party includes its personal representatives, successors or permitted assigns;

(c) A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

(d) Any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

(e) A reference to **writing** or **written** includes faxes and e-mails.

1. GENERAL

(1) Orders placed with the Company will only be accepted on the following terms and conditions and no variation of these Conditions shall be binding unless expressly agreed by the Company in writing.

(2) No Customer's conditions of order or purchase and no other conditions, particulars, standards, specifications, statements or other matters, whether printed, written or oral shall apply to the Contract. These Conditions shall prevail.

(3) The Order constitutes an offer by the Customer to purchase the Goods and/or the Hirework in accordance with these Conditions. The Customer shall ensure that the terms of the Order and any relevant Specification are complete and accurate.

(4) 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.

(5) The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Company and the Customer for the sale of the Goods.

2. QUOTATIONS

- (1) Quotations shall not be deemed to constitute an offer and Orders are subject to acceptance by the Company in writing. A quotation shall only be valid for a period of 7 Business Days from its date of issue.
- (2) Quotations in a currency other than sterling are based on the rate of exchange at the time of quoting and unless otherwise stated the quotation will be subject to revision up or down if any different rate of exchange is ruling at the date the Order acknowledgement is despatched.
- (3) Offers to supply Goods from stock are subject to the Goods being unsold at the time of acceptance of the Order.

3. CANCELLATION

- (1) If the Customer cancels or purports to cancel the Order or part thereof after acceptance by the Company then any such cancellation or purported cancellation must be notified in writing and be signed by a Director or other duly authorised officer or representative of the Customer. The Company shall not be obliged to accept any cancellation or purported cancellation but if it elects to do so then without prejudice and in addition to any other remedy which the Company may have the Customer shall pay to the Company by way of cancellation charges a sum equal to the costs incurred by the Company in connection with the Order from the date of acceptance to the date of cancellation which costs shall include (without limitation) labour and transport.
- (2) If delivery of any Goods or provision of the Hirework is likely to be delayed by reason of the causes or events referred to in condition 15 and:-
 - (a) the Company has not commenced the manufacture of the Goods or provision of the Hirework; and
 - (b) the delay is likely to continue so long that the Customer will need to acquire substitute goods or Hirework from a source other than the Company and the Customer has promptly notified the Company of the consequences of such delay; and
 - (c) the Customer shows to the reasonable satisfaction of the Company that the conduct of its operations is likely to be seriously affected by the lack of the Goods or failure to provide the Hirework to such an extent that the Customer is in peril of being in breach of a contractual obligation to a third party;then the Company may at the request of the Customer agree to the cancellation of the delivery of those Goods and/or provision of the Hirework provided that all costs and expenses incurred by the Company up to the time of cancellation are reimbursed by the Customer forthwith. The Company shall have no liability to the Customer in the event of such cancellation.

4. PRICES

- (1) The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Company's published price list in force as at the date of delivery. The price of the Hirework will be calculated in accordance with condition 14(1).
- (2) All prices are based on the costs at the date of acceptance of Order and every effort will be made to maintain these prices. The Company reserves the right to increase the prices accordingly after acceptance in the event of any factor beyond the Company's control including foreign exchange fluctuations, increase in taxes, duties, costs of raw materials, fuel, transport or labour or other costs properly attributable to the Order over those current at the date of quotation or acceptance, any request by the Customer to change the delivery date(s), quantities or types of Goods and/or Hirework ordered or the Specification or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions. The price invoiced will be the price ruling at date of despatch.
- (3) Unless otherwise agreed between the Company and the Customer, the price of the Goods and the Hirework is exclusive of the costs and charges of packaging, insurance and transport, which shall be paid by the Customer when it pays for the Goods and/or Hirework.

(4) The price for the Goods and/or Hirework does not include V.A.T., import duties or for any other charges that may be levied under the authority of H.M.R.C or the Government and the Order is subject to the payment by the Customer of all such charges.

5. PAYMENT

(1) The Company may invoice the Customer for the Goods and/or Hirework on or at any time after the Goods have been despatched to the Customer or completion of the Hirework.

(2) The full amount of all invoices rendered pursuant to the Contract shall be paid to the Company to a bank account notified by the Company before delivery of the Goods and/or provision of the Hirework unless the Company has agreed previously that credit facilities are available to the Customer in respect of the particular Contract.

(3) Where credit terms have been agreed in accordance with condition 5(2) payment shall be made by the last day of the month following the month the invoice was dated. Time of payment is of the essence.

(4) Where payment is not made on the due date, whether credit facilities have been allowed or not and without prejudice to any other rights which the Company may have arising from non-payment, the following rules shall apply:-

(a) the Company may charge interest on the overdue amount at the rate of 2% per calendar month calculated from day to day and compounded on a calendar monthly basis from the date the payment becomes due until the date the Company receives the payment in full;

(b) the Company shall have the right to demand immediate payment of all or any other sums due under any other agreement entered into by the Customer with the Company, any credit facilities allowed by the Company in respect of any such agreements ceasing to be of effect and the Company may charge interest from the date on which the payment is deemed due by this paragraph on the same basis as set out in paragraph (a) above;

(c) the Company may treat any or all other agreements between the Company and the Customer as repudiated without prejudice to any other remedies the Company may have in respect of non-payment by the Customer;

(d) the Company may refuse to carry out any other work or supply any other goods to the Customer until all payments due or deemed due pursuant to this paragraph including any interest accrued under paragraph (a) above have been satisfied.

(5) The Customer shall not be entitled:-

(a) to withhold payment of any amount payable pursuant to the Contract because of any disputed claim of the Customer in respect of defective Goods, Hirework or workmanship or any other alleged breach of Contract;

(b) to set off against any amounts payable pursuant to the Contract any monies which are not then presently payable by the Company or for which the Company disputes liability.

(6) If the Company shall elect, pursuant to condition 6(2), to deliver the Goods by instalment deliveries, the Company shall be entitled to render invoices for each instalment delivery as if the instalment delivery constituted a separate contract and the Customer shall not be entitled to refuse or delay payment of any such invoice on the ground that the balance of the Goods subject to the Order have not been delivered. The provisions for payment set out in condition 5(1)-(4) shall apply to each such invoice as if it were a final invoice.

(7) A Customer may be required by the Company to furnish references before any credit facilities are allowed by the Company and until such time as credit facilities are allowed the Customer shall pay the amount due before delivery in accordance with condition 5(2).

(8) The Company reserves the right to suspend or to refuse to carry out any further work or deliveries if in its absolute discretion it considers there to be doubt as to the Customer's financial position or ability to pay for the Goods and/or Hirework. The Company may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Company to the Customer.

6. DELIVERY DAMAGE AND LOSS IN TRANSIT

(1) Delivery dates or periods quoted or accepted by the Company are approximate only and the time of delivery is not of the essence. The Company will not be liable in the event of delay in delivery or non-delivery due to an event set out in condition 15 or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

(2) Delivery of the Goods shall take place at the delivery points specified in the Contract or such other location as the parties may agree ('Delivery Location') at any time after the Company notifies the Customer that the Goods are ready.

(3) If the Contract provides for the Customer to collect the Goods the Delivery Location shall be the works from which the Goods are to be collected and the Customer shall collect them without delay.

(4) Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.

(5) The Company shall be entitled at its absolute discretion to deliver the Goods in separate instalments and for the purposes of condition 5 each delivery of part of the Goods shall be treated as a delivery of a separate Order.

(6) The Company will not accept any charges arising from its inability to comply with its quoted or acknowledged delivery promise unless the amount to be charged is agreed in writing on acceptance of the Order. Delays or non-deliveries shall not entitle the Customer to reject the consignment or cancel the Order or any part of the Order or any other order with the Company.

(7) The weight or quantity of the Goods printed upon the Company's advice/despatch notice shall be final unless the Customer shall have given notice of any discrepancy in-weight or quantity within 7 days after the receipt of the Goods and has thereafter given to the Company a reasonable opportunity of witnessing a verification of the Goods before they have been used processed or sold.

(8) The Company reserves the right to supply the Goods from any of its producing works or any sub-contractor or supplier of its choice.

(9) If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods.

(10) If the Customer fails to take or accept delivery of the Goods within 3 Business Days of the Company notifying the Customer that the Goods are ready then, except where such failure or delay is caused by an event set out in condition 15 or the Company's failure to comply with its obligations under the Contract, delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Company notified the Customer that the Goods were ready and the Company may store the Goods at the expense and risk of the Customer until delivery takes place.

(11) If 10 Business Days after the Company notified the Customer that the Goods were ready for delivery, the Customer has not taken or accepted delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, if the Customer has paid for the Goods, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

(12) The Customer shall not be entitled to reject the Goods if the Company delivers up to and including 10% more or less than the quantity of Goods ordered but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

(13) The Company reserves the right to charge to the Customer any costs, charges or expenses incurred by the Company as a result of special requirements or stipulations of the Customer not provided for in the Contract.

(14) Any marine insurance required to be effected by the Company under the Contract shall unless otherwise agreed in writing be 10% over the invoice price and shall cover the interest from the commencement of transit to the destination named in the Contract as provided and contained in the Institute of London Underwriters ("the Institute") Cargo Clauses the Institute's War Clauses and the Institute's Strikes Clauses current at the time of shipment.

(15) Except as varied by these conditions or otherwise agreed in writing the commercial terms in the contract such as CIF and C&F shall have the meaning assigned to them by Incoterms 2000 Edition including any additions or amendments thereof.

7. RISK AND TITLE

(1) Risk in the Goods shall pass to the Customer when:-

- (a) the Goods leave the Company's premises; or
- (b) the Company renders an invoice in respect of the Goods; whichever is the earlier date.

(2) Property in the Goods (both beneficial and legal title thereof) shall not pass to the Customer until:

- (a) the Customer shall have paid the price for the Goods plus VAT in full; and
- (b) no other sums whatever shall be due from the Customer to the Company.

(3) Until property in the Goods has passed to the Customer in accordance with paragraph (2) above the Customer shall:-

(a) maintain the Goods in satisfactory condition and insure the Goods to their full value against all insurable risks with a reputable insurance company and shall produce to the Company if demanded evidence to the satisfaction of the Company that such insurance has been effected;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;

(c) give the Company such information relating to the Goods as the Company may request from time to time;

(d) hold the Goods and each of them on a fiduciary basis as bailee for the Company;

(e) store the Goods (at no cost to the Company) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property; and

(f) upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Company. If the Customer fails to do so the Company may enter upon any premises owned occupied or controlled by the Customer where the Goods are situated and repossess the Goods.

(4) Notwithstanding that the Goods (or any of them) remain the property of the Company the Customer may sell or use the Goods in the ordinary course of the Customer's business at full market value for the account of the Company. Any such sale or dealing shall be a sale or use of the Company's property by the Customer on the Customer's own behalf and the Customer shall deal as principal when making such sales or dealings.

(5) Until property in the Goods passes from the Company the entire proceeds of sale or otherwise of the Goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Company's money.

(6) The Company shall be entitled to recover the price for the Goods (plus VAT) notwithstanding that property in any of the Goods has not passed from the Company.

8. QUALITY

(1) Where the Company is not the manufacturer of the Goods, the Company shall endeavour to pass on to the Customer the benefit of any warranty granted by the manufacturer to the Company.

(2) Subject to condition 8(1) the Company warrants that on delivery and for a period of 12 months from the date of delivery the Goods shall:

(a) conform in all material respects with their description and any applicable Specification;

(b) be free from material defects in design, material and workmanship; and

(c) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979)

(3) In the event of any goods proving to be not in accordance with the warranty in condition 8(1) then the Company will, at its option, either repair or replace the defective Goods at its own expense or refund the price of the defective Goods.

(4) Repaired or replacement Goods will be re-delivered at the Company's expense.

(5) Any claim in respect of a defect or failure to comply with the Specification or Order shall not entitle the Customer to cancel or refuse delivery of or payment for any Order or delivery.

(6) The Customer shall be deemed to have accepted the Goods and it shall be conclusively agreed that the Goods are in accordance with the Contract unless:-

(a) within 21 days after receipt of the Goods and prior to their use or resale the Customer serves upon the Company a written notice specifying any defect in the quality or state of the Goods which would be apparent upon careful inspection or by such testing as it is reasonable in all the circumstances for the Customer to undertake and stating why the Goods are in accordance with the Contract and thereafter provides to the Company a reasonable opportunity of inspecting or testing the Goods before they have been used or processed;

(b) if a defect in the quality or state of the Goods would not be apparent upon careful inspection or reasonable testing, the Customer serves upon the Company written notice of such defect forthwith upon its discovery and in any event not more than 12 months after the receipt of the Goods specifying why the Goods are not in accordance with the Contract and thereafter affording to the Company a reasonable opportunity of inspecting the Goods. The Customer shall not be excused from providing such opportunity by reason only of the incorporation of the Goods in the property of a third party or the location of the Goods in upon or under the premises or land of a third party; and

(c) the Customer (if asked to so by the Company) returns such Goods to the Company's place of business at the Company's cost.

(7) Any dispute between the parties as to whether any Goods are defective in quality or state or otherwise not in accordance with the contract shall be referred in accordance with the provisions of the Arbitration Acts 1990 or any statutory modification or re-enactment thereof for the time being in force to a single arbitrator to be agreed between the Company and the Customer or in default of agreement to be nominated by the President for the time being of the Law Society.

(8) The Company shall not be liable for Goods' failure to comply with the warranty set out in condition 8(2) if:

(a) the Customer makes any further use of such Goods after giving notice in accordance with condition 8(6); or

(b) the defect arises because the Customer 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; or

(c) the defect arises as a result of the Company following any drawing, design or specification supplied by the Customer;

(d) the defect arises due to a defect in the hirework provided by the Customer to the Company; or

(e) the Customer alters or repairs such Goods without the written consent of the Company; or

(f) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions.

(9) Except as provided in this condition 8, the Company shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in condition 8(2).

(10) The Company warrants that the Hirework will be provided using reasonable skill and care in a professional and diligent manner in accordance with condition 14.

(11) Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

(12) These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

(13) Where the contract states that the Goods are sold as "other than prime" "non-prime" "no warranty" or by any such similar description and the Company and the Customer agree that such Goods are sold as "other than prime" "non-prime" "no warranty" or by any such similar description then in all cases such Goods 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.

If the Customer shall re-sell such Goods, the Customer shall ensure that provisions in similar form to those set out in this paragraph are incorporated in the re-sale agreement unless prior to re-selling the Goods the Customer has caused the Goods or such part of the Goods as the Customer re-sells to comply with a recognised specification or standard.

9. TESTING AND SPECIFICATION

(1) Where the Contract provides for testing or inspection of Goods by the Company the Company will supply test certificates in respect thereof but shall not be obliged to carry out any test other than those specified in the Contract;

(a) the test certificates supplied by the Company shall be conclusive as to the results of the testing of a sample of the Goods but the Company gives no warranty that:-

(i) the sample which has been tested is typical or representative of the whole of the Goods;

(ii) if the test were repeated in respect of the whole of the Goods the results would be the same in respect of either the whole or any particular part or parts of the Goods.

(b) if the Customer considers that the Goods supplied do not correspond with the details and specifications shown in the test certificates or are not in accordance with the Order, the Customer shall only be entitled to credit in respect thereof if:-

(i) the Customer shall within 48 hours of delivery of the Goods have notified the Company of such matters specifying the particular nature of the problem;

(ii) the Goods are in their original state as at the time of leaving the Company's premises and are undamaged free from corrosion and have not been worked or machined in any way.

PROVIDED that if the reason why the Goods supplied are unsuitable is as a result of an error on the part of the Customer, the Company shall not be obliged to give credit for the Goods or accept their return unless it in its absolute discretion decides to do so and in such circumstances the Company shall impose such terms including the making of a handling charge as it thinks fit for the return of such material.

(2) Where the Contract provides for testing or inspection of the Goods by or on behalf of the Customer before delivery whether at the Company' works other locations or elsewhere then upon the Company giving notice of the availability of the Goods for inspection/testing the Customer shall inspect and/or test the Goods within 7 days of such notice and if the Customer does not inspect or test the Goods within the time specified or if within 7 days of such testing or inspection the Customer does not notify the Company in writing that the Goods are not in accordance with the Contract specifying the matters complained of then the Customer shall conclusively be deemed to have accepted the Goods as being in accordance with the Contract and shall not thereafter be entitled to reject the Goods on the grounds of anything which such testing or inspection has or would have revealed.

(3) The goods to be supplied shall be to the specification stated in the Contract and in the absence of any such specification to the specification published by the Company and if none is specified to any relevant British Standard Specification or Code of Practice PROVIDED that the Company shall be entitled to supply goods of an equivalent specification (whether British Standard or otherwise) notwithstanding that such specification may be different to a minor extent from that ordered.

10. LIABILITY

(1) Nothing in these Conditions shall limit or exclude the Company's liability for:

(a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation; or

(c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

(d) defective products under the Consumer Protection Act 1987; or

(e) any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

(2) Subject only to any liability which the Company is unable to limit or exclude, by virtue of the Unfair Contract Terms Act 1977 and/or the Consumer Protection Act 1987 or any other statute which prohibits or restricts the limitation or exclusion of the Company's liability under the Contract:-

(a) the Company's liability under the Contract order is limited to replacement or rectification work under these Conditions to the total exclusion of any other remedy which but for this paragraph the Customer might have;

(b) the implied warranties and conditions in Sections 13, 14 and 15 of the Sale of Goods Act 1979 or any statutory amendment or re-enactment thereof or of any other statute incorporating either expressly or by implication such warranties and conditions or any similar warranties and conditions and any other condition or warranty implied by trade, custom, statute, common law and usage or otherwise are hereby expressly excluded.

(3) Subject to paragraph 1 above:

(a) the Company shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any direct or indirect costs, damages or expenses relating to damage to property or injury or loss to any person, firm or company or for any loss of profits of production or any other consequential loss arising out of the Contract or occasioned by any defect in or failure of the Goods and/or Hirework; and

(b) the Company's total liability whether in contract, tort (including negligence), breach of statutory duty, or otherwise and whether respect of one claim or in the aggregate arising out of the Contract shall not exceed the price of the Goods and/or Hirework.

(4) Unless the Customer shall have expressly notified the Company in writing of the purpose for which the Goods are to be used by the Customer and the Company has confirmed in writing that the Goods supplied are fit or suitable for that particular purpose the Company accepts no responsibility or liability for any loss, damage, claim, interest or other expense whatsoever which the Customer may suffer or incur if the Goods are not fit or suitable for the purpose for which the Customer or any third party uses the Goods and no statement or undertaking contained in any British Standard Euronorm or ISO Recommendations or other standard or technical specification as to the suitability of the Goods for any purpose shall give rise to any such liability.

11. INDEMNITY

The Customer hereby agrees to indemnify and keep indemnified the Company from and against all liability of loss, claims, damages, costs, interest and other liability whatsoever (on a full indemnity basis) which the Company may suffer (including that which may arise pursuant to the Consumer Protection Act 1987) and which liability arises either wholly or partly from :-

(1) The defect in the design or manufacture of a subsequent product (as defined in Section 4 of the Consumer Protection Act 1987); or

(2) From compliance by the Company with the requirements or instructions of the Customer; or

(3) From use by the Company (on the instructions of the Customer) of (i) the Customer's materials or products or patterns or dyes in connection with the manufacture of the Goods or (ii) the Materials when providing the Hirework;

(4) The improper incorporation, use, processing, storage or handling of the Goods and/or Hirework by the Customer; or

(5) Any infringement or alleged infringement of any patent registered design copyright trademark or any other intellectual property rights resulting from compliance by the Company with the Customers instructions whether express or implied.

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) of the Consumer Protection Act 1987.

12. CUSTOMER'S INSOLVENCY

If:

(1) The Customer 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; or

- (2) The Customer 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; or
 - (3) The Customer (being an individual) is the subject of a bankruptcy petition or order or a receiver is appointed over its assets; or
 - (4) A creditor or encumbrancer of the Customer attaches or takes possession of, or a distress or execution, or other such process is levied or enforced on or sued against, the whole or any part of its assets; or
 - (5) 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 or administrative receiver is appointed over the Customer (being a company) or its assets; or
 - (6) Any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 12(1)-(5); or
 - (7) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business; or
 - (8) the financial position of the Company deteriorates to such an extent that in the opinion of the Customer the capability of the Seller adequately to fulfil its obligations under the Contract has been placed in jeopardy;
- 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 Customer and the Company without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered and/or Hirework provided to the Customer shall become immediately due.

13. ECSC MATTERS

- (1) The Goods are sold on condition that they will not be resold by the Customer or its purchasers or sub-purchasers for delivery in an unprocessed state outside the territory of the European Coal and Steel Community ("the Community") or Austria Finland Norway Sweden Iceland and Switzerland ("the EFTA Countries"). The Customer shall be responsible for any breach of this condition and the Customer shall also be responsible for ensuring that no Goods sold to it by the Company for delivery outside the Community or the EFTA Countries shall be re-imported in an unprocessed state into the Community or the EFTA Countries either by the Customer or any of its purchasers or sub-purchasers. On receipt of a written demand from the Seller the Customer shall produce evidence of the ultimate destination of the Goods.
- (2) If any Goods are resold by the Customer in an unprocessed state within the Territory of the European Coal and Steel Community or to Austria Finland Norway or Sweden then unless such resale is made from stock the Customer shall comply in respect of such resale with the requirements of the decisions of the Commission of the Community for the time being in force relative to such resale. Further particulars of the applicable decisions will be supplied on request. The references in this clause to "The Commission" are to the Commission of the European Communities exercising its powers in accordance with the provisions of the Treaty of Paris of 18th April 1951 establishing a European Coal and Steel Community and to "Goods" are to Goods of the types listed in Annex 1 to the said treaty.

14. HIREWORK

- (1) The price of Hirework will be based on the weight of the Materials received by the Company from the Customer.
- (2) The Company will only return any scrap or waste Materials after undertaking the Hirework if requested by the Customer when forwarding the Materials to the Company.
- (3) The Customer will be responsible for insuring and will maintain at all times insurance for the Materials whilst in the possession of the Company.
- (4) Unless otherwise agreed in writing the Company shall not be obliged to check or test Materials delivered by the Customer for Hirework as specified in the Contract and reserves the right to make a charge for such checking or testing, if required.

(5) The Customer warrants that the Materials delivered will (a) be prepared and ready for the Hirework; (b) be suitable to be treated as Materials for the purposes of the Hirework; and (c) not be in a defective or dangerous state. The Company shall be entitled to charge for extra work required as a result of this breach of warranty including the cost of re-treating if necessary.

(6) Where the Materials are delivered to the Company by a third party the Company may inspect the Materials for the purpose of ascertaining whether the Materials delivered correspond to the description given by the Customer and the Company shall be entitled to charge an additional sum in respect of such inspection and ancillary administrative costs.

(7) In all cases additional charges shall be at the rate of charge made by the Company at the relevant time.

(8) These Conditions shall apply in all respect to the Hirework and in particular condition 10 and the Company shall not be liable for any loss or damage of whatsoever kind (including consequential loss) suffered by any party including the Customer as a result of a breach by the Customer of the warranties contained in this clause. With the exception of condition 8(10) the Company does not warrant the quality of the Hirework.

15. FORCE MAJEURE

Should the manufacture or delivery of any of the Goods be prevented or delayed directly or indirectly by fire, the elements, war, civil commotion, strikes or lock-outs, industrial dispute, shortage of raw materials, or fuel, shortage of labour (whether involving the Company's or a third party's workforce), breakdown or partial failure of plant or machinery, late receipt of the Customer's specification or other necessary information, acts orders or regulations of Governments or directives of the Commission of the European Communities. delay on the part of any independent sub-contractor or supplier or any cause whatsoever beyond the reasonable control of the Company or any of its subsidiary companies concerned with the manufacture or delivery of the Goods, the Company shall not be liable to the Customer and the time for delivery of the Goods shall be extended for a reasonable period having regard to the effect of the delaying cause on the manufacture or delivery of the Goods.

16. GENERAL

(1) If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby. 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.

(2) No waiver by the Company of any breach of the order by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

(3) 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.

(4) The Customer 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.

(5) Any notice given under the Contract shall be sent in writing, addressed to the other 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 in writing and shall be delivered personally, sent by pre-paid first-class post, recorded delivery, commercial courier, fax or e-mail. A notice shall be deemed to have been received: if delivered personally, when left at the address referred to above, 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 by fax [or e-mail], one Business Day after transmission. The provisions of this paragraph shall not apply to the service of any proceedings.

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

(7) Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Company.

17. JURISDICTION

The Contract shall be governed by English Law which shall be the proper law of the Contract and any dispute arising out of Contract shall be heard and determined exclusively by an English Court of competent jurisdiction or at the option of the Company shall be submitted to arbitration in London in accordance with and subject to the provisions of the Arbitration Act 1990 or any statutory modifications or re-enactments thereof for the time being in force.