

Impalloy Limited Conditions of Sale

- 1 **Definitions**
 - 1.1 **In this Contract:**
 - Company** means Impalloy Limited;
 - Contract** means any contract between the Company and the Customer incorporating these conditions for the sale of Goods;
 - Customer** means the person or organisation whose order for Goods is accepted by the Company;
 - Force Majeure** means any event outside the Company's and/or the Customer's control including but not limited to acts of God, war, flood, fire, labour disputes, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events;
 - Goods** means any products and/or goods ordered to be supplied by the Company to the Customer; and
 - Liability** means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs (including legal costs) and any other losses and/or liabilities.
- 2 **Basis Of Contract**
 - 2.1 These conditions shall govern the agreement between the Customer and the Company to the exclusion of any other terms or conditions. Orders placed by the Customer leading to a contract which is not expressed to be subject to these conditions shall still be subject to them.
 - 2.2 These conditions supersede all previous terms and conditions and shall replace any terms and conditions previously notified to the Customer.
 - 2.3 No variation to these conditions shall be binding on the Company unless contained in the Company's quotation or agreed in writing between the Customer and one of the Company's authorised representatives.
 - 2.4 No oral warranties or representations shall bind the Company (unless given by a Director of the Company). The Customer acknowledges that the Customer does not rely on any representation and/or warranty that has not been made in accordance with these conditions.
- 3 **Orders And Contract**
 - 3.1 Quotations (unless stated otherwise) are valid for a period of 30 days from the date of the Quotation. Quotations may be withdrawn by the Company at any time during this period by oral or written notice.
 - 3.2 The Company shall have the right to refuse to accept any orders placed for Goods.
 - 3.3 The Customer shall be responsible for the accuracy of an order and for giving the Company any information necessary for the Company to perform the Contract. All orders must be in writing and must quote Goods reference numbers and/or quotation reference numbers (if any). No order for Goods shall be deemed accepted by the Company until confirmed in writing by the Company's authorised representative.
- 4 **Delivery**
 - 4.1 Time is not of the essence in relation to dates for delivery.
 - 4.2 Where Goods are to be delivered in instalments, each delivery shall constitute a separate and distinct contract and failure by the Company to deliver, or any claim by the Customer in respect of, any instalment shall not entitle the Customer to repudiate and/or terminate this Contract as a whole.
 - 4.3 The Customer shall have no right to reject Goods and shall have no right to rescind for late delivery unless the due date for delivery is delayed for a period of 60 days or more, for reasons other than as a result of an event of Force Majeure.
 - 4.4 The Company shall not be required to fulfill orders for Goods in the sequence in which they are placed.
 - 4.5 The Customer shall procure during normal working hours that the Company and/or any agent that the Company engages to deliver the Goods, has free rights of access to the address for delivery for the purpose of delivering the Goods. The Customer shall be responsible at its own cost for unloading the Goods when delivered.
 - 4.6 If the Customer refuses to take delivery of any Goods then the Company shall be entitled to withhold delivery of any other Goods and to treat this Contract as repudiated by the Customer and shall have the right to rescind this Contract.
 - 4.7 If the parties agree that the Goods are to be collected from the Company's premises then the Customer shall collect the Goods within 7 working days of being notified that the Goods are ready for collection. If the Goods are not collected by the Customer within the specified period the Company may despatch the Goods to the Customer at the Customer's expense and risk and/or store the Goods at the Customer's expense and risk until despatch and/or collection.
 - 4.8 Where Goods are exported outside the United Kingdom:-
 - 4.8.1 The Customer shall be responsible for obtaining at its own expense any necessary import licences; and
 - 4.8.2 The Company shall be responsible for obtaining at its expense any export licence required for the export of Goods from the United Kingdom, except where the order for Goods is placed from an address in the United Kingdom in which case, the Customer shall be responsible at its expense for obtaining any necessary export licence.
- 5 **Postponement**

The Company may comply with reasonable requests by the Customer for postponement of delivery of the Goods but shall be under no obligation to do so.

 - 5.1 Where delivery of the Goods is postponed or suspended at the Customer's request and/or is delayed in accordance with clause 9.2 below, then the Customer shall pay all the Company's costs and expenses incurred as a result including reasonable charges for storage, transportation and insurance. In addition, the Customer shall be obliged to pay for the Goods as if delivery had not been postponed, suspended or delayed.
- 6 **Price**
 - 6.1 The price of the Goods shall be as set out in the Company's written acceptance. All packing cases, crates, pallets and other containers will be charged at cost price and are non-returnable.
 - 6.2 If the Company incurs any expenses not set out in its quotation and/or acceptance, as a result of any alteration to the specification of the Goods and/or any change in instructions given or requested by the Customer, such additional expenses shall be added to the price and shall be payable by the Customer in addition.
 - 6.3 Except as otherwise stated, prices are Ex-Works Bloxwich, and the Customer shall be liable to pay the Company's charges (if any) for transport, packaging, insurance, import duties, taxes and relevant shipping costs.
 - 6.4 The Company may increase its prices in relation to the Goods which it has agreed to supply at any time prior to delivery of the Goods, where the increase is to take account of increases in costs, expenses, transport, labour, exchange rate variation and/or materials suffered by the Company and/or where there is an alteration in the Metal Bulletin (English Edition) price for metric tone for the producer price of Aluminium, Zinc, Indium or Magnesium in which case the Company may increase its price for Goods by the same percentage as the increase in the Metal Bulletin.
 - 6.5 The Company's terms of payment are (unless agreed otherwise in writing by the Company):
 - 6.5.1 for UK sales - net cash within 30 days of the date of the invoice, unless otherwise specified; or
 - 6.5.2 for sales outside the UK - irrevocable letter of credit confirmed by a London clearing bank of which the Company approves, unless otherwise specified. Time for payment shall be of the essence.
 - 6.6 If the Customer fails to make any payment in full on the due date, the Company may charge the Customer any reasonable additional administration costs and/or interest (both before and after judgment) on the amount unpaid at the rate of 5% above the base rate from time to time of Lloyds Bank Plc. Such interest shall be compounded with monthly rests.
 - 6.7 The Customer shall pay all sums due to the Company under this Contract without any set-off, deduction, counterclaim or any other withholding of monies.
 - 6.8 Payment shall not be deemed to be made until the Company has received either cash or cleared funds in respect of the full amount outstanding.
 - 6.9 The Company shall be entitled to render an invoice to the Customer any time after production of the Goods.
 - 6.10 If payment in full is not made to the Company when due then the Company may withhold or suspend future or current deliveries of the Goods and delivery under any other agreement with the Customer.
- 7 **Specification**
 - 7.1 Any specification supplied by the Company to the Customer shall only be approximate unless stated on its quotation or agreed in writing by the Company. Unless stated otherwise, weights and dime
 - 7.2 The quantity, quality, description and/or specification for the Goods shall be that set out in the Company's quotation unless otherwise agreed in writing by the parties. The Customer is responsible for checking the quotation and satisfying itself that any specification given is accurate and adequate for the Goods.
 - 7.3 The Company shall have no Liability for errors in any specification, drawings, models, specimens or similar articles, information, instructions and/or details supplied by the Customer and the Customer is solely responsible for their accuracy.
 - 7.4 The Customer warrants that any details, drawings, specifications, models specimens or similar articles, instructions and/or other information that it supplies to the Company do not infringe any third party intellectual property rights.
 - 7.5 Details and/or specifications in the Company's catalogues, price lists and/or on the Company's web site are intended as a guide only and only give a general approximation of the Goods. The Customer confirms and agrees that it has not relied upon the details and information contained in the Company's catalogue unless the Customer has sought and obtained written confirmation from the Company of their accuracy.
 - 7.6 The Company reserves the right to make changes to the specification of the Goods as required from time to time by law, applicable safety requirements or manufacturing requirements provided that they do not have a material adverse effect on the quality of the Goods.
- 8 **Intellectual Property Rights And Confidentiality**
 - 8.1 The Customer shall not make any modification to the Goods or their packaging, nor alter, remove, or tamper with any trade marks used on or in relation to the Goods.
 - 8.2 All intellectual property rights (including without limitation all patents, copyright, design rights (whether registered or unregistered), trade marks (whether registered or unregistered) skill and/or know-how and other similar rights, whether existing now and/or in the future, wherever existing in the world together with the right to apply for protection of the same) in the Goods and/or their packaging shall be owned by the Company or its licensors absolutely.
 - 8.3 The Customer agrees that, it will at its cost do all acts and/or things and execute all documents and/or deeds which are necessary or desirable to give effect to clause 8.2 above and/or to assist the Company and/or its licensors in the application, registration, renewal and/or protection of such intellectual property rights.
 - 8.4 The Customer agrees that it will keep confidential and not use and/or disclose confidential information which is acquired by it about the Company's business and/or given by the Company to the Customer and/or generated by the Customer from the Company's confidential information except in the proper performance of this Agreement or where such information is public knowledge or is required to be disclosed by law.
- 9 **Property And Risk**
 - 9.1 Subject to clause 9.2 below, risk in the Goods shall pass to the Customer at the time of delivery. Delivery shall be deemed to occur:-
 - 9.1.1 at the time when the Goods arrive at the place of delivery if the Company delivers the Goods by its own transport or the Company arranges transport in accordance with a specific contractual obligation; or
 - 9.1.2 when the Goods leave the Company's premises; or
 - 9.1.3 after the expiration of 7 working days after the Customer has been notified of it, if the Goods are available for collection from the Company in accordance with clause 4.7.
 - 9.2 If delivery of the Goods is delayed by 21 days or more from the date that the Company notifies the Customer that the Goods are ready for despatch, as a result of the Customer's instructions and/or the Customer's failure to give instructions, risk in such Goods shall pass immediately to the Customer on expiry of the 21 day period.
 - 9.3 The Company shall retain title and ownership of the Goods until the Company has received payment in full in cash or cleared funds of all sums due and/or owing for all Goods supplied to the Customer by the Company under this Contract and under any other agreement between the Company and the Customer.
 - 9.4 Until title in the Goods has passed to the Customer, the Customer shall keep the Goods insured for the price at which the Goods were sold to the Customer against all normal risks.
 - 9.5 The Customer shall provide to the Company on request copies of all relevant insurance policies for the Goods (including all documents evidencing any amendments, extensions or variations to such insurances), together with evidence that the premiums have been paid and that the insurances are in full force and effect.
- 10 **Default**
 - 10.1 If the Customer:-
 - 10.1.1 fails to make any payment to the Company when due;
 - 10.1.2 breaches the terms of this Contract (and, if remediable the breach has not been remedied within 14 working days of receiving notice requiring the breach to be remedied);
 - 10.1.3 pledges or charges any Goods which remain the property of the Company, or ceases or threatens to cease to carry on business, or proposes to compound with its creditors, applies for an interim order under Section 252 Insolvency Act 1986 or has a Bankruptcy Petition presented against it, enters into voluntary or compulsory liquidation, has a receiver, administrator, liquidator, trustee, administrative receiver or other similar officer appointed to it or over all or any of its assets, or takes or suffers any similar action in any jurisdiction or any steps are taken (including without limitation, the making of an application or the giving of any notice) by the Customer or by any person in respect of the above;
 - 10.1.4 appears to the Company due to its credit rating to be financially inadequate to meet its obligations under any Contract; and/or
 - 10.1.5 appears reasonably to the Company to be about to suffer any of the above events;
 - 10.2 then the Company shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 10.2.1 below.
 - 10.2.1 If any of the events set out in clause 10.1 above occurs in relation to the Customer then:-
 - 10.2.2 the Company may enter, without prior notice, any of the Customer's premises (or premises of third parties with their consent) where Goods owned by the Company may be and repossess and dispose of or sell any Goods found which are owned by the Company so as to discharge any sums due to the Company under this Contract or under any other agreement with the Customer;
 - 10.2.3 the Customer is automatically no longer permitted to re-sell, use and/or part with the possession of any Goods owned by the Company until the Customer has paid in full all sums due to the Company under this Contract or under any other agreement with the Customer;
 - 10.2.4 the Company may withhold delivery of any undelivered Goods and stop any Goods in transit;
 - 10.2.5 the Company may cancel, terminate and/or suspend without Liability to the Customer any agreement with the Customer; and/or
 - 10.2.6 all monies owed by the Customer to the Company shall forthwith become due and payable.
- 11 **Repairs And Replacements**
 - 11.1 The Company will at its option either refund the price, repair or replace free of charge any defective Goods where the defect is apparent on inspection provided that the defect is notified to the Company within 30 working days of delivery of such Goods within Europe and within 60 days of delivery to a destination outside Europe or, in the case of a latent defect, within 7 days of the time when the defect ought reasonably to have been discovered (but in any event no later than 12 months from the date of delivery of the Goods).
 - 11.2 Any defective Goods must where reasonable be returned to the Company for inspection if requested by the Company before the Company will have any Liability for defective Goods. If the Goods shall prove to be defective then the Company shall reimburse the Customer for the cost of returning the defective Goods.
 - 11.3 The Company may at its sole discretion replace, repair free of charge or refund the price of defective Goods which are not notified to the Company within the specified time limits set out in this Contract, where in the Company's opinion the defect would not have been ascertainable on inspection and has been notified to the Company.
 - 11.4 The Company will at its option either refund the price of or replace free of charge any Goods missing from a delivery of Goods provided that the missing items are notified to the Company within 5 working days of delivery of, in the event of total non-delivery, this fact is notified to the Company within 5 working days of receipt of the invoice for such Goods by the Customer.
- 12 **Limitations On Liability**
 - 12.1 The Company shall have no Liability for defective Goods where the defect has been caused or contributed to by the Customer to the extent so contributed.
 - 12.2 The Company shall have no Liability to the Customer for defective Goods, Goods not despatched or Goods damaged or lost in transit unless the event is notified to the Company within the appropriate time limits set out in this Contract.
 - 12.3 The Company shall have no Liability for additional damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Goods after a defect has become apparent or suspected or should reasonably have become apparent to the Customer.
 - 12.4 The Customer shall give the Company a reasonable opportunity to remedy any matter for which the Company is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Company shall have no Liability to the Customer in relation to such matter.
 - 12.5 The Customer shall produce to the Company written evidence of any claims for which it is alleged that the Company is liable together with written details of how loss was caused by the Company and the steps the Customer has taken to mitigate the loss before the Company shall have any Liability for the claim by the Customer.
 - 12.6 The Company shall have no Liability to the Customer in relation to any claim that the Goods infringe any third party intellectual property rights.
 - 12.7 The Company shall have no Liability to the Customer in respect of any advice it gives to the Customer in relation to technique or in respect of use of any Products it supplies to the Company in order to effect a technique only.
 - 12.8 The Company shall have no Liability to the Customer for any:-
 - 12.8.1 loss of profits and/or damage to goodwill;
 - 12.8.2 economic and/or other similar losses;
 - 12.8.3 special damages;
 - 12.8.4 aggravated, punitive and exemplary damages;
 - 12.8.5 consequential losses and/or indirect losses; and/or
 - 12.8.6 business interruption, loss of business, loss of contracts, loss of opportunity and/or production.
 - 12.9 The Customer shall be under a duty to use its reasonable endeavours to mitigate any loss, damage, costs or expenses that the Customer may suffer (including by maintaining an adequate stock of Goods).
 - 12.10 The Company's total Liability to the Customer in relation to any one claim shall not exceed the replacement value of the goods.
 - 12.11 Each of the limitations and/or exclusions in this Contract deemed to be repeated and apply as a separate provision for each of:
 - 12.11.1 Liability in contract (including fundamental breach);
 - 12.11.2 Liability in tort (including negligence);
 - 12.11.3 Liability for breach of statutory duty; and
 - 12.11.4 Liability for breach of Common Law and/or under any other legal basis.
 - 12.12 except any clause placing of a financial cap on the Company's Liability which shall apply once only in respect of all types of Liability.
 - 12.13 Nothing in this Contract shall exclude or limit the Company's Liability for death or personal injury due to its negligence or any Liability which is due to fraud or any other Liability which it is not permitted to exclude or limit as a matter of applicable law.
 - 12.14 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by applicable law.
- 13 **General**

The Customer agrees to indemnify and keep indemnified the Company against any and all losses, lost profits, damages, claims, costs (including legal costs on a full indemnity basis), actions and any other losses and/or liabilities arising from or due to the Company delivering Goods to the Customer's premises, any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Customer.

 - 13.1 No waiver by the Company of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.
 - 13.2 If any provision of this Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.
 - 13.3 Neither party shall have any Liability to the other for any delay in performance of this Contract (other than in relation to payment) to the extent that such delay is due to an event of Force Majeure. If a party is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.
 - 13.4 The Customer shall not assign its interest in the Contract (or any part) without the Company's written consent. The Company may assign its rights and/or obligations in the Contract (or any part).
 - 13.5 Any notice under this Contract shall be in writing and shall be deemed to have been duly given if left at or sent by pre-paid, special or recorded delivery post or by fax to the principal place of business of the party receiving the notice (or such other address as that party may from time to time notify in writing). The notice shall be deemed to have been given at the time it is left at the relevant address when delivered by hand, 48 hours after posting or in the case of facsimile transmission on the next following day.
 - 13.6 This Contract is governed by and interpreted in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.