

TERMS AND CONDITIONS OF SALE

DEFINITIONS:

"**Buyer**" means the person who accepts the seller's written quotation for the sale of the Goods or whose Written order for the Goods is accepted by the Seller;

"**Goods**" means the goods (including any instalment of the goods or any part for them) which the Seller is to supply in accordance with these Conditions;

"**Seller**" means Taylor Studwelding Systems Limited or any of its subsidiaries;

"**Conditions**" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and Seller;

"**Contract**" means the contract for the purchase and sale of the Goods;

"**Writing**" and any similar expression, includes telex cable facsimile transmission and comparable means of communication, but not electronic mail.

1. ACCEPTANCE OF ORDER.

- (a) No binding contract shall be deemed to have been effected by the acceptance on the part of the Buyer or a quotation or offer made by the Seller, until such contract shall have been confirmed in writing by the Seller's order acknowledgement when the Seller's terms and conditions printed thereon will apply. In the event of an order being placed by the Buyer with the Seller, the Buyer shall be deemed to accept the Seller's conditions of sale unless notice in writing to the contrary is received by the Seller within two days from the date of the Seller's order acknowledgement. Unless expressly accepted in writing any qualifications of these Conditions in any document of the Buyer shall be deemed to be inapplicable.
- (b) The Seller's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in Writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed, but nothing in these Conditions affects the liability of either party for fraudulent misrepresentation.

2. BASIS OF QUOTATION. All quotations are made on the following basis:

- (a) The right is reserved by the Seller to correct stenographic or clerical errors.
- (b) Goods made to the Buyer's written instruction and/or official drawings containing stenographical or clerical errors and not amended by the Buyer in writing and acknowledged by the Seller in writing must be the complete responsibility of the Buyer.
- (c) Where an order is received for a quantity different from that quoted for or where delivery is required in instalments smaller than those specified in the quotation, or where product specifications given on the order are different from those stated in the quotation prices may be subject to amendment.
- (d) Quotations only indicate the current price and may be subject to alteration at any time before completion of an order resulting from that quotation.
- (e) Quotations shall only be available for acceptance for a maximum of 30 days from the date thereof, but may be withdrawn by the Seller within such period without notice.
- (f) All prices shown exclude Value Added Tax.
- (g) The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer and for giving the Seller any necessary information relating to the Goods within a sufficient time to enable the Seller to perform the Contract in accordance with its terms.

3. PRICE.

- (a) Unless the contract provides expressly otherwise the price payable by the Buyer for each delivery shall be the Seller's ruling price at date of despatch and unless otherwise stated on the quotation and/or order acknowledgement all consignments are charged ex-works and subject to carriage charges. All orders specifying or consignments dispatched by premium transportation at the request of the Buyer will be charged at cost.
- (b) The Seller reserves the right by giving Written notice to the Buyer at any time before delivery to increase the price of the Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as without limitation any foreign exchange fluctuation currency regulation alteration of duties significant increase in the costs of 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 Seller adequate information or instructions.
- (c) The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods but full credit will be given to the Buyer provided they are returned undamaged to the Seller before the due payment date.

- 4. BLANKET ORDER.** An open or blanket order (i.e. a document setting out all details of an order except quantities and delivery requirements, which information is to be supplied by schedules from the Buyer) shall not be considered as authority to proceed with the preparation for manufacture or the manufacture of any components. Only the delivery schedule will provide the requested authority to proceed and schedules will be accepted under the Seller's terms and conditions. The Seller reserves the right to advise delivery according to the Seller's manufacturing lead times applicable upon receipt of the Buyer's schedule.

5. SCHEDULE ORDER.

- (a) The schedule (i.e. an order calling for a specific quantity spread over a defined period) shall constitute authority for manufacture of the total order and shall define the Buyer's ultimate liability.

- (b) Scheduling shall permit completion of delivery of an order within twelve months from the date when the order was received, except by mutual agreement between the Buyer and the Seller on a longer or shorter period.
- (c) Minimum quantity for call off at any one time shall be stated on quotation and/or order acknowledgement.
- (d) Minimum notice for change in delivery requirements four weeks.
- (e) The Buyer shall at all times be liable for current scheduled total stocks, work in progress, special material and manufacturing tools.

6. SPECIFICATIONS.

- (a) Undefined specifications. If manufacturing tolerances, materials or type of finish, are not clearly defined in any specification or drawing supplied by the Buyer, the Seller reserves the right to manufacture to the Seller's commercially accepted tolerance or finish or from the Seller's commercially accepted material for the product concerned.
- (b) Defined specifications. Where detailed specifications are to be supplied by the Buyer, it must be in reasonable time to enable the Seller to complete deliveries in the period mutually agreed.
- (c) Change of specification. The Buyer is liable for any costs involved in manufacturing tools and/or products and any losses incurred by the Seller as a result of amendments requested by the Buyer for the specification originally agreed.
- (d) Indemnity. The Buyer shall indemnify the Seller from against all actions, costs and proceedings which arise due to the manufacture of goods to the drawings and specifications provided by the Buyer where such drawings and specifications shall be at fault, or where it is alleged that they involve an infringement of a patent, registered design, copyright or other exclusive rights.
- (e) The Seller reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory or E.U requirements or where the Goods are to be supplied to the Seller's specification which do not materially affect their quality or performance.

7. QUANTITY TOLERANCE. The Seller shall have the right to supply 10% more or less than the exact quantity ordered. A pro rata charge at the quoted price will be made to cover any such variation in addition where the Seller supplies goods calculated by weight any shortfalls or excess up to 2% shall be permissible without financial adjustment.

8. DELIVERY AND FORWARDING ARRANGEMENTS.

- (a) All dispatches to be consigned at the Buyer's risk and the Seller shall not be liable for any consequential loss caused by damage or delay in transit from the Seller's factory however arising.
- (b) Any delivery date or period where stated in the contract or schedule order or elsewhere is a business estimate only and the Seller shall not be liable for any loss or damage whatsoever caused by failure to make deliveries on such a date or within such a period.
- (c) The Seller shall be under no obligation to the Buyer to supply proof of delivery for any goods sent by first class post.
- (d) Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.
- (e) If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller the Seller may:
 - (i) store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage or;
 - (ii) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the contract or charge the Buyer for any shortfall below the price under the Contract.

9. LOSS OR DAMAGE IN TRANSIT.

- (a) No responsibility can be accepted for damaged materials or short delivery where the carriers have been given a clean receipt.
- (b) Any damage or short delivery must be notified to the Seller in writing within seven days. In the case of short delivery of any item the notice to the Seller must specify the number of packages of that item received and their total gross weight and details of any damage to packages.

10. CLAIM FOR NON-DELIVERY.

- (a) Any claim for non-delivery of goods must be made in writing within seven days from the date of the advice note or other notification of dispatch.
- (b) If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault and the Seller is accordingly liable to the Buyer the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.

11. DEFECTIVE GOODS.

- (a) Goods will be made to the Buyer's specification subject to any variation agreed in writing. Goods found within six months of delivery date to be defective or not in accordance with specification (due to suppliers manufacturing fault) will be replaced free of charge at the place of original delivery with a reasonable period or at the sole and absolute discretion of the Seller the invoice value of the goods will be refunded, but only if:
 - (i) The Seller is given written notification of the findings of the defect or suspicion or defect or deviation from specification;

- (ii) The Seller is given facilities for access to inspect, investigate and test the suspected goods.
 - (b) Replacement of the goods or the refund of the invoice shall constitute the limit of the Seller's responsibility and liability in respect thereof.
 - (c) This understanding does not apply to and no responsibility is accepted for, goods which have suffered or been subject to undue wear and tear, accident, misuse, improper application, modification, neglect or overloading in which case in no circumstances shall the Seller be liable for loss or damage of any kind directly caused by or arising from goods supplied.
 - (d) No guarantee warranty condition or representation on the part of the Seller is given or implied by these conditions nor is any guarantee warranty conditions description or representation to be taken to have been given or implied from anything said in the negotiations between the parties or their representatives prior to an agreement.
- 12. MODIFICATIONS AND RECTIFICATION.** The Seller will accept no responsibility for the cost of modifying or rectifying any goods unless such notification rectification and the cost thereof have been agreed in writing with the Seller beforehand.
- 13. IN THE EVENT OF SUSPENSION OF DELIVERY BY SELLER.**
- (a) Deliveries may be wholly or partially suspended by the Seller and the time of such suspension added to the original contract in the event of a stoppage, delay or interruption of work in the establishment of the Seller during the delivery period as a result of strike, lock outs, trade disputes, breakdown or any cause whatsoever beyond the control of the Seller.
 - (b) If the Buyer makes any default in payment or becomes subject to the bankruptcy laws or executes any assignments for the benefit of creditors or enters into voluntary or compulsory liquidation (except for the purpose of amalgamation or reconstruction) or becomes subject to receivership the Seller may at its option cancel any undelivered or uncompleted portion of any order and stop any of the goods in transit and shall nonetheless be entitled to claim against the Buyer for any loss or damage sustained by the non-completion of the contract.
- 14. DEFERMENT OR SUSPENSION OF DELIVERIES BY THE BUYER.** In the case of the Buyer requesting postponement of delivery of a part of, or the whole of the goods for a period not exceeding three months from the delivery date originally required the contract shall not be invalidated but:
- (a) If manufacture of the goods has not commenced the price shall be subject to variation and the revised price shall be notified to the Buyer by the Seller following receipt of the revised delivery dates required.
 - (b) If manufacture of the goods has been commenced then the goods will be invoiced and paid for as if the delivery date had not been postponed and deferment of delivery will not be extended longer than three months after the delivery date originally required and goods will be dispatched and storage charges will be invoiced at the termination of that period. Any request for postponement of delivery for a period exceeding three months shall be regarded as a cancellation of the order.
- 15. RETURNED GOODS.** Goods returned by the Buyer to the Seller without justifiable reason may be subject to a rehandling charge at the sole discretion of the Seller.
- 16. CANCELLATION.**
- (a) Prior to commencement of manufacture, the Buyer will be liable for payment in full immediately on cancellation for any materials specifically acquired and for any preliminary costs (e.g. tooling) incurred. Any tooling will remain the property of the Seller.
 - (b) After commencement of manufacture, the Buyer will be liable for payment immediately on cancellation of the full value of the goods less any made by cessation of manufacture and the value of any scrap realised.
- 17. TERMS OF PAYMENT.**
- (a) Normal credit terms will be granted by the Seller on receipt of adequate references or other evidence, otherwise goods will be dispatched against payment of pro forma invoices.
 - (b) Payment where normal credit terms have been agreed by the Seller shall be received at the Seller's specified place of payment thirty days from the date of invoices.
 - (c) Payment shall not be deemed to have been made or received until cash has been handed to the Seller or any cheque or draft paid to the Seller shall have been cleared and the Seller's bank account credited with the amount in which the cheque or draft is drawn.
 - (d) The Seller reserves the right to charge interest on all overdue accounts both before and after judgement at the rate of four per cent above the Base Rate of Lloyds Bank PLC prevailing from time to time.
- 18. PATTERN/DRAWING/TOOLS, ETC.** Unless otherwise agreed in writing, all patterns, drawings, tools, etc produced by the Seller shall remain the property of the Seller and no claim for these by the Buyer will be entertained. The Buyer shall not utilise, reproduce or communicate knowledge of such items to any third party without the express written consent of the Seller and the Buyer shall return the same to the Seller at any time at the request of the Seller.
- 19. SUB-CONTRACTING.** The Seller reserves the right to sub-contract the fulfilment of any order or contract or any part thereof.
- 20. HEALTH AND SAFETY.** In accordance with Section 6 of the Health and Safety at Work Act 1974, the Seller ensures that as far as it is reasonably practicable the Seller's products are safe and without risk to health and safety when properly used. All products can constitute a health hazard if used incorrectly or without regard to the Seller's relevant health and safety recommendations. It is a condition of supply that the Buyer acquaints itself with any appropriate health and safety information provided by the supplier and undertakes to take whatever steps indicated to use the goods supplied in an agreed manner.
- 21. OWNERSHIP OF GOODS.**

- (a) Risk of damage to or loss of the Goods shall pass to the Buyer:
 - (i) in the case of Goods to be delivered at the Seller's premises at the time when the Seller notifies the Buyer that the Goods are available for collection or;
 - (ii) in the case of Goods to be delivered otherwise than at the Seller's premises at the time of despatch from the Seller's premises.
- (b) Notwithstanding delivery and the passing of risk in the Goods or any other provision of these Conditions the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- (c) Until the property has so passed the Buyer shall hold the goods as bailee and will at its own expense keep the goods safe and insured against customary commercial risks and shall keep them separately stored in a readily identifiable state.
- (d) Until the property in the goods has so passed the Buyer shall return the goods to the Seller on demand and the Seller shall without prejudice to any other rights be entitled to go upon the property of the Buyer and repossess and remove the goods.
- (e) The Buyer shall be at liberty to sell the goods in the ordinary course of business. The proceeds of any such sale and the benefit of any contract of sale shall be the property of and held in trust for the Seller absolutely.

22. LIABILITY

- (a) Except in respect of death or personal injury caused by the Seller's negligence or liability for defective products under the Consumer Protection Act 1987 the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent) or any implied warranty condition or other term or any duty at common law or under the express terms of the Contract for loss of profit or any indirect special or consequential loss or damage costs expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller its employees or agents or otherwise) which arise out of or in connection with the supply of Goods (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) or their use or resale by the buyer and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the Goods except as expressly provided in these Conditions.
- (b) The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing or any failure to perform any of the Seller's obligations in relation to the Goods if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing the following shall be regarded as causes beyond the Seller's reasonable control:
 - (i) Act of God explosion flood tempest fire or accident;
 - (ii) war or threat of war sabotage insurrection civil disturbance terrorism or requisition;
 - (iii) acts restrictions regulations bye-laws prohibitions or measures of any kind on the part of any governmental parliamentary or local authority;
 - (iv) import or export regulations or embargoes;
 - (v) strikes lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
 - (vi) difficulties in obtaining raw materials labour fuel parts or machinery;
 - (vii) power or communication system failure or breakdown in machinery;
 - (viii) malicious activities of third parties.

23 EXPORT TERMS

- (a) Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the meaning of the Incoterms and these Conditions the latter shall prevail.
- (b) Where the Goods are supplied for export from the United Kingdom the provisions of this clause 23 shall (subject to any special terms agreed in writing between the Buyer and Seller) apply notwithstanding any other provisions of these Conditions.
- (c) The Buyer shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination and for the payment of any duties on them.
- (d) Unless otherwise agreed in writing between the Buyer and the Seller the Goods shall be ex works Dewsbury, England and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979.
- (e) The Buyer shall be responsible for arranging the testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any damages during transit.
- (f) Payments of all amounts due to the Seller shall be made either by:
 - i) Irrevocable Letter of Credit paid on sight of documents and opened by the Buyer in favour of the Seller
 - ii) Telegraphic Transfer prior to despatch
 - iii) On credit terms as agreed between the Buyer and the Seller.

24. LEGAL CONSTRUCTION.

These conditions and any contract between Seller and Buyer shall be constructed and operate in all respects as a contract made in England and in conformity with English Law.