

Clevedon and Clevtec
(divisions of Clevedon Fasteners Limited)
Terms and Conditions of Sale

1. DEFINITIONS

- 1.1 The "Seller" means Clevedon Fasteners Limited, trading as Clevedon or Clevtec as the case may be.
- 1.2 The "Buyer" means the person, firm or company to whom the Goods are supplied by the Seller.
- 1.3 The "Goods" means the [engineering products, fasteners, equipment or other products, works and materials] supplied by the Seller under the Contract.
- 1.4 The "Contract" means the contract for the sale by the Seller to the Buyer for Goods the terms of which shall be based on the Conditions except to the extent (if at all) amended in writing by the Seller.
- 1.5 The "Conditions" shall mean the terms and conditions set out in this document.
- 1.6 "Insolvency Event" means any one or more of (1) a notice being issued to propose a resolution for winding up or dissolution, or such a resolution being passed; (2) a petition for a winding up or an administration or bankruptcy order being presented, or such an order being made; (3) any steps being taken with a view to a voluntary arrangement or other assignment, composition or arrangement with all or any creditors or any moratorium, readjustment, rescheduling, forgiveness or deferral of all or any indebtedness; (4) suspension of payments to all or any creditors and/or ceasing business; (5) an encumbrancer taking possession of all or any assets of a party; (6) an administrator or receiver being appointed over a party or all or any of its assets; (7) any action anywhere similar or analogous to any of the foregoing; (8) the other party having reasonable grounds for believing that any of the foregoing is imminent. For the avoidance of doubt if any of the foregoing occur in relation to a partner in any of the parties hereto it shall be deemed to occur in relation to that party.
- 1.7 "Business Day" means any day (other than Saturday) on which clearing banks are open for normal banking business in sterling in the City of London.

2. APPLICABLE TERMS

- 2.1 The supply of all Goods by the Seller are, unless otherwise agreed in writing by an authorised representative of the Seller, made on these terms and conditions and shall apply to the exclusion of any terms or conditions whether put forward by or on behalf of the Buyer in or on its order or otherwise or whether implied by law (insofar as the exclusion of the same is lawful).
- 2.2 In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any representations and warranties made by or on behalf of the Seller other than those expressly contained in the Conditions.

- 2.3 All intellectual property rights of whatever nature in Goods and all related drawings, specifications and documents at all times remain vested in the Seller. No authority is given under the Contract for the Buyer to use the same without the Seller's prior express written consent.
- 2.4 In the event of any conflict between the Conditions and any written terms contained in any quotation or other documents signed by the Seller which may form part of the Contract then the latter shall prevail.
- 2.5 The Buyer shall not be entitled to cancel the whole or any part of the Contract.
- 2.6 No alteration to these Conditions shall be effective unless expressly agreed to in writing by [a director of] the Seller.

3. **QUOTATIONS**

- 3.1 All quotations issued by the Seller are an invitation to the Buyer to place an order with the Seller for the Goods referred to in the quotation. No Contract arises until an order from the Buyer has been accepted in writing by the Seller. Without limiting the foregoing the Seller shall not be liable for withdrawing or altering the terms of its quotation at any time prior to the date of Contract.
- 3.2 The Seller reserves the right to correct stenographic, typographical and clerical errors in the quotation.
- 3.3 Any quotation is valid for a period of 28 days unless a different period is stated in the quotation.

4. **PRICE**

- 4.1 All prices are ex-works and unless agreed otherwise in writing in the Contract by the Seller such prices shall be those prevailing at the date of delivery.
- 4.2 All prices exclude value added tax and any other taxes and/or duties payable thereon and the Seller reserves the right to charge for packaging the Goods.
- 4.3 Any sums paid by the Buyer in advance of delivery of the Goods shall be deemed to be paid as a deposit and without limitation of the Seller's rights shall be forfeited in the event of cancellation of the Contract by the Buyer.

5. **PAYMENT**

- 5.1 Unless otherwise agreed the Seller shall be entitled to invoice the Buyer for the price of the Goods at any time after the Seller has notified the Buyer that the Goods are ready for collection or the Seller has tendered delivery of the Goods. The Buyer shall pay the Seller for the Goods not later than the 28th day following the end of the month in which delivery of the Goods takes place.
- 5.2 The Seller reserves the right at any time to increase or reduce the level of credit given by it to the Buyer. The Seller may at its option refuse the supply of any Goods on order or require immediate payment of outstanding sums due if at any time the credit level of the Buyer is exceeded.
- 5.3 Without prejudice to any other rights of the Seller, the Buyer shall pay to the Seller interest on any overdue amounts at the rate of 4% per annum above the base rate

from time to time of Lloyds TSB Bank until the actual date of payment (both before and after judgment).

6. ORDERING

6.1 If agreed in writing by the Seller the Buyer may request deliveries of the Goods on a scheduled basis over an agreed period of time. The Buyer shall however remain liable to buy the quantity of Goods specified in the Contract. Any delivery date agreed to by the Seller is an estimate only and in no event shall the Seller be liable for inability to meet scheduled delivery dates.

7. SPECIFICATIONS

7.1 Other than with respect to Goods made specifically to the Buyer's own specifications, all Goods shall meet the specifications from time to time published by the Seller which reserves the right to make improvements to the same from time to time without notice in writing to the Buyer.

7.2 Where the Goods are made to the Buyer's own specifications, (which expression shall be deemed to include without limitation any samples and drawings) the Buyer shall ensure that such specifications are delivered to the Seller by such date as the Seller may specify and in the event of any defect in the Buyer's specifications the Buyer shall keep the Seller indemnified against losses, costs, claims, demands and expenses incurred by the Seller as a result.

7.3 The Buyer represents and warrants that any specifications supplied by it will not infringe any third party rights. The Buyer shall indemnify the Seller in full against all actions, claims, costs and proceedings which arise due to the manufacture and/or supply of Goods to the Buyer's specification and in such event the Seller reserves the right to terminate its obligations to supply without liability to the Buyer and without prejudice to its rights under the Contract.

8. QUANTITY TOLERANCE

8.1 The Seller shall have the right to supply plus or minus 10% of any quantity of Goods ordered where the Goods are in the nature of consumable as opposed to capital Goods and as determined by the Seller. A pro-rata charge at the quoted price will be made to cover any such variations.

9. DELIVERY RISK INSTALLATION AND ACCEPTABLE TERMS

9.1 The risk in and to the Goods shall pass to the Buyer on delivery as defined in sub-Clause 9.2 hereof.

9.2 Delivery shall be deemed to be at the Seller's factory except in those cases where the Seller has agreed in writing that the Goods are subject to acceptance testing (which expression shall include without limitation installation and commissioning of the Goods) at the Buyer's premises then delivery shall be deemed to take place when the Goods have been physically delivered to the Buyer's premises as specified in the Contract.

9.3 The Buyer may request the Seller to arrange on behalf of the Buyer for onward delivery of the Goods to a destination specified by the Buyer and the Buyer shall indemnify the Seller against all costs incurred including without limitation the transportation costs, insurance and packaging. In no event shall the Seller be

liable for any delays in arranging such transportation and/or insurance nor for the risks and/or level of cover arranged by the Seller.

- 9.4 In those cases where the Goods are subject to acceptance testing at the Buyer's premises as contemplated in sub-Clause 9.2 above then unless otherwise stated by the Seller the Buyer shall:
- 9.4.1 ensure that the delivery site shall be level, clean and of adequate strength to support the Goods;
 - 9.4.2 provide suitable access to the Seller and its agents to enable the acceptance testing to be carried out;
 - 9.4.3 provide all necessary labour at its own risk and cost to unload the Goods and handle the same and shall keep the Seller fully indemnified against all damage caused to the Goods pending delivery;
 - 9.4.4 provide facilities for the storage of plant and materials necessary for carrying out the work (including the free use of adequate lighting water and electricity);
 - 9.4.5 provide all building joinery masonry electrical and plumbing work (as required by the Seller) to enable it to carry out the acceptance tests.
- 9.5 Until the acceptance tests have been fulfilled the provisions of sub-Clause 9.4 shall continue in force and in addition the Seller shall be entitled at its own risk and cost to remove the Goods to carry out any remedial or other works of repair or modification that the Seller shall deem to be appropriate.
- 9.6 The acceptance tests to be carried out shall, unless otherwise agreed in writing by the Seller, be those considered by the Seller in its own discretion to be sufficient to demonstrate to the Buyer that the Goods conform to the specifications contained in the Contract.
- 9.7 Where acceptance tests are to be carried out other than at the Buyer's premises then the Seller shall give the Buyer not less than four days written notice specifying the date, time and place where the tests are to be carried out and in the event the Buyer is not in attendance at the specified time and place then the Seller may carry out the tests and its decision shall be final and binding as to whether or not the Goods meet the requirements of the tests.
- 9.8 If the Buyer fails to take delivery of or collect the Goods or fails to give the Seller adequate delivery instructions after notification by the Seller that the Goods are ready the Seller may (without prejudice to its other rights and remedies): -
- 9.8.1 store the Goods (on its own or any third party's premises) and charge the Buyer for its reasonable costs (including without limitation VAT costs of storage, carriage and insurance); and/or
 - 9.8.2 If 10 Business Days after the day on which the Seller notified the Buyer that the Goods were ready for delivery the Buyer has not taken or accepted delivery of them, the Seller may resell or otherwise dispose of part or all of the Goods and, if the Buyer has already paid for the Goods, after deducting reasonable storage and selling costs,

account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.

10. TITLE

10.1 The legal and beneficial property in the Goods shall not pass to the Buyer until the Seller has received payment in full (in cash or cleared funds) for (a) the Goods and (b) all other goods supplied by the Seller to the Buyer under any other contract whatsoever. Until payment in full has been received the Buyer shall be in possession of the Goods in a fiduciary capacity as a bailee for the Seller; shall keep the goods in good condition and insured against all risks to their full replacement value; and shall store the Goods in such a manner to enable them to be clearly identified as the property of the Seller.

10.2 Until the Goods have been paid for in full the Buyer shall be entitled to use the Goods or sell them to a third party (but this licence shall terminate immediately upon an Insolvency Event) but on the strict condition that the Buyer shall hold as nominee for the Seller and place in a separate bank account and hold in trust for the Seller absolutely such amount of the proceeds of sale of Goods as equates to the amount owed to the Seller for the relevant Goods.

10.3 Further, until property in and title to the Goods passes to the Buyer: -

10.3.1 the Buyer shall keep the Goods properly stored, protected and insured and separate from all or any other goods whether belonging to the Seller the Buyer or any third party;

10.3.2 the Seller shall be entitled at any time forthwith to revoke the Buyer's power to deal with the Goods; and it shall automatically cease if an Insolvency Event shall occur in respect of the Buyer; and

10.3.3 the Buyer shall not make any modification to the Goods or their packaging or alter remove or tamper with any marks, numbers or other means of identification used on or in relation to the Goods.

10.4 Until title has passed in and to the Goods the Buyer grants the Seller and its servants and agents an irrevocable licence without the need for consent of any third party to enter upon any premises of the Buyer, or any third party where the Goods are situated for the purposes of repossessing them at any time and without further notice.

10.5 If any of the foregoing provisions of this Condition shall be invalid or unenforceable such invalidity or unenforceability shall not affect the remaining provisions.

11. LOSS OR DAMAGE IN TRANSIT

11.1 No responsibility is accepted by the Seller for damaged Goods or short delivery where the carriers have been given a clean receipt.

11.2 Any damage or short delivery must be notified to the Seller in writing within three days of the date of delivery. Such notifications shall specify the items missing or damaged and the nature of any damage.

11.3 Any claim for non delivery of the Goods must be made in writing within fourteen days from the date of the advice note or other notification of despatch.

12. **DEFECTIVE GOODS**

12.1 Unless otherwise expressly agreed in writing all conditions, guarantees, warranties, representations whether express or implied by statute, common law or otherwise are hereby excluded.

12.2 Subject to Condition 12.8, the Seller's totally liability for any loss or damage which the Buyer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Seller its servants or agents including without limitation any breach of the terms of the contract tort (including negligence) breach of statutory duty, or otherwise shall be limited to the purchase price of the Goods in respect of which the claim arises although the Seller may at its option agree to replace the Goods and in no event shall the Seller be liable for any delays in meeting specified delivery dates.

12.3 In no event will the Seller be liable whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, loss of goodwill, loss of business, loss of business opportunity, loss of anticipated saving , loss of goodwill, loss of business, loss of business opportunity, loss of anticipated saving or for any indirect or consequential losses suffered by the Buyer and/ or additional costs suffered by the Buyer in purchasing goods similar to the Goods or for any damages caused to the Buyer by defective design.

12.4 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal use, failure to follow the Seller's instructions, lack of proper maintenance or servicing, misuse or alteration or repair of the Goods without the Seller's prior written approval.

12.5 In no event will the Seller be liable for any defects in the Goods not notified to it within six month of the date of delivery of the Goods.

12.6 The Seller shall not be liable in any event under the Contract for any delay or failure in performing its obligations under the Contract if such failure or delay is caused or contributed to by any happening or event beyond its reasonable control including without limitation trade disputes, machinery breakdown, accident and/or failure of supplies.

12.7 Notwithstanding anything to the contrary contained in the Conditions and without prejudice to the rights of the Seller if the Goods satisfy acceptance tests then the Goods shall be deemed to meet fully the agreed specifications.

12.8 Nothing in these Conditions shall limit or exclude the Seller's liability for:

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

12.8.2 fraud or fraudulent misrepresentation;

12.8.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

- 12.8.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

13. INTELLECTUAL PROPERTY RIGHTS

13.1 If any claim is made against the Buyer that the Goods infringe or that their use or resale infringes the patent, copyright, database right, design right, registered design, trade mark or other industrial or intellectual property rights of any other person or any claim is made in respect of passing off or unauthorised use of Confidential Information in relation to the Goods and/or their use or resale the Buyer shall forthwith notify the Seller in writing and the Seller shall be given full control of any proceedings or negotiations in connection with any such claim. The Buyer shall give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations and except pursuant to a final award, the Buyer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which shall not be unreasonably withheld). The Buyer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Seller may have in relation to such infringement.

13.2 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted by the Buyer, the Buyer shall (without prejudice to the other rights and remedies of the Seller) indemnify the Seller in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred by the Seller as a result of or in connection with:

13.2.1 any claim for infringement of any patent, copyright, database right, design right, registered design, trade mark or other industrial or intellectual property rights of any other person and/or for passing off and/or unauthorised use of Confidential Information which results from the Seller's use of the Buyer's specifications;

13.2.2 any other liability of any kind to any third party including without limitation for defective Goods, personal injury or death to the extent that it arises from the specification.

14. HIRE OF GOODS

14.1 These Terms and Conditions shall apply equally where Goods are hired out by the Seller and references to the Seller and Buyer herein shall where the context admits be construed accordingly.

15. APPLICABLE BY LAW

15.1 These Terms and Conditions and the Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

15.2 The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with Terms and Conditions and the Contract or its subject matter or formation (including non-contractual disputes or claims).

16. **GENERAL**

- 16.1 It shall be the responsibility of the Buyer to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise howsoever, (including without limitation any relating to the importation or use of the Goods in the country of destination and for the payment of duties thereon) are duly complied with. It shall be a condition precedent to the performance by the Seller of its obligations under the Contract that all necessary licences, permits and consents shall have been obtained by the Buyer.
- 16.2 Without prejudice to the generality of Condition 16.1 the obtaining of any relevant exchange control consents shall be a condition precedent to the performance by the Seller of any of its obligations under the Contract.
- 16.3 Neither party shall have any liability for any failure to perform or for any delay in the performance (other than as to payment) of any of its obligations under the Contract caused by any factor beyond its reasonable control.
- 16.4 The rights and remedies of the Buyer in respect of the Contract shall not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Seller to the Buyer nor by any failure of or delay by the Seller in ascertaining or exercising any such rights or remedies. Any release, waiver or compromise or any other arrangement of any kind (a release) by the Seller shall not affect its rights and remedies as regards any other party nor its rights and remedies against the Buyer in whose favour it is granted or made except to the extent of the express terms of the release and no such release shall have effect unless granted or made in writing. The rights and remedies in this Contract are cumulative and not exclusive of any rights and/or remedies provided by law.
- 16.5 The Contract is personal to the Buyer. The Buyer shall not assign, transfer or charge its rights and responsibilities under this Contract or any of them, [nor appoint any sub-contractor or agent] without the prior written consent of the Seller [not to be unreasonably withheld].
- 16.6 The provisions of the Conditions are severable and distinct from one another, and, if at any time any of the provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions shall not in any way be affected or impaired.
- 16.7 The headings in these Conditions are for convenience only and do not affect the interpretation of the Contract.
- 16.8 The Conditions and the Contract shall not constitute and shall not be deemed to constitute a partnership between the Seller and the Buyer and the Buyer shall not act nor purport to act as agent for the Seller but solely as an independent contractor.
- 16.9 All notices under this Contract shall be in writing and may be served by post or facsimile transmission addressed to the other party at the address given in this Contract or at such other address as a party shall from time to time by notice in writing give to the other party for the purpose of service of notices under this Contract and every such notice shall be deemed to have been served by post at the expiration of [days] after despatch of the same or if sent by facsimile transmission at ten hours local time on the next normal Business Day of the

recipient following despatch and in proving service it shall be sufficient to show in the case of a letter that the same was duly addressed prepaid and posted in the manner provided and in the case of a facsimile transmission a transmission report that it was transmitted to the correct telephone number. Saturdays, Sundays and Bank Holidays shall not in any event be treated as days on which service is effected, and service shall be deemed to take place on the next normal Business Day of the recipient.

- 16.10 For the avoidance of doubt nothing in these Conditions shall confer on any third party any benefit or the right to enforce any provision of these Conditions.
- 16.11 If the Buyer is a partner in an unincorporated partnership or an unincorporated sole trader, the Buyer's data will be transferred to the Seller's financiers for the purpose of providing finance. Their details are available upon request.