

**1. Variations and Representations**

- 1.1 These conditions of contract shall apply to the exclusion of any other conditions issued by either party to the contract except as varied by the express written agreement of Phoenix Hull Limited ('the Company'). No representations by an employee or agent of the Company shall bind the company in writing to the other party to the contract ('the Customer').
- 1.2 A binding contract ('the Contract') for the supply or purchase of goods and/or services shall come into being on the Company's written acceptance of the Customer's orders and accordingly unless otherwise provided in writing quotations shall be invitations to treat and not offers capable of acceptance.
- 1.3 The exercise by the Company of any right pursuant of these Terms and Conditions shall be without prejudice to any other right available to it whether hereunder or under general law.
- 1.4 The Customer acknowledges that the Contract was not entered into in reliance on any representations other than those incorporated in the Company's quotation (if any) and these Conditions.

**2. Price Variation**

The price of the Contract ('Contract Price') is based on costs ruling at the date of quotation (Quotation' which expression shall include a tender submitted by the Company) and shall be exclusive of all taxes (including Value Added Tax) customs or other duties. In the event of any increase in the cost to the Company between the date of Quotation completion of any Contract of labour manufacture materials insurance or transport (including handling and incidentals) due to any factor beyond the Company's control or in the event of any deviation in the route or manner of transit occasioned by the like causes the Company reserves the right to amend the Contract Price to cover such increased costs by giving notice in writing to the Customer.

**3. Specifications**

3.1 All specifications, drawings and particulars are the sole property and copyright of the Company and shall not be reproduced, copied by any means, or passed on to a third party for whatever reasons, unless expressly agreed in writing and signed by a Director of the Company. All specifications, drawings and particulars are approximate where tolerances are not shown. All such information, documents and data are not representations or warranties of fact nor shall they form part of or the basis of any contract.

3.2 All specifications and/or tolerances defined by the customer will take precedence over the company's standard conditions. Where relevant specifications and/or tolerances are not specified the following will be used Powder Coating iaw BS EN 12476, Aluminium Welding iaw BS 3571, Steel Fusion Welding iaw BS EN 3834, Zinc Plating iaw BS 1705, Galvanising iaw BS EN 1461, S/Steel to EN 100088, Aluminium to BS EN 485 and M/Steel to EN 10025/10327

**4. Delivery and Risk**

4.1 Delivery of Goods shall be deemed to have taken place:

- 4.1.1 Where transit is arranged by the Company when the Goods have been conveyed to the place for delivery named in the Contract ready for unloading by the purchaser or his agents at which time risk of loss of or damage to the Goods shall pass to the Customer.
- 4.1.2 Where transit is not arranged by the Company when the Goods have been loaded for despatch to the Customer or his nominee from the Company's works or those of its sub-contractor at which time risk of loss of or damage to the Goods shall pass to the Customer.

4.2 when transit is arranged by the Company and the Goods are damaged in transit or having been placed in transit are not delivered to the Customer then and in such event:

- 4.2.1 The Customer in the case of damage to the Goods shall give notice within three days after delivery that they have been delivered damaged and in the case of non-delivery shall (if he has been advised of the despatch) give notice within ten days after the receipt of the advice that the Goods have not been delivered. Each such notice shall be given in writing to the Company and also if the Customer had knowledge that the Goods were entrusted for delivery to a carrier and
- 4.2.2 The Company's liability shall be limited to the repair or (at the Company's option) replacement within a reasonable time of the part of the Goods damaged or not delivered provided always that the Company shall be under no liability whatsoever for any damages or non-delivery if the transit was not arranged by the Company or if by reason of the failure of the Customer to give notice of damage or non-delivery the Company is precluded from recovering compensation for such loss or damage from any third party.

Transit will not be arranged by the Company except where expressly stated in the Contract.

**5. Company's Right to Withhold**

Notwithstanding any other provision in these Conditions of Contract the Company shall be entitled to withhold delivery of Goods or any instalment of Goods or to cease any erection work until all sums due to the Company from the Customer or where the Customer is a body or corporation from any company which is the Customer's subsidiary or holding company (whether mediate or immediate) or a subsidiary (whether mediate or immediate) of the Customer's holding company on any account other than in respect of the Goods or instalment of Goods withheld or the erection work so ceased have been paid in full.

**6. Completion and Delivery by Instalments**

- 6.1 Delivery dates and times specified by the Company are approximate only. Unless expressly agreed by the Company in writing, time is not and shall not be deemed to be of the essence of the Contract.
- 6.2 In the event of Goods being delivered by the Company to the Customer's order by the Company's transport or by transport arranged by the Company, the Customer shall unload the Goods immediately on arrival, and the Company's employees or agent shall not be permitted to assist in unloading or stacking the Goods.
- 6.3 If Goods are sold and delivered to the Company's Customer in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated and further the Customer shall have no right of set-off against any monies due to the Company under this or any other order.
- 6.4 If the Customer fails to collect or otherwise take delivery of the Goods when the Company has notified the Customer that they are ready for delivery then they shall be regarded as delivered and payment shall become due notwithstanding any other provisions hereof not later than twenty eight days after the date of the Company's invoice. If acceptance of delivery is delayed beyond fourteen days after notification that the Goods are ready the Company shall be entitled to charge the Customer for storage handling maintenance and insurance.
- 6.5 Where Goods are delivered in instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these Terms and Conditions.
- 6.6 If the Customer is in default in paying any sum as and when it becomes due, the Company shall have the right to suspend all further deliveries until the default is made good and/or to cancel the Contract so far as any goods remain to be delivered thereunder.

**7. Terms of Payment**

The terms of payment of the Contract Price (as amended pursuant to Clause 2 above) together with any Value Added Tax chargeable on the supply of goods or services pursuant to the Contract will be stated in writing on the Company's Quotation and/or acceptance of Customer's order. Interest at the rate of 2% per month or part of a month will be payable on all amounts overdue.

**8. Warranty**

Providing that the Goods are correctly handled, installed, maintained and used in accordance with the Company's recommendations and where applicable any recommendations of the Company's sub-contractor suppliers save for the wear and tear the Company undertakes to make good by repair or (at the Company's option) replace any defect arising solely from faulty material or workmanship and disclosed within a period of six calendar months from the date of delivery of the Goods to the Customer (except that where the plant in which the Goods are installed or with which the Goods are set to work is running night and day the warranty period shall be three calendar months from such delivery) subject to the following:

- 8.1 Notice in writing is given of any such defect immediately it becomes apparent and no repair or replacement is made or attempted without the Company's express written permission.
- 8.2 All parts supplied by the Company not of the Company's manufacture are not covered by this guarantee and are subject to the warranty (if any) of the makers beyond which the Company accepts no responsibility.
- 8.3 The Company's right to require the purchaser to return defective Goods to the Company's United Kingdom works free of charge. Thereafter repaired or replaced Goods would be sent to site free of charge within the United Kingdom mainland or FOB.

**9. Packing**

Unless otherwise agreed all packing will be charged as an extra cost and packages are not returnable.

**10. Title**

- 10.1 Title in the Goods or any part thereof shall only pass to the Customer when payment in full has been made and the Customer shall permit so far as it is able and shall use its best endeavours to assist any officer, employee, representative or agent of the Company to enter onto any premises where the Goods may from time to time be situated and to repossess the Goods at any time prior to title passing to the Customer shall hold the Goods as the Company's fiduciary agent and bailee.
- 10.2 The Customer shall only be at liberty to sell goods purchased from the Company prior to the passing of title on the understanding that the Goods are to be sold only by way of bona fide sale at market value in the ordinary course of the Customer's business and the Customer will hold on trust for the Company so much of the proceeds received by the Customer, as are necessary to discharge the sum due for the Goods to the Company and such proceeds of sale shall be kept separate from any and all other monies held by or on behalf of the Customer. The Customer shall account to the Company on demand for the monies so due and shall be liable for any shortfall including all interest due in accordance with the terms hereof.
  - 10.2.1 The Customer sells Goods purchased from the Company prior to passing on title then so long as the Customer has not discharged all amounts owing to the Company the co shall be entitled to the benefit of all claims the Customer has against its purchaser emanating from such transactions which benefit the Customer shall formally assign to the Company when called upon to do so.
  - 10.2.2 The Customer shall not in any event, until all monies due have been paid to the Company be entitled to pledge or in any way charge by way of security for any reason any of the Goods which remain the property of the Company. But if the Customer does so all monies due to the Customer shall become immediately due and payable without prejudice to any other right or remedy of the Company.
- 10.3 The Customer's power of sale of the Goods shall cease upon happening of any of the following events:
  - 10.3.1 Upon written notice from the Company after the Customer shall have failed to pay any sum due to the Company for a period exceeding seven days.
  - 10.3.2 Ipso facto upon the happening of any events as is set out in Condition 11 hereof.

**11. Customer's Insolvency**

If any distress or execution shall be levied on the Customer's property or assets or any part thereof or if the Customer shall make any arrangements or composition with its creditors generally or if the Customer:

- 11.1 Being an individual commits any act of bankruptcy shall be presented or made against him or
- 11.2 Being a partnership if the said partnership is dissolved for whatsoever reason or if any partner commits any act of bankruptcy shall be presented or made against any partner or
- 11.3 Being a limited company if proceedings are commenced for the liquidation of the Customer or if a meeting of creditors is called pursuant to Section 588 of the Companies Act 1985 or if a resolution is passed for the voluntary winding up of the Customer (other than a member's voluntary winding up for the purpose of amalgamation or reconstruction only) or the appointment of an Administrator or if Receiver is appointed of all or any of the assets of the Customer or the Customer ceases or threatens to cease to carry on business.

Then the Company shall have the right forthwith to determine all subsisting contracts whether performed in whole or in part by serving written notice of such determination on the Customer and all monies due to the Company shall become immediately due and payable.

**12. Lien**

The Company shall have a general lien on all the goods for the time being under its control belonging to the Customer for all sums due and for all claims of every description by the Company against the Customer in respect of any order of account and if any sum or sums remain owing to the Company fourteen days after the Customer has been given notice in writing of the exercise of such lien the co shall have the power to sell the whole or part of such Goods to discharge the same sums and claims and all expense incurred in connection with the sale of the Goods and any balance of the proceeds of such sale shall be paid by the Company to the Customer.

**13. Consequential Loss**

The Company shall not in any event be liable for the indirect or consequential loss or damage (including without limitation) loss of profits of use or of contracts arising out of the supply or failure of supply of goods or services by the Company (other than liability for death or personal injury resulting from the negligence of the Company) and whether arising in contract fait or otherwise and in all other cases liability shall be limited to the Contract Price and the provisions of the sub-clause shall survive the termination of an order or contract howsoever arising.

**14. Force Majeure**

Delivery of equipment ordered may be partially or totally suspended by the Company during any period in which it is prevented from manufacturing or delivering the equipment through any circumstances outside its control and the Company shall be under no liability for loss or damage suffered by the Customer as a result of such suspension. If any such suspension continues for a period longer than three months the Company may cancel the Contract in respect of that part then unfulfilled and the Customer shall have no claim against the Company on account of such cancellation.

**15. Arbitration**

If at any time any question, dispute or difference whatsoever shall arise between the Company and Customer upon in relation to in connection with or arising out of the Contract either of the parties may give to the other notice in writing of such question, dispute or difference and the same shall be referred to arbitration of a single arbitrator mutually agreed upon or failing agreement as to such an arbitration within twenty one days of a request by either party to so mutually agree upon an arbitrator some person appointed at the request of either party by the London Chamber of Commerce and such arbitrator shall be deemed to be a single arbitrator within the Arbitration Act (1950) or any statutory encasement in that behalf for the time being in force.

**16. Law**

The Contract shall in all respects be construed and operate as an English Contract and be subject to and interpreted in accordance with English Law.

Dated July 2009