

STANDARD TERMS OF TRADING

These terms and conditions apply to all our products [and services] APART FROM products [and services] purchased from our foundry at 43 Millrise Road, Stoke On Trent, ST2 7BN.

The buyer's attention is in particular drawn to the provisions of condition 8.7 and 11.4.

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Buyer: the person, firm or company who purchases the Goods or Services from the Company. When the Buyer is more than one person, firm or company, each shall be jointly and severally liable to the Company under a Contract.

Company: Harding Sales Limited T/A British Spirals and Castings

Contract: any contract between the Company and the Buyer for the sale and purchase of the Goods or Services, incorporating these conditions. The Contract shall include all of the Buyer's designs, drawings, diagrams, illustrations and specifications for the Goods or the finalised versions thereof prior the commencement of the manufacture of the Goods by the Company.

Delivery Point: the place where delivery of the Goods or supply of the Services is to take place under condition 5.

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

Services: any services agreed in the Contract to be supplied to the Buyer by the Company and any services which are required to install the Goods at the Buyer's premises if the Company has expressly agreed in writing to carry out the installation of any Goods under the Contract.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Words in the singular include the plural and in the plural include the singular.

1.4 A reference to one gender includes a reference to the other gender

1.5 Condition headings do not affect the interpretation of these conditions.

2. APPLICATION OF TERMS

2.1 Subject to any variation under condition 2.3 the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods or Services shall have no effect unless expressly agreed in writing and signed by a Director of the Company or the Operations Manager. The Buyer 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.

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- 2.4 Each order or acceptance of a quotation for Goods or Services by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods or supplies the Services to the Buyer
- 2.6 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 2.7 Any quotation is given on the basis that no Contract shall come into existence until the Company despatches a notification that the manufacture of the product(s) is due to commence to the Buyer prior to the commencement of manufacture of the product(s) and any quotation is subject to review and amendment by the Company prior to the commencement of manufacture of the product(s) to take account of fluctuating costs of raw materials. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn **3**.

3. DESIGN SPECIFICATIONS AND SUITABILITY

- 3.1 The quantity and specifications of the Goods shall be as set out in the Company's quotation and the Buyer's order which shall include the Buyer's designs, drawings, diagrams, illustrations, and specifications for the Goods.
- 3.2 The Buyer shall be solely responsible for the design of the Goods and the Buyer shall supply to the Company prior to the commencement of manufacture of the Goods all specifications for the Goods including all designs, drawings, diagrams, illustrations.
- 3.3 The Company shall be responsible for the Goods being manufactured in accordance with the specifications supplied by the Buyer. The Company shall not be liable for any defects resulting from the design and specifications of the Goods which have been supplied by the Buyer.
- 3.4 It is the Buyers responsibility to ensure that the Goods are fit for the Buyer's intended purpose and the Buyer shall not rely upon the Company's skill or judgement.
- 3.5 It is the Buyer's responsibility to ensure that the Goods are compliant with Building Regulations relating to their application.
- 3.6 All samples, drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures or on the Company's website are issued or published for the sole purpose of giving an approximate idea of the Goods or Services described in them. They shall not form part of the Contract and this is not a sale by sample.
- 3.7 Whilst the Company endeavours to select high quality timber for use within our Goods and all timber is selected against cracks/splitting and purchase with between a 10 and 12% moisture content after being kiln dried the Company cannot guarantee any timber elements against splits and shrinkage after installation. Room temperatures, humidity and daylight will affect the timber as it is natural product and therefore it is the Buyer's reasonability to ensure the timber is treated after as soon as possible after installation and remains treated after that for the given conditions. As timber is a natural product cracks and shrinkage can occur over time which is beyond the Company's control.

4. BUYER'S RESPONSIBILITIES

- 4.1 When a Contract includes the supply of poles and handrails it shall be the Buyer's responsibility at its own cost to paint the poles and handrails once installation of the Goods has been completed, whether or not the Company has agreed to install the Goods.
- 4.2 It is the responsibility of the Buyer to as its own cost fill counter sunk holes in handrails with a suitable plastic padding or body filler once installation of the Goods has been completed, whether or not the Company has agreed to install the Goods.

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5. DELIVERY

- 5.1 Unless otherwise agreed in writing by the Company, delivery of the Goods shall take place at the Company's place of business.
- 5.2 The Buyer shall take delivery of the Goods within 14 days of the Company giving it notice that the Goods are ready for delivery.
- 5.3 Any dates specified by the Company for delivery of the Goods or supply of the Services are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 5.4 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or supply of the Services (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 30 days.
- 5.5 If for any reason the Buyer fails to accept delivery of any of the Goods or supply of any of the Services when they are ready for delivery or supply, or the Company is unable to deliver the Goods or unable to supply the Services on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
 - (b) the Goods and Services shall be deemed to have been delivered and supplied; and
 - (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5.6 The Buyer shall provide at the Delivery Point and at its expense adequate and appropriate equipment and manual labour for loading and unloading the Goods.
- 5.7 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 5.8 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.

6. NON-DELIVERY

- 6.1 The quantity of any consignment of Goods as recorded by the Company on despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 6.2 The Company shall not be liable for any non-delivery of Goods or failure to provide the Services (even if caused by the Company's negligence) unless the Buyer gives written notice to the Company of the non-delivery within 48 hours of the date when the Goods would in the ordinary course of events have been received.
- 6.3 Any liability of the Company for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any invoice raised for such Goods or Services.

7. RISK/TITLE

- 7.1 The Goods are at the risk of the Buyer from the time of delivery.

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- 7.2 Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
 - (b) all other sums which are or which become due to the Company from the Buyer in respect of any Contract, order or account.
- 7.3 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
 - (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 7.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- (a) any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - (b) any such sale shall be a sale of the Company's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 7.5 The Buyer's right to possession of the Goods shall terminate immediately if:
- (a) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
 - (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - (c) the Buyer encumbers or in any way charges any of the Goods.
- 7.6 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 7.7 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.

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7.8 Where the Company is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Company to the Buyer in the order in which they were invoiced to the Buyer.

7.9 On termination of the Contract, howsoever caused, the Company's (but not the Buyer's) rights contained in this condition 7 shall remain in effect.

8. PRICE

8.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's quotation.

8.2 The price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

8.3 Unless otherwise agreed within the Company's written quotation the price for all Services supplied by the Company to the Buyer shall be charged at a rate of £325 per half day exclusive of any value added tax.

8.4 In the event that the Buyer is not ready for the Company to supply the Services on the agreed date for the supply of the Services and the Buyer fails to provide 7 days written notification of this, the Company shall be entitled to charge for the Services in accordance with condition 8.3 in addition to charging for the Services when they are eventually supplied to the Buyer.

9. PAYMENT

9.1 Subject to condition 9.6, payment of 50% the price for the Goods is due immediately upon the either the Buyer accepting the Company's quotation or the Company accepting the Buyer's order.

9.2 If the Contract is for the supply only of the Goods the Buyer shall pay the remaining balance of 50% of the price either prior to taking delivery of the Goods or within 14 days of the Company providing its invoice, whichever is the earlier

9.3 In the event that the Company has agreed to install the Goods at the Buyer's premises then the Customer shall pay 25% of the price prior to the Goods being delivered and the remaining 25% of the price within 7 days of the completion of the installation of the Goods.

9.4 Should any additional Services be provided to the Buyer in addition to the installation of the Goods the payment of the price for such Services shall be paid within 7 days of the date of the Company's invoice sent to the Buyer.

9.5 Time for payment shall be of the essence.

9.6 No payment shall be deemed to have been received until the Company has received cleared funds.

9.7 All payments payable to the Company under the Contract shall become due immediately on its termination despite any other provision.

9.8 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

9.9 If the Buyer is a company or limited liability partnership, the person entering into the Contract on behalf of the Buyer hereby agrees to personally guarantee all payments due to the Company under the Contract in the event that the Buyer defaults on any payments due to the Company.

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9.10 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such sum from the due date for payment at the annual rate of 5% above the base lending rate from time to time of the Bank of England accruing on a daily basis until payment is made, whether before or after any judgment. The Company reserves the right to claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998.

10. QUALITY AND ACCEPTANCE

10.1 Where the Company is not the manufacturer of the Goods, the Company shall endeavour to transfer to the Buyer the benefit of any warranty or guarantee given to the Company.

10.2 The Buyer is deemed to have accepted the Goods within 24 hours of delivery of them and the Buyer acknowledges and agrees that the Buyer has had a reasonable opportunity to inspect the Goods prior to acceptance of them. The Buyer must therefore notify the Company of any defects with the Goods in writing within 48 hours of the Goods being delivered. When the Company has agreed in writing with the Buyer to install Goods, the Goods will be deemed to be delivered upon completion of the installation.

10.3 The Company shall not be liable for any defects or shortages with the Goods unless:

- (a) the Buyer gives written notice of any defects or shortages to the Company within 48 hours of delivery of the Goods; and
- (b) the Company is given a reasonable opportunity after receiving the notice of defects to examine such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business cost for the examination to take place there.

10.4 The Company shall not be liable for any defects with the Goods if:

- (a) the Buyer makes any further use of such Goods after giving such notice of defects; or
- (b) the defects arise because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- (c) the Buyer alters or repairs such Goods without the written consent of the Company.

10.5 Subject to condition 10.2 and condition 10.4, if any of the Goods are deemed to be defective the Company shall at its option repair or replace such Goods (or the defective part) or refund the price of such Goods at the pro rata Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Goods or the part of such Goods which is defective to the Company.

10.6 If the Company complies with condition 10.5 it shall have no further liability in respect of such Goods.

10.7 Any Goods replaced shall belong to the Company.

11. LIMITATION OF LIABILITY

11.1 Subject to condition 5, condition 6 and condition 10, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:

- (a) any breach of these conditions;
- (b) any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and

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- (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 11.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 11.3 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
 - (b) under section 2(3), Consumer Protection Act 1987; or
 - (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
 - (d) for fraud or fraudulent misrepresentation.
- 11.4 Subject to condition 11.2 and condition 11.3:
- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price; and
 - (b) the Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

12. ASSIGNMENT

- 12.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 12.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.

13. FORCE MAJEURE

The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

14. GENERAL

- 14.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 14.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be

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construed as a waiver of any of its rights under the Contract.

- 14.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 14.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 14.6 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

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