

MSS PRODUCTS – CONDITIONS OF SALE OF GOODS

1. DEFINITIONS

1.1 In these Conditions, the following definitions apply:

Business Day: a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Buyer: the person or firm who purchases Goods from the Seller acting in the course of business.

Conditions: the terms and conditions set out in this document, as may be amended from time to time by the Seller.

Contract: the contract between the Seller and the Buyer for the sale and purchase of Goods in accordance with these Conditions (as amended from time to time).

Goods: the goods (or any part of them) set out in the Order.

Order: the Buyer's order for the Goods, as agreed in writing between the parties.

Price: the price to be paid by the Buyer for the provision of the Goods, as set out in the Seller's written acceptance of the Order, which shall include the Copper Price and the Ex Copper Price (both as defined in clause 12).

Quotation: a quotation for the Goods given by the Seller, which shall only be valid for a period of thirty (30) Business Days from its date of issue.

Seller: MSS Products Limited, Bankfield Road, Tyldesley, Manchester M29 8QH (company number 04361302).

Specification: the specification for the Goods, including any related plans and drawings, which are agreed in writing by the Buyer and the Seller.

1.2 In these Conditions, the following rules apply:

(a) any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and (b) A reference to **writing** or **written** includes faxes and e-mails.

2. GENERAL

2.1 These Conditions shall apply to all Contracts with the Seller. Any other terms, conditions, warranties or representations, whether made prior to or subsequent to the Order are hereby excluded, as are any terms that the Buyer seeks to impose or incorporate by trade, custom, practice, course of dealing or otherwise. Any terms contained in the Buyer's order or otherwise shall have no effect unless agreed in writing signed by a director of the Seller.

2.2 The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these Conditions. **The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate as Goods are made to order and once an Order has been accepted it becomes irrevocable.**

2.3 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order, at which point the Contract shall come into existence. Full payment will be due in respect of all accepted Orders.

2.4 These Conditions constitute the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Seller which is not set out in the Contract.

2.5 All specifications, drawings and particulars of weights and dimensions submitted otherwise than as part of the Quotation are approximate only and the descriptions and illustrations contained in the Seller's catalogues, price lists and other advertisements are intended merely to present a general idea of the goods described therein. None of these documents shall form part of the Contract.

2.6 A variation to any Contract shall only be binding upon the Seller if contained in writing and signed on the Seller's behalf by a director or other duly authorised person.

2.7 Contracts or Orders may be cancelled only with the Seller's written consent, and in such circumstances the Buyer shall indemnify the Seller for all losses and costs incurred in relation to the Contract including, but without limitation, loss of profit, costs, damages, charges and expenses.

3. GOODS

3.1 The Goods are described in the Specification.

3.2 The Supplier reserves the right to amend the Specification, after giving notice to the Buyer, if required by any applicable statutory or regulatory requirements.

4. PACKING

Unless otherwise specified in the Seller's quotation, all packing cases, skids, drums and other packaging material must be returned to the Seller's premises at the Buyer's expense and in good condition within one (1) month from the date of receipt of the Goods. If not so returned, the Buyer will be charged for the full cost of replacement of the relevant packaging material(s).

5. OWNERSHIP OF SPECIAL TOOLS

The Price shall be inclusive of any dies, tools or equipment which the Seller is required to specifically obtain or commission in order for the Seller to fulfil any Order, which shall remain the property of the Seller at all times.

6. TERMINATION

Without prejudice to any claim or right the Seller might otherwise have, the Seller shall have the right immediately to suspend or terminate any Order or Contract or part thereof by written notice to the Buyer if:

a) the Buyer defaults in respect of, or commits a breach of, these Conditions, or of any other obligations to the Seller;

b) the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

c) any distress or execution is levied upon the Buyer's property or assets, or if a receiver is appointed over any of the Buyer's property or assets or any part thereof;

d) the Buyer makes any arrangement or composition with creditors, or commits any act of bankruptcy or if any petition for bankruptcy shall be presented or made against him, or if any resolution or petition to wind up the Buyer's business shall be passed or presented (other than for the purpose of a solvent amalgamation or reconstruction); or

e) the Buyer undergoes any other insolvency event in any jurisdiction.

On termination of the Contract for any reason the Buyer shall immediately pay to the Seller all outstanding unpaid invoices and interest.

7. DELIVERY

7.1 Unless otherwise specified in the Order (or subsequently agreed in writing by the parties), the Price shall include the cost of delivery to the Buyer's premises by any method of transport at the Seller's option. Delivery shall be DAP (the Buyer's address, as stated in the Order) (Incoterms 2010) unless stated otherwise by the Seller. Unless otherwise stated the Seller shall not be responsible for off-loading. Where the Seller notifies the Buyer of a period for delivery, and such period is not extended by mutual consent in writing, the Buyer shall take delivery within that period.

7.2 The time, if any given, for delivery is an estimate only and shall run from the later of: (a) despatch of the Seller's written acceptance of Order; or (b) receipt by the Seller of all the necessary information to enable the Seller to finalise an order with its manufacturer, whichever is the latter. The Seller will not accept any liability whatsoever for any failure to meet estimated delivery dates and time for delivery shall not be of the essence of the Contract.

7.3 The Seller shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an event of force majeure (as set out in clause 11) or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

8. WEIGHTS

The weight of Goods shown on the Seller's invoices shall be binding unless shortages are made known to the Seller in accordance with clause 9.5.

9. LIABILITY - *The Buyer's attention is in particular drawn to the provisions of this condition 9.*

9.1 Nothing in these Conditions shall limit or exclude the Seller's liability for: (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); (b) fraud or fraudulent misrepresentation; (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979; or (d) any other liability to the extent that it may not be limited or excluded.

9.2 Subject to clauses 9.1, 9.3 and 9.5:

a) the Seller shall under no circumstances be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit (whether direct or indirect), legal expenses or for any indirect or consequential losses or costs arising under or in connection with the Contract;

b) the Seller shall not be under any liability in respect of any defect in the Goods arising from any drawing, design or specification supplied by or on behalf of the Buyer; and

c) the Seller's total liability to the Buyer in respect of all other direct losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty or otherwise, shall in no circumstances exceed the amount paid by the Buyer in respect of the relevant Order (less any transportation or other costs incurred by the Seller in fulfilling the Order).

9.3 The Seller shall not be liable pursuant to clause 9.2 if the relevant Goods have been tampered with or have not been handled or stored by the Buyer in accordance with good industry practice. Damaged or defective Goods must be made available for inspection by the Seller.

9.4 A claim in respect of any defect or failure to comply in respect of any delivery or any Order or any part of it shall not entitle the Buyer to cancel or refuse delivery of or payment for any other Order or delivery, or any part of the same Order.

9.5 The Buyer shall not accept any claim in respect of damage or loss in transit, shortage of Goods or any defect in the Goods unless notice in writing is given to the Seller within three (3) days of delivery (or, in the case of Goods lost in transit, the due date for delivery) of the relevant Goods followed by a complete claim in writing within seven (7) days of delivery (or, in the case of Goods lost in transit, the due date for delivery, as applicable). In respect of other matters, no claim shall be accepted unless it is submitted in writing to the Buyer within twelve (12) months of delivery of the relevant Goods.

9.6 The Seller shall not be liable for and the Buyer shall indemnify the Seller against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Seller in connection with: (i) any claim made against the Seller for actual or alleged infringement of a third party's intellectual property rights; and (b) any other claim, arising directly or indirectly out of or in connection with the Seller's use of the Specification, the Goods and/or any other work carried out by the Seller in accordance with the Buyer's instructions. This clause 9 shall survive termination of the Contract.

10. WARRANTIES

10.1 The Seller warrants that on delivery, and for a period of twelve (12) months from the date of delivery, the Goods will be of satisfactory quality and will comply in all material respects with the Specification. As the Buyer is responsible for ensuring the Specification is accurate, the Seller only warrants that the Goods will be fit for the purpose made known to it by the Buyer in advance and as set out in the Specification.

10.2 Subject to clause 10.1 and save as otherwise agreed in writing by the Seller, the Seller excludes all conditions and warranties (express and implied, statutory or otherwise) to the fullest extent permitted by law.

11. FORCE MAJEURE

Should the Seller be delayed in or prevented from performing any of its obligations under the Contract owing to an act of God; war or civil disturbance; government restriction of any kind; import and export restrictions; strikes, lockouts or trade disputes; difficulty in obtaining workmen or materials; non-availability of materials, fuel or energy; breakdown of machinery; fire, flood or extreme weather conditions; accident or any other cause whatsoever beyond the Seller's control, the Seller shall be at liberty to cancel or suspend the Contract or to delay delivery or to reduce the amount of Goods delivered without incurring any liability for any loss or damage resulting therefrom (save that in the event of cancellation of a Contract any moneys paid by the Buyer in respect of the relevant Order(s) shall be refunded without undue delay, less any costs and

expenses incurred by the Seller in fulfilling the Order up until the date of the relevant force majeure event).

12. PRICE

12.1 The Price will include the following elements:

a) the appropriate copper price (currently LME mid-day cash settlement price for copper wirebars within eight weeks) at the date of booking ("**the Copper Price**"); and

b) the cost of providing the Goods, other than the cost of copper ("**the Ex Copper Price**").

12.2 In respect of the Ex Copper Price:

a) where the estimated delivery date in the Seller's acceptance of Order is within twenty eight (28) days of the date thereof and delivery is made by that date, the Ex Copper Price shall remain firm;

b) where the estimated delivery date in the Seller's acceptance of Order is in excess of twenty eight (28) days from the date thereof, or where the estimated delivery date is extended to a date in excess of twenty eight (28) days from the date of the Seller's acceptance of Order, the Ex Copper Price will be subject to adjustment for such price as may be applicable at the date of despatch of the Goods (and of each consignment thereof). Such fluctuation is due to variations in costs other than the cost of copper (such adjusted price being hereinafter referred to as "**the Actual Ex Copper Price**") and the total price of the Goods shall be adjusted to take account of the Actual Ex Copper Price; and

c) where there is a dispute between the Buyer and the Seller as to the Actual Ex Copper Price the certificate of the Seller's auditor shall be conclusive and such certified amount shall be the Actual Ex Copper Price.

12.3 Where the Goods or any part thereof have not been despatched within one hundred and eighty (180) days of the date of the Seller booking the copper the Buyer shall, on notice from the Seller at the expiration of the said 180-day period, pay on account the price stated in the Seller's acceptance of Order in respect of those Goods. The Price shall include the Copper Price and the Ex Copper Price set out therein. Where the Actual Ex Copper Price is greater than the Ex Copper Price, the Buyer shall pay the difference to the Seller prior to despatch of the Goods (and, where the Actual Ex Copper Price is less than the Ex Copper Price, the Seller shall issue a credit note to the Buyer in respect of the difference).

13. RISK AND OWNERSHIP

13.1 Risk in the Goods shall remain with the Seller until the Goods are made available for unloading at the Buyer's premises.

13.2 Notwithstanding delivery and the passing of risk in the Goods, ownership of the Goods shall not pass to the Buyer until the Seller has received payment in full in cleared funds of the price of the Goods.

13.3 Until such time as ownership of the Goods passes to the Buyer:

a) the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property

b) the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods. The Buyer shall keep all such proceeds separate from any moneys or property of the Buyer or any third party;

c) provided the Goods are still in existence and have not been resold, the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods; and

d) the Buyer shall not be entitled to pledge or in any way charge by way of security any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

13.6 If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in clause 6, then, without limiting any other right or remedy the Seller may have:

a) the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

b) the Seller may at any time: (i) require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and (ii) if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

14. TERMS OF PAYMENT

14.1 Unless otherwise stipulated in writing in the Seller's acceptance of Order, payment is due in full on the last day of the calendar month following the calendar month in which the Seller despatches the Goods to the Buyer.

14.2 Where the Order is to be or may be fulfilled in separate instalments, deliveries or parts, payment for each such instalment, delivery or part shall be made in accordance with clause 14.1.

14.3 Where the Buyer fails to make any payment in accordance with these Conditions the Seller shall be entitled to interest on any undisputed amount overdue at the annual rate of 4% above Lloyds Bank Plc base rate for the time being in force. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Buyer shall pay the interest together with the overdue amount.

14.4 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.

15. CONFIDENTIALITY

Each party undertakes that it shall not disclose to any person any confidential information concerning the business, customers or suppliers of the other party for a period of two (2) years after receipt of the same from the other party, except as strictly necessary for the purposes of the Contract.

16. ASSIGNMENT AND SUBCONTRACTING

None of the rights or obligations of the Buyer under the Contract may be assigned or transferred in whole or in part without the prior written consent of the Seller. The Seller shall be entitled to subcontract any work relating to the Contract without obtaining the consent of, or giving notice to, the Buyer.

17. NOTICES

17.1 Any notice or other communication to be given under these Conditions must be in writing and may be delivered or sent by prepaid first class letter or by fax to a fax number provided by the Seller.

17.2 Any notice or document shall be deemed served: if sent by post, two (2) Business Days after postal collection; and, if sent by facsimile transmission, at the time of transmission provided the facsimile transmission sheet is retained for proof PROVIDING THAT if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

18. WAIVER

The waiver or failure of a party in insisting in any one or more instances upon the performance of any provision of the Contract shall not be construed as a waiver or relinquishment of that party's rights to future performance of such provision and the other party's obligation in respect of such future performance shall continue in full force and effect.

19. INVALIDITY

If any provision of these Conditions is found by any court, tribunal or administrative body or competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and/or the remainder of such provision shall continue in full force and effect.

20. THIRD PARTY RIGHTS

A person who is not party to this agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

21. LAW AND JURISDICTION

The Contract (and any proceedings whereby one party might be entitled to join the other as a third party) shall be governed by and construed in all respects in accordance with English law and the parties hereby submit to the non-exclusive jurisdiction of the English courts.