

## LMC PRODUCTS LIMITED CONDITIONS OF SALE

### 1. INTERPRETATION

#### 1.1 Definitions:

**Buyer** means the person who purchases Goods from the Seller under the Contract in accordance with these Conditions;

**Goods** means the goods (or any part of them) set out in the Order;

**Seller** means LMC Products Limited, a company registered in England with limited liability under company number 6432373 whose registered office is at Knowle House, 4 Norfolk Park Road, Sheffield, S2 3QE;

**Conditions** means the standard terms and conditions of sale set out in this document;

**Contract** means the contract formed in accordance with these Conditions for the purchase and sale of the Goods which shall comprise these Conditions and any documents referred to in them and any special terms and conditions agreed in writing between the parties;

**Defect** means any defect in the Goods which causes the Goods to not conform to the warranty set out in clause 8.1;

**Delivery Location** means the address specified in the Order or otherwise agreed in writing between the Buyer and the Seller to which the Goods are to be delivered;

**Force Majeure Event** means any event beyond the Seller's reasonable control;

**Order** means an order by the Buyer for the Goods, placed by the Buyer sending the Seller a purchase order, and only agreed once accepted in writing by the Seller;

**Quotation** means any formal quotation which is issued by the Seller and which the Buyer seeks to accept by its Order; and

**Specification** means any specification for the Goods which is provided by the Seller in writing or provided by the Buyer and approved by the Seller in writing.

#### 1.2 Interpretation:

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 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.

1.2.3 a reference to **writing** or **written** includes faxes and emails.

## **2. CONDITIONS**

2.1 The Order is an offer by the Buyer to purchase Goods in accordance with these Conditions.

2.2 The Order shall only be deemed to be accepted when the Seller accepts the Order in writing, at which point the Contract will come into existence.

2.3 The Conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate or which are implied by trade, practice or a course of dealing.

2.4 Any samples, drawings or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are provided only to give an approximate idea of the Goods and will not form any part of the Contract or have any contractual force.

2.5 A Quotation shall not constitute an offer to sell Goods. The Seller reserves the right to withdraw or amend any Quotation at any time prior to the Seller accepting an Order without liability.

## **3. ORDERS AND SPECIFICATIONS**

3.1 It is the Buyer's responsibility to ensure the accuracy of the Order and any Specification.

3.2 If the Goods are to be supplied in accordance with a Specification supplied by the Buyer, the Buyer shall indemnify the Seller against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with, or paid or agreed to be paid by the Seller in settlement of, any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person which results from the Seller's use of the Buyer's specification.

3.3 The Seller reserves the right to make any changes in the Specification of the Goods which:

3.3.1 are required to conform to any applicable statutory or EU requirements; or

3.3.2 which do not materially affect their quality or performance.

3.4 The Buyer shall not be entitled to reject the Goods if the Seller delivers up to and including 10% more or less than the quantity of the Goods set out in the Order

(whether in terms of the weight of the Goods or otherwise) and the Buyer shall pay for the Goods delivered at the rate provided in the Contract.

3.5 If the Seller delivers more than 10% more or less than the quantity of Goods set out in the Order, the Buyer may accept the Order and pay for any excess at the rate set out in the Contract or reject any excess Goods, provided that any rejected Goods are returned to the Seller in the same condition as on delivery to the Buyer no later than 7 days from the date of delivery.

#### **4. PRICE OF THE GOODS**

4.1 The price of the Goods shall be the price set out in the Order.

4.2 The Seller reserves the right, by giving 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:

4.2.1 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);

4.2.2 any change in delivery dates, quantities or Specification which is requested by the Buyer;

4.2.3 or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

4.3 The price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to the Seller at the prevailing rate.

#### **5. TERMS OF PAYMENT**

5.1 The Seller will invoice the Buyer for the Goods on or at any time after the delivery of the Goods is completed by the Seller (or if delivery is not accepted by the Buyer, on or at any time after delivery is attempted by the Seller).

5.2 If the terms of payment agreed between the Seller and the Buyer state that the Goods must be paid for before completion of delivery, then the Seller reserves the right to issue the invoice at any point in time it sees fit.

5.3 The Buyer shall pay the invoice in full and in cleared funds to the bank account nominated in writing by the Seller within 30 days after the end of the month in which the invoice was dated, unless otherwise agreed in writing with the Seller. The time of the payment shall be the essence of the Contract.

5.4 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:

5.4.1 cancel the contract or suspend any further deliveries to the Buyer;

5.4.2 demand immediate payment of all issued invoices to the Buyer, whether the payment has fallen due or not

5.4.3 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and

5.4.4. charge the Buyer interest (both before and after any judgment) on the amount unpaid, at the rate of interest specified under the Late Payment of Commercial Debts (Interest) Act 1998 calculated on a daily basis, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

5.5 In the event that the Seller owes money to the Buyer under any contract or other arrangement entered into between the Seller and the Buyer the Seller shall be entitled to set off such sums owed by the Seller to the Buyer against any sums which the Buyer shall owe to the Seller whether under the Contract or otherwise.

5.6 The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding except as required by law.

## **6. DELIVERY**

6.1 Delivery of the Goods shall be made by the Seller delivering the Goods to the Delivery Location.

6.2 The Seller will deliver the Goods to the Delivery Location on the date agreed in writing (subject to clause 6.3) or, where no date is agreed, when the Goods are ready to be delivered.

6.3 Delivery dates given by the Seller to the Buyer are approximate only and time for delivery shall not be the essence of the Contract.

6.4 The Seller shall have no liability for failure to deliver or delay in delivering the Goods which is caused by the Buyer's failure to provide adequate or accurate information or instructions, a Force Majeure Event or matters beyond the Seller's reasonable control including, but not limited to, the following matters:

6.4.1 Delays occurring during production by the mill;

6.4.2 Delays occurring due to the default of transport/freight companies;

6.4.3 Delays occurring because of the delay in arrival of a vessel;

6.4.4 Delays occurring due to customs checks/clearance issues beyond the Seller's control.

6.5 Delivery of the Goods shall be completed when the goods are unloaded at the Delivery Location.

6.6 The Seller may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate Contract governed by these Conditions. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment.

6.7 If the Buyer fails to accept delivery of the goods when the Seller first attempts delivery then:

6.7.1 delivery of the Goods shall be deemed to have been completed upon such first attempt; and

6.7.2 the Seller may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or

6.7.3 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.

6.8 Failure to notify the Seller of the non-delivery of the Goods, or any of them, within 7 days of the due date for delivery will release the Seller from liability for claims for non-delivery.

6.9 Where agreed in writing between the Buyer and the Seller, Goods may be held at a warehouse designated by the Seller to be delivered on a 'call off' basis subject to the following additional terms:

6.9.1 the Goods will be invoiced upon delivery to the Buyer's premises, or chosen delivery location;

6.9.2 risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Seller's warehouse;

6.9.3 if any Goods have been in the Seller's warehouse for a period of longer than 3 months and the Buyer has not requested their delivery, the Seller shall be entitled in its sole discretion to:

6.9.3.1 deliver the Goods to the Buyer's address or last Delivery Location without notice to the Buyer; or

6.9.3.2 invoice the Buyer for continued storage of the Goods.

## **7. RISK AND PROPERTY**

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon completion of delivery in accordance with clause 6.

7.2 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 earlier of:

7.2.1 the Seller receiving in cash or cleared funds, payment in full of the price of the Goods and any other debts owed by the Buyer to the Seller (in which case title shall pass at the time of payment of all such sums); and

7.2.2 the Buyer reselling the Goods, in which case title shall pass to the Buyer in accordance with clause 7.4.

7.3 Until property in the Goods passes to the Buyer, the Buyer shall:

7.3.1 store the Goods separately from any goods of the Buyer or any third party in such a way that they remain readily identifiable as the Seller's property;

7.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;

7.3.3 maintain the Goods in satisfactory condition, keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller and, upon the Seller's request, produce the policy of insurance to the Seller;

7.3.4 notify the Seller immediately if it becomes subject to any of the events listed in clauses 10.1.2 to 10.1.11 inclusive;

7.3.5 give the Seller such information as it requires from time to time in relation to the Goods; and

7.3.6 not be entitled to pledge or in any way charge by way of security for any indebtedness 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.

7.4 Subject to clause 7.5, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Seller receives payment for the Goods. However, if the Buyer resells the Goods before that time:

7.4.1 it does so as principal and not as the Seller's agent; and

7.4.2 title to the Goods shall pass from the Seller to the Buyer immediately before the time at which resale by the Buyer occurs.

7.5 Until such time as the property in the Goods passes to the Buyer, the Seller shall be entitled at any time:

7.5.1 to terminate the Buyer's right to resell the Goods in accordance with clause 7.4 by giving written notice to the Buyer; and

7.5.2 to require the Buyer to deliver up the Goods to the Seller and, if the Buyer fails to do so forthwith, the Buyer grants the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored or otherwise located, but in any event, and without limitation, hereby undertakes to secure full rights of access at any time to any such premises for the Seller, its agents and employees to recover the Goods and to undertake any work required to remove them, notwithstanding that the Goods may be affixed or attached to any other goods or property.

## **8. DEFECTS AND COMPLAINTS**

8.1 The Seller warrants that the Goods shall at the time of delivery be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

8.2 Subject to clause 8.3, the Buyer shall be deemed to have accepted the Goods 7 days after the date of delivery and after acceptance the Buyer shall not be entitled to reject the Goods.

8.3 Subject to clause 8.6, if:

8.3.1 the Buyer gives the Seller written notice of a Defect within 7 days of the date of delivery;

8.3.2 the Seller is given a reasonable opportunity of examining such Goods;

8.3.3 the Buyer returns the Goods to the Seller, if asked to do so by the Buyer; and

8.3.4 the Seller agrees, or it is established under clause 8.5, that the Goods are Defective;

8.4 then the Seller will, at its option, replace or repair any Defective Goods or refund the price of those Goods in full.

8.5 In the event of dispute as to whether any Goods are Defective, the dispute shall be referred to an independent third party appointed jointly by the Seller and the Buyer or, failing agreement within 7 days, by a party appointed, on the application of either the Seller or the Buyer, by the President for the time being of The Royal Institute of Chartered Surveyors. Such independent third party shall act as an expert and not as an arbiter and his decision shall be final and binding on, and his costs and expenses shall be borne by the Seller if the Goods are determined to be Defective and by the Buyer if they are not.

8.6 The Seller shall not be liable in respect of any Defect if:

8.6.1 the Buyer fails to follow the procedures set out in these Conditions in relation to Defects;

8.6.2 the Buyer makes any further use of such Goods after giving a notice in accordance clause 8.3.1;

8.6.3 the Defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

8.6.4 the Defect arises as a result of the Seller following any drawing, design or Specification supplied by the Buyer;

8.6.5 the Buyer alters or repairs such Goods without the written consent of the Seller;

8.6.6 the Defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;

8.6.7 the Seller has obtained written confirmation from the Buyer that the Goods were delivered free from defect; or

8.6.8 the Defect arises as a result of changes made to ensure they comply with applicable statutory or regulatory standards.

8.7 Except as specifically provided in this clause 8, the Seller shall have no liability to the Buyer in respect of any Defect.

8.8 The terms of these Conditions shall apply to any repaired or replacement Goods supplied by the Seller under clause 8.3.

## **9. LIABILITY**

9.1 Except as set out in these Conditions, all conditions, warranties and representations, expressed or implied by statute, common law or otherwise, in relation to the supply, non-supply or delay in supplying the Goods are excluded to the extent permitted by law.

9.2 Nothing in these Conditions is intended to exclude or limit the liability of the Seller to the Buyer for the following matters:

9.2.1 death or personal injury caused by the Seller's negligence;

9.2.2 failure to give good title to the Goods; or

9.2.3 fraud or fraudulent misrepresentation.

9.3 Subject to clause 9.2:



9.3.1 the Seller shall have no liability to the Buyer for any of the following losses or damages, whether they arise directly or indirectly in relation to the Contract:

9.3.1.1 loss or damage incurred by the Buyer as a result of third party claims;

9.3.1.3 loss of actual or anticipated profits;

9.3.1.4 loss of business opportunity;

9.3.1.4 loss of anticipated savings;

9.3.1.5 loss of goodwill;

9.3.1.6 injury to reputation; or

9.3.1.7 any indirect, special or consequential loss or damage howsoever caused even if the Seller was advised of the possibility of them in advance;  
and

9.3.2 the Seller's total liability in regards to all other losses rising under the Contract shall not exceed 100% of the price paid for the Goods. In the cases where the Buyer's claim is for only part of the Goods supplied, then the Seller will only be liable for up to 100% of the Goods in question.

9.4 The Seller will have no liability for delay in, or failure to perform, any of its obligations in relation to the Contract if the delay or failure was due to any Force Majeure Event. Force Majeure Events shall be deemed to include, but not be limited to:

9.4.1 act of God, explosion, flood, tempest, fire or accident;

9.4.2 war or threat of war, sabotage, insurrection, civil disturbance or requisition;

9.4.3 acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;

9.4.4 import or export regulations or embargoes;

9.4.5 strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);

9.4.6 difficulties in obtaining raw materials, labour, fuel, parts or machinery;

9.4.7 power failure or breakdown in machinery.

9.4.8 extreme weather conditions

## **10. CANCELLATION**

10.1 The Seller may terminate the Contract with immediate effect and cancel any future orders from the Buyer without liability if:

10.1.1 the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable), fails to remedy the breach within 7 days of being notified in writing by the Seller to do so;

10.1.2 a petition for a winding-up order or bankruptcy order is presented against the Buyer; or

10.1.3 the Buyer passes a resolution or makes a determination for it to be wound up without a declaration of solvency/except for the purposes of amalgamation or reconstruction, the terms of which have been previously approved in writing by the other party); or

10.1.4 the Buyer has appointed to it an administrator or an administrative receiver or a notice of intention to make such an appointment is given; or

10.1.5 being a partnership, in addition to the above, the Buyer suffers bankruptcy orders being made against any or all of its partners; or

10.1.6 an incumbrancer takes possession, or a receiver, manager or administrative receiver is appointed, of the whole or any part of the Buyer's assets;

10.1.7 the Buyer ceases or suspends payment of any of its debts, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or

10.1.8 any arrangement, compromise or composition in satisfaction of its debts is proposed or entered into by the Buyer; or

10.1.9 the Buyer suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business;

10.1.10 the Buyer's financial position deteriorates to such an extent that in the Seller's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

10.1.11 the Buyer (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

10.2 On termination of the Contract for any reason:

10.2.1 the accrued rights and remedies of each party shall be unaffected;

10.2.2 clauses of these Conditions which are expressly or by implication intended to survive to termination shall continue in full force and effect;

10.2.3 the price of any Goods which have been delivered but not paid for shall become immediately due and payable.

## **11. GENERAL**

11.1 No variation to the Contract shall be binding unless agreed in writing by the Seller.

11.2 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

11.3 The Seller may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract. The Buyer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Seller.

11.4 Any notice required to be given by either party under these Conditions shall be in writing addressed to the other party at its principal place of business, or in email form to the relevant contact as given by the other party.

11.5 The Seller can only waive a breach of the contract expressly and in writing. Failure or delay by the Seller in enforcing any provision of any Contract shall not be construed as a waiver of any of its rights under the Contract. No waiver by the Seller of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.6 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Buyer whether under the Contract or not.

11.7 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

11.8 Except as expressly stated in these Conditions, neither the Seller nor the Buyer intends 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.

11.9 The Contract shall be governed by the laws of England.

11.10 The Seller and the Buyer submit to the exclusive jurisdiction of the English courts in relation to any dispute arising under or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims).