

TENNANT METALLURGICAL GROUP LTD

(Company Registration Number 646646)
CALLYWHITE LANE, DRONFIELD, S18 2XP

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

- 1.1** "BUYER" Means the person or company or person(s) or organisation from whom the Order is received.
- 1.2** "COMPANY" Means the company whose name and address appears at the head of the form.
- 1.3** "CONDITIONS" Means the terms and conditions of sale set out in this document and any special terms and conditions agreed in writing by the Company.
- 1.4** "CONTRACT" Means the contract between the Company and the Buyer for the sale and purchase of Goods in accordance with these Conditions.
- 1.5** "GOODS" Means the articles or things or any of them described in the Order.
- 1.6** "PRICE" Means the price for the Goods specified by the Company in acceptance of the Order.
- 1.7** "ORDER" Means the Order placed by the Buyer for the supply of the Goods and/or provision of the Services.

2. CONDITIONS APPLICABLE

- 2.1** The Company's quotations are not binding on the Company and the Contract will only come into being upon acceptance by the Company of the Order.
- 2.2** The Contract will be subject to the Conditions which shall apply to all contracts for the sale of Goods by the Company to the Buyer to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply under any purchase order, confirmation of order or similar document. All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Conditions.
- 2.3** Any variation to these Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by a director of the Company and in particular (but without limitation):-
 - 2.3.1** where the Buyer requires the Goods for a particular purpose the Company shall be deemed to have no notice of such purpose unless the purpose is agreed by the Buyer and Company in writing and signed on their behalf as above;
 - 2.3.2** the Company and the Buyer acknowledges that there is no usage or course of trading in existence which could affect the terms of the Contract in any way.
- 2.4** The Contract constitutes the entire agreement between the parties. 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.
- 2.5** Any samples, drawings, descriptive matter, or advertising produced by the Company and any descriptions or illustrations contained in the Company's brochures or catalogues or on the Company's

website are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

- 2.6** Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Buyer, it is hereby declared that such a sample was so exhibited and inspected solely to enable the Buyer to judge the quantity of the bulk of the Goods and not so as to constitute a sale by sample under the Contract. The Buyer shall take the Goods at its own risk as to their corresponding with the said sample or as to their quantity, condition or sufficiency for any purpose.
- 2.7** The description of the Goods given on the Order or elsewhere is by way of identification only and such description shall not constitute a sale by description.

3. LIMITATION OF LIABILITY

- 3.1** Except where the Buyer is dealing as a consumer (as defined in the Unfair Contract Terms Act 1977 Section 12), all warranties, conditions or terms of every kind whether implied by statute or common law or otherwise are hereby excluded to the fullest extent permitted by law.
- 3.2** Nothing in these Conditions shall limit or exclude the Company's liability for:
- 3.2.1** death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors (as applicable); and
 - 3.2.2** fraud or fraudulent misrepresentation.
- 3.3** Subject to clause 3.2:
- 3.3.1** the Company shall not be liable for INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL OR OTHER SIMILAR DAMAGES or LOSSES including (but not limited to) loss of profit or revenues, damage for loss of use of the Goods, damage to property, claims of third parties, including personal injury or death on account of a failure of the Buyer to warn against or instruct on, or adequately warn against or instruct on, the dangers of the Goods or the safe and proper use of the Goods (as directed by the Company), whether or not the Company has been advised of the potential for such damages; and
 - 3.3.2** The Company's total liability hereunder from any cause whatsoever, whether arising under contract, warranty, tort (including negligence), strict liability or product liability will be limited to the lesser of the Buyer's actual damages or the Price paid to the Company for the Goods that are the subject of the Buyer's claim. All claims against the Company must be brought within one year after the cause of action arises.

4. QUALITY

- 4.1** The Company warrants that on delivery the Goods shall:
- 4.1.1** conform in all material respects with their description; and
 - 4.1.2** be free from material defects in design, material and workmanship.
- 4.2** The Buyer shall inspect the Goods supplied under this Contract immediately on the delivery thereof and shall, in the case of any allegation of disconformity of the Goods with the type or quality of metal specified in the Order, notify the Company of this within 14 days of delivery. In the case of any other

defects the Buyer shall notify the Company in writing, within three days of delivery, of the alleged defect.

- 4.3** If the Buyer fails to give notice that it rejects the Goods, as provided in clause 4.2, the Buyer shall be deemed to have accepted the Goods and the Goods shall be deemed to be in all respects in accordance with the Contract.
- 4.4** Subject to clause 4.5, if:
- 4.4.1** the Buyer gives notice in writing to the Company pursuant to clause 4.2; and
 - 4.4.2** the Company is given a reasonable opportunity of examining such Goods; and
 - 4.4.3** the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Buyer's cost, the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.
- 4.5** The Company shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 in any of the following events:
- 4.5.1** the Buyer makes any further use of such Goods after giving notice in accordance with clause 4.4;
 - 4.5.2** the defect arises because the Buyer failed to follow the Company'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;
 - 4.5.3** the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer;
 - 4.5.4** the Buyer alters or repairs such Goods without the written consent of the Company;
 - 4.5.5** the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
 - 4.5.6** the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 4.6** Except as provided in this clause 4, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.7** The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.
- 4.8** These Conditions shall apply to any repaired or replacement Goods supplied by the Company.

5. RETENTION OF TITLE

- 5.1** Notwithstanding clause 8 legal and beneficial ownership of Goods sold under this Contract shall remain with the Company until payment in full has been received by the Company:-
- 5.1.1** for those Goods;
 - 5.1.2** for any other Goods supplied by the Company;
 - 5.1.3** for any other monies due from the Buyer to the Company on any account

- 5.2** Until legal and beneficial ownership of Goods passes to the Buyer in accordance with clause 5.1 the Buyer shall:
- 5.2.1** hold the Goods and each of them on a fiduciary basis as bailee for the Company; and
 - 5.2.2** store the Goods (at no cost to the Company) separately from all other Goods in its possession and readily identifiable as the Company's property.
- 5.3**
- 5.3.1** Notwithstanding clause 5.1 the Buyer may (as between it and its customer only) as principal in the ordinary course of its business sell the Goods by bona fide sale at full market value or in the ordinary course of its business use the Goods.
 - 5.3.2** Goods shall be deemed sold or used in the order delivered to the Buyer.
 - 5.3.3** Any resale by the Buyer of Goods in which the legal and beneficial ownership has not passed to the Buyer shall (as between the Company and the Buyer) be made by the Buyer as agent of the Company.
- 5.4**
- 5.4.1** If the Goods in which the legal and beneficial ownership has not passed to the Buyer are mixed with or incorporated into other goods the property in those other goods of the proceeds of sale thereof shall be held on trust by the Buyer for the Company to the full extent of the sums recoverable by the Company under clause 5.1.
 - 5.4.2** The proceeds of sale of any Goods and any other goods referred to in clause 5.4.1 shall be held by the Buyer in trust for the Company to the extent of all sums recoverable by the Company under clause 5.1.
 - 5.4.3** The Buyer shall keep any proceeds of sale as referred to in clause 5.4.2 in a separate account and the Company shall have the right to trace such proceeds (according to the principals in *re Halletts Estate (1880) 13 ch D 696*).
 - 5.4.4** Upon accounting to the Company for the entire proceeds of sales made under clauses 5.3.3 and 5.4.1 above, the Company will pay to the Buyer a commission equivalent to the difference between the sums owed to the Company and the value of such proceeds.
- 5.5** The Buyer assigns to the Company all rights and claims the Buyer may have against its own customers and others in respect of Goods specified in clauses 5.3.3 and 5.4.1
- 5.6** At any time prior to legal and beneficial ownership in Goods passing to the Buyer (whether or not any payment to the Company is then overdue or the Buyer is otherwise in breach of any obligation to the Company) the Company may (without prejudice to any other of its rights):-
- 5.6.1** re-take possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so) which the Buyer hereby authorises;
 - 5.6.2** require delivery up to it of all or any part of the Goods;
 - 5.6.3** terminate the Buyer's authority to resell or use the Goods forthwith by written notice to the Buyer which authority shall automatically terminate (without notice) upon any insolvency of the Buyer or it going into liquidation (as defined in the Insolvency Act 1986) or it having a

receiver or similar appointed or calling a meeting of its creditors or in any execution or distress being levied on goods in its possession.

- 5.7** The Company may at any time appropriate sums received from the Buyer as it thinks fit notwithstanding any purported appropriation by the Buyer.
- 5.8** Each clause and sub clause of this clause is separate, severable and distinct.

6. PAYMENT

- 6.1** Except where there is in existence at the date of the Order a written arrangement by both parties signed on their behalf in the case of the Company by a director of the Company confirming credit terms or otherwise varying terms as to payment upon the Buyer payment of the price of the Goods shall be made in cash within 30 days of delivery of the Goods or within 30 days of the date on which the Company has notified the Buyer that the Goods are ready for delivery and the time mentioned within which the Buyer is to pay the Price shall be of the essence of this Contract.
- 6.2** If the price of the Goods is not paid on the date upon which it became due whether by virtue of clause 6.1 hereof or by virtue of any agreement varying the time during which payment of the price is to be made the following consequences shall ensue:-
- 6.2.1** compound interest shall be payable by the Buyer as well after as before any judgement which may be obtained by the Company in respect thereof on :-
- 6.2.1.1** the price of the Goods; and
- 6.2.1.2** on any other sums which by virtue of clause 6.2.2 and/or 7.6 shall thereupon become due from the Buyer to the Company such interest shall be calculated from the date upon which payment of the price becomes due with half yearly rests at the rate of 3% above the base rate for lending of Barclays Bank Plc from time to time if applicable; and
- 6.2.2** any credit arrangements subsisting between the Buyer and the Company whether in respect of the Goods which are the subject to this Contract or otherwise shall terminate and all and any sums due from the Buyer to the Company on any account whatsoever shall become due and payable forthwith.
- 6.2.3** The Company reserves the right to vary the price of the Goods at any time by notice in writing given by the Company to the Buyer PROVIDED that if any such variation shall increase the price of the Goods by more than 10% the Buyer shall have the option within fourteen days of the giving of the said notice by notice in writing to the Company either to proceed with the Order at the price so varied or to cancel such part of the Order as may be affected by the said variation.
- 6.2.4** Without prejudice to any of the other rights of the Company if the Company is unable to obtain and maintain an insured credit limit on the Buyer then all credit facilities and arrangements will terminate immediately or at the discretion of the Company be reduced to

the limit of credit imposed by the Company's credit insurers upon the Company giving the Buyer notice in writing. The credit limit on the Buyer is available on request.

7. DELIVERY/FORCE MAJEURE/HARDSHIP

- 7.1** Subject to clause 7.2 and 7.3 the Goods shall be delivered by the Company at or despatched for delivery to the place or places and in the manner specified in the Order or as subsequently agreed.
- 7.2** The performance of all contracts is subject to variation or cancellation by the Company owing to any act of God, war, strikes, Governmental regulations or orders, national emergencies, lock-outs, fire, flood, drought, tempest or any other cause (whether or not of a like nature) beyond the control of the Company or owing to any inability to deliver caused by any such contingency or for any loss consequent thereon.
- 7.3** In the event that economic or business conditions or any other unexpected condition or event creates abnormal hardship for the Seller in the performance of terms and conditions of the Contract, it is agreed the parties shall meet to discuss and negotiate amendments to any agreement to alleviate such hardship. If an agreement to amendments is not reached a neutral conciliator, acceptable to both parties, shall be appointed within a term of 15 days. The conciliator shall inform both parties of his/her conclusions within a month. If this is not accepted by both parties the non-breaching party may submit the matter to the Courts.
- 7.4** Unless otherwise specified in the Order the Company shall be deemed to have made a due delivery of the Goods if the Goods are collected by or on behalf of the Buyer or delivered to or collected by a carrier nominated by the Buyer and such delivery shall be deemed to have taken place at the moment when the Goods are received into the possession of the Buyer, his servant, agent, representative or such carrier.
- 7.5** Any claim for damage or partial loss of the goods in transit must be submitted in writing to both the carrier and the Company within three days of delivery. In the case of non delivery of the whole consignment claims must be submitted in writing to both the carrier and the Company within seven days of receipt of the Buyer (or the Buyer's agent) of notification of despatch of the Goods. In the absence of claims within the terms mentioned above the Goods shall be deemed to have been delivered in accordance with the contract.
- 7.6** If for any reason the Buyer is unable to accept delivery of the Goods at the time stated for delivery the Company shall at its discretion and without prejudice to its rights hereunder if its storage facilities permit, store the Goods until their actual delivery and the Buyer shall pay to the Company on the actual delivery of the said Goods in addition to any sum due under clause 6 hereof such sum as it represents the costs (including insurance) and the cost of any abortive deliveries of its so doing. In addition, if the Buyer has not taken delivery of the goods six months after the sales order acknowledgement, the Company has the right to cancel said order, without liability or compensation due to the Buyer, or deliver and invoice the goods to the Buyer.
- 7.7** No delay in delivery shall entitle the Buyer to repudiate or cancel the contract or any deliveries thereunder.
- 7.8**
- 7.8.1** The Company reserves the right to make deliveries and/or services by instalments and to render a separate invoice in respect of each such instalment
- 7.8.2** If the Company exercises its right to make deliveries and/or services in accordance with subparagraph 7.8.1 above then any delay in the provision of such deliveries and/or services, or failure to deliver to deliver any further instalment or instalments shall not entitle the Buyer

to reject the Contract or the delivery/service of any other instalment or to withhold payment in respect of any instalment previously delivered/serviced.

8. RISK

- 8.1** The risk in the Goods shall pass to the Buyer on delivery of the Goods or the release in warehouse of the Goods or the collection of the Goods. Subject to these Conditions, the Buyer shall be liable to insure the Goods and pay all sums due under the Contract from this point, whether or not the Goods are lost, destroyed, damaged or stolen.
- 8.2** Title to the Goods shall not pass to the Buyer until the Company has received payment in full (in cash or cleared funds) for:
- 8.2.1** the Goods; and
 - 8.2.2** any other goods and services that the Company has supplied to the Buyer in respect of which payment has become due;
- 8.3** and until such time the provisions of clause 5 shall apply to the Goods.

9. TERMINATION

- 9.1** This clause applies if:-
- 9.1.1** the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a Company) goes into administration and/or liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
 - 9.1.2** an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
 - 9.1.3** the Buyer ceases, or threatens to cease, to carry on business; or
 - 9.1.4** the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 9.2** If this clause applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to determine the Contract or suspend any further deliveries under the Contract without any liability to the Company, and if the Goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement of arrangement to the contrary.

10. INDEMNITY

- 10.1** When the Goods are made or adapted in accordance with any specification provided by the Buyer, the Buyer shall indemnify the Company against all liabilities, costs, claims, expenses, damages and losses (including any direct, indirect or consequential losses, and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Company in connection with any claim

made against the Company for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Company's use of such specification.

10.2 The Buyer agrees upon demand to indemnify the Company against all liabilities, claims, losses, damages, injury, costs and expenses of whatever nature suffered by the Company to the extent that the same are caused by or related to :-

10.2.1 designs, drawings or specifications given to the Company by the Buyer in respect of Goods produced by the Company for the Buyer; or

10.2.2 defective materials or products supplied by the Buyer to the Company and incorporated by the Company in Goods produced by the Company for the Buyer: or

10.2.3 the improper incorporation, assembly, use, processing, storage or handling of the Goods by the Buyer.

11. GENERAL

11.1 All headings are for ease of reference only and shall not affect the construction of this Contract.

11.2 Any provision of this Contract which is or may be void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable from these Conditions and shall not affect the validity of any other provision of this Contract.

11.3 No waiver, forbearance or indulgence by the Company (whether express or implied) shown or granted to a Buyer, whether in respect of the Conditions or otherwise shall in anyway affect or prejudice the rights of the Company under this Contract or shall prejudice the Company's rights to do so in the future.

11.4 The Company may license or sub-contract all or any part of its rights and obligations under this Contract without the Buyer's consent.

12. JURISDICTION AND ARBITRATION

The Contract shall be governed by and construed in accordance with the laws of England and any difference of dispute arising between the Company and the Buyer shall be subject to the sole and exclusive jurisdiction of the English Courts.

13. BUSINESS REGULATION, MANDATORY LAW AND COMPLIANCE

The Buyer hereby warrants that it will comply (and will procure that all its employees, directors, officers consultants and/or agents will comply) with all laws, regulations or policies relating to economic sanctions, trade sanctions and/or export controls, combating of bribery, corruption and/or money laundering to which either the Buyer and/or the Seller is subject from time to time in force (which laws include but are not limited to the EU and OFAC sanctions regime and the UK Bribery Act 2010). The Seller reserves the right and is entitled to suspend and/or terminate sales to the Buyer immediately if the Seller has reasonable suspicion of Buyer's breach or intention to breach this condition. The Buyer will also indemnify the Seller against any losses, costs, fines or payments which the Seller is required to make as a result of any breach of this clause by the Buyer