



Terms and Conditions of Sale

1. Definitions

- 1.1 "Business Day" means 9am until 5pm on a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
- 1.2 "Buyer" means the person, firm or company to whom the Goods and/or Services are supplied by the Seller.
- 1.3 "Contract" means the contract for the sale by the Seller to the Buyer of Goods and/or Services in accordance with these Conditions.
- 1.4 "Conditions" shall mean these terms and conditions as amended in writing from time to time by the Seller.
- 1.5 "Goods" means the engineering products, fasteners, equipment or other products supplied by the Seller under the Contract.
- 1.6 "Order" means the Buyer's request, instruction or order, whether or not in writing, for the supply of Goods and/or Services.
- 1.7 "Seller" means Clevedon Fasteners Ltd (company number 3859239) with its registered office at 11 Reddicap Trading Estate, Sutton Coldfield, West Midlands B75 7DG, including its trading divisions Clevedon and Clevtec.
- 1.8 "Services" means the services supplied by the Seller to the Buyer under the Contract.

2. Basis of contract

- 2.1 The supply of all Goods and/or Services by the Seller are, unless otherwise agreed in writing by an authorised representative of the Seller, made on these Conditions. These 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, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Buyer to purchase Goods and/or Services in accordance with these Conditions. The Order shall only be deemed to be accepted when the Seller issues written acceptance of the Order at which point and on which date the Contract shall come into existence.
- 2.3 In entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim for breach of any representations and warranties made by or on behalf of the Seller other than those expressly contained in the Conditions.
- 2.4 In the event of any conflict between the Conditions and any written terms contained in any quotation or other documents signed by the Seller which may form part of the Contract then the latter shall prevail.
- 2.5 Any samples, drawings, descriptive matter or advertising issued by the Seller and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Services and/or Goods described in them. They shall not form part of the Contract or have any contractual force.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.7 The Buyer shall not be entitled to cancel the whole or any part of the Contract.

3. Quotations

- 3.1 All quotations issued by the Seller are an invitation to the Buyer to place an order with the Seller for the Goods and/or Services referred to in the quotation. No contract arises until an order from the Buyer has been accepted in writing by the Seller. Without limiting the foregoing, the Seller shall not be liable for withdrawing or altering the terms of its quotation at any time prior to the date of Contract.
- 3.2 Any quotation is valid for a period of 28 days unless a different period is stated in the quotation.



4. **Price**

- 4.1 All prices for Goods are ex-works and unless agreed otherwise in writing in the Contract by the Seller. Unless otherwise set out in the Contract, such prices shall be the Seller's list prices at the date of delivery.
- 4.2 All prices for Services are per person per Business Day unless otherwise agreed in writing in the Contract. In the event that any Services are expressed in the Contract to be provided on a free of charge basis, the Buyer's acceptance of these Conditions shall be deemed valuable consideration for the provision of the Services.
- 4.3 All prices exclude value added tax and any other duties payable thereon and the Seller reserves the right to charge for packaging the Goods.
- 4.4 Any sums paid by the Buyer in advance of delivery of the Goods shall be deemed to be paid as a deposit and without limitation of the Seller's rights shall be forfeited in the event of cancellation of the Contract by the Buyer.

5. **Payment**

- 5.1 The Buyer shall pay the Seller for the Goods and/or Services not later than the **28th** day following the end of the month in which delivery of the Goods and/or Services takes place. The Seller shall issue an invoice for the Goods and/or Services delivered in each month at the end of the relevant month.
- 5.2 The Seller reserves the right at any time to increase or reduce the level of credit given by it to the Buyer. The Seller may at its option refuse the supply of any Goods or Services on order or require immediate payment of outstanding sums due if at any time the credit level of the Buyer is exceeded.
- 5.3 Without prejudice to any other rights of the Seller, the Buyer shall pay to the Seller interest on any overdue amounts at the rate of 4% per annum above the base rate from time to time of Lloyds Bank.

6. **Specifications**

- 6.1 Other than with respect to Goods or Services made specifically to the Buyer's own specifications, all Goods and Services shall meet in all material respect the specifications from time to time published by the Seller who reserves the right to make improvements to the same from time to time without notice in writing to the Buyer.
- 6.2 Where the Goods or Services are made to the Buyer's own specifications, (which expression shall be deemed to include without limitation any samples and drawings) the Buyer shall ensure that such specifications are delivered to the Seller by such date as the Seller may specify and in the event of any defect in the Buyer's specifications the Buyer shall keep the Seller indemnified against losses, costs, claims and expenses incurred by the Seller as a result.
- 6.3 The Buyer represents and warrants that any specifications supplied by it will not infringe any third party rights. The Buyer shall indemnify the Seller against all actions, claims, costs and proceedings which arise due to the manufacture and/or supply of Goods or Services to the Buyer's specification and in such event the Seller reserves the right to terminate its obligations to supply without prejudice to its rights under the Contract.

7. **Delivery of Goods and/or Services**

- 7.1 If agreed in writing by the Seller the Buyer may request deliveries of the Goods and/or Services on a scheduled basis over an agreed period of time. The Buyer shall however remain liable to buy the minimum quantity of Goods and/or Services (if any) specified in the Contract.
- 7.2 The Seller shall use reasonable efforts to meet any delivery date specified for the Goods and/or Services, but each such date is an estimate only and in no event shall the Seller be liable for any inability to meet scheduled delivery dates. Time shall not be of the essence for performance of the Services.
- 7.3 The Seller shall have the right to supply plus or minus 10% of any quantity of Goods ordered where the Goods are in the nature of consumable as opposed to capital Goods and as determined by the Seller. A pro-rata charge at the quoted price will be made to cover any such variations.
- 7.4 Delivery shall be ex works and deemed to be at the Seller's factory except in those cases where the Seller has agreed in writing that the Goods are subject to acceptance testing (which expression



shall include without limitation installation and commissioning of the Goods) at the Buyer's premises, in which instance the delivery shall be deemed to take place when the Goods have been physically delivered to the Buyer's premises as specified in the Contract.

- 7.5 The Buyer may request the Seller to arrange on behalf of the Buyer for onward delivery of the Goods to a destination specified by the Buyer and the Buyer shall indemnify the Seller against all costs incurred including without limitation the transportation costs, insurance and packaging. In no event shall the Seller be liable for any delays in arranging such transportation and insurance nor for the risks and level of cover arranged by the Seller.
- 7.6 In those cases where the Goods are subject to acceptance testing at the Buyer's premises as contemplated in Clause 7.4 above then unless otherwise stated by the Seller the Buyer shall:
 - 7.6.1 ensure that the delivery site shall be level, clean and of adequate strength to support the Goods;
 - 7.6.2 provide suitable access to the Seller and his agents to enable the acceptance testing to be carried out;
 - 7.6.3 provide all necessary labour at its own risk and cost to unload the Goods and handle the same and shall keep the Seller fully indemnified against all damage caused to the Goods pending delivery;
 - 7.6.4 provide facilities for the storage of plant and materials necessary for carrying out the work (including the free use of adequate lighting water and electricity); provide all building joinery masonry electrical and plumbing work (as required by the Seller) to enable it to carry out the acceptance tests.
- 7.7 Until the acceptance tests have been fulfilled the provisions of Clause 7.6 shall continue in force and in addition the Seller shall be entitled at its own risk and cost to remove the Goods to carry out any remedial or other works of repair or modification that the Seller shall deem to be appropriate.
- 7.8 The acceptance tests to be carried out shall, unless otherwise agreed in writing by the Seller, be those considered by the Seller in its own discretion to be sufficient to demonstrate to the Buyer that the Goods conform to the specifications contained in the Contract.
- 7.9 Where acceptance tests are to be carried out other than at the Buyer's premises then the Seller shall give the Buyer not less than four days written notice specifying the date, time and place where the tests are to be carried out and in the event the Buyer is not in attendance at the specified time and place then the Seller may carry out the tests and its decision shall be final and binding as to whether or not the Goods meet the requirements of the tests.

8. Services

- 8.1 The Seller warrants to the Buyer that the Services will be provided using reasonable care and skill, however the Services are provided on an advisory basis only.
- 8.2 The Buyer shall:
 - 8.2.1 co-operate with the Seller in all matters relating to the Services;
 - 8.2.2 provide the Seller, its employees, agents, consultants and subcontractors, with access to the Buyer's premises, office accommodation and other facilities as reasonably required by the Seller to provide the Services;
 - 8.2.3 provide the Seller with such information and materials as the Seller may reasonably require in order to supply the Services, and ensure that such information is complete and accurate in all material respects;
 - 8.2.4 comply with all applicable laws, including health and safety laws; and
 - 8.2.5 keep all materials, equipment, documents and other property of the Seller ("Seller Materials") at the Buyer's premises in safe custody at its own risk, maintain the Seller Materials in good condition until returned to the Seller, and not dispose of or use the Seller Materials other than in accordance with the Seller's written instructions or authorisation.
- 8.3 If the Seller's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation ("Buyer Default"):
 - 8.3.1 without limiting or affecting any other right or remedy available to it, the Seller shall have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays the Seller's performance of any of its obligations;
 - 8.3.2 the Seller shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Seller's failure or delay to perform any of its obligations; and
 - 8.3.3 the Buyer shall reimburse the Seller on written demand for any costs or losses sustained or incurred



by the Seller arising directly or indirectly from the Buyer Default.

9. Risk and Title

- 9.1 The risk in Goods shall pass to the Buyer on delivery.
- 9.2 The title in Goods shall not pass to the Buyer until the Seller has received payment in full for the Goods. Until payment in full has been received the Buyer shall be in possession of the Goods in a fiduciary capacity as a bailee for the Seller, shall keep the goods in good condition and insured against all risks to their full replacement value, and shall store the Goods in such a manner to enable them to be clearly identified as the property of the Seller.
- 9.3 Until the Goods have been paid for in full the Buyer is granted a licence to use the Goods (but this licence shall terminate immediately prior to the appointment of a receiver or equivalent over any of the Buyer's assets or upon its liquidation) but on the strict condition that the Buyer shall hold as nominee for the Seller and place in a separate bank account and hold in trust for the Seller absolutely such amount of the proceeds of sale of Goods as equates to the amount owed to the Seller for the relevant Goods.
- 9.4 Until title has passed in and to the Goods the Buyer grants the Seller an irrevocable licence to enter upon any premises of the Buyer where the Goods are situated for the purposes of repossessing them at any time and without further notice.

10. Intellectual Property Rights

- 10.1 All intellectual property rights of whatever nature in the Goods and Services and any deliverables resulting therefrom, including all drawings, specifications and documents, at all times remain vested in the Seller. No authority is given under the Contract for the Buyer to use the same without the Seller's prior express written consent.

11. Loss Or Damage In Transit

- 11.1 No responsibility can be accepted by the Seller for damaged Goods or short delivery where the carriers have been given a clean receipt.
- 11.2 Any damage or short delivery must be notified to the Seller in writing within three days of the date of delivery. Such notifications shall specify the items missing or damaged and the nature of any damage.
- 11.3 Any claim for non delivery of the Goods must be made in writing within fourteen days from the date of the advice note or other notification of despatch.

12. Limitation of Liability

- 12.1 Unless otherwise expressly agreed in writing all conditions, guarantees, warranties, representations whether express or implied by statute, common law or otherwise are hereby excluded.
- 12.2 The Seller's liability for any and all loss or damage from defects in the Goods or any other cause including without limitation any breach of the terms of the Contract and negligence shall be limited to the purchase price of the Goods in respect of which the claim arises, although the Seller may at its option agree to replace the Goods and in no event shall the Seller be liable for any delays in meeting specified delivery dates.
- 12.3 The Seller's liability for any and all loss or damage from defects in the Services or any other cause including without limitation any breach of the terms of the Contract and negligence shall be limited to the purchase price of the Services in respect of which the claim arises, although the Seller may at its option agree to re-perform the Services and in no event shall the Seller be liable for any delays in meeting specified delivery dates.
- 12.4 For the avoidance of doubt, any Services provided by the Seller are advisory only. The Buyer should conduct its own due diligence before taking any course of action in reliance on the Services. The Seller accepts no liability for the consequences of any actions taken by the Buyer in reliance on the Services.
- 12.5 In no event will the Seller be liable for any indirect or consequential losses suffered by the Buyer, including without limitation any loss of profit, loss of sales or business, loss of agreements or contracts, loss of or damage to goodwill or additional costs suffered by the Buyer in purchasing goods or services similar to the Goods or Services or for any damages caused to the Buyer by defective design or performance.



- 12.6 The Seller shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal use, failure to follow the Seller's instructions, misuse or alteration or repair of the Goods without the Seller's prior written approval.
- 12.7 In no event will the Seller be liable for any (a) defects in the Goods not notified to it within six months of the date of delivery of the Goods, or (b) defects in the Services not notified to it within three months of the date of completion of the relevant Services or part thereof.
- 12.8 The Seller shall not be liable in any event under the Contract for any delay or failure in performing its obligations under the Contract if such failure or delay is caused or contributed to by any happening or event beyond its reasonable control including without limitation trade disputes, machinery breakdown, accident or failure of supplies.
- 12.9 Notwithstanding anything to the contrary contained in these Conditions or the Contract and without prejudice to the rights of the Seller, if the Goods satisfy acceptance tests then the Goods shall be deemed to meet fully the agreed specifications.
- 12.10 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, or (b) fraud or fraudulent misrepresentation.
- 13. Confidentiality**
- 13.1 Each party undertakes that it shall not at any time during the Contract, and for a period of five years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 13.2.
- 13.2 Each party may disclose the other party's confidential information:
- 13.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 13; and
- 13.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.
- 14. Hire of Goods**
- 14.1 These Terms and Conditions shall apply equally where Goods are hired out by the Seller and references to the Seller and Buyer herein shall where the context admits be construed accordingly.
- 15. Entire Agreement and Applicable Law**
- 15.1 The Contract forms the entire agreement between the parties.
- 15.2 The Contract shall be governed by the Laws of England and the Buyer and the Seller submit to the exclusive jurisdiction of the English Courts for such purposes.