

Tomrods Ltd Terms and Conditions of Sale

In these Terms and Conditions the expression "we" or "us" shall mean Tomrods Ltd (registered number 1137143) or its successors in title or any subsidiary company thereof.

"You" means the person, firm, company or corporation purchasing the goods or services.

- 1.1 These Conditions shall apply to all contracts for the sale of goods and/or services by us to you to the exclusion of all other terms and conditions including any terms and conditions which you may purport to apply under any purchase order confirmation or similar document.
- 1.2 Any variation to these terms and conditions (including any special Terms and Conditions agreed between the parties) shall be inapplicable unless agreed in writing signed by our duly authorised representative.
- 1.3 Acceptance of delivery of goods shall be conclusive evidence of your acceptance of these terms and conditions.

Delivery

- 2.1 Delivery dates and times quoted by us are given in good faith but are estimates, and their observance shall not be of the essence of the agreement. We shall not be liable for any loss or damage whatsoever due to delivery of the goods or services upon a different date or the expiry of any delivery period referred to in any agreement, quotation or other document.
- 2.2 You will ensure the provision of fully and adequate access where delivery is to take place and that a suitable area for the delivery vehicle is provided.
- 2.3 You should be responsible for unloading the goods which must be effected by your own labour force and lifting tackle. If our driver does assist or undertake unloading he shall be deemed to be your agent and any unloading shall be done under your supervision including the use of any on-board crane.
- 2.4 Part delivery shall be deemed to be a separate contract. Failure by us to deliver any instalment of goods shall not entitle you to cancel or suspend performance of the contract or any such instalments or contracts. We reserve the right to make deliveries in instalments whether or not so ordered.
- 2.5 Where delivery is postponed or is abortive other than due to default by us we shall be entitled to charge for abortive delivery costs, storage and any other associated or resultant costs.
- 2.6 Delivery notes must be signed on receipt of the goods by you or your employee and such signature will be conclusive proof of delivery of the goods to which the note refers.

Conditions Applicable

- 3.1 We only sell or supply goods and services on these conditions, which apply to all contracts with us to you to the exclusion of all other terms and conditions, including any terms and conditions which you may purport to apply under any purchase order, confirmation or order or similar document.
- 3.2 All orders for goods or services shall be deemed to be an offer by you to purchase goods or services pursuant to these conditions.

- 3.3 Acceptance of delivery of any goods shall be deemed conclusive evidence of your acceptance of these conditions.
- 3.4 Any variation to these conditions are only applicable if agreed in writing, signed by our duly authorised representative.

Acceptance

- 4.1 All quotations are estimates without commitment and any order placed is not binding on us (expressly or applied) until accepted by us.

Prices

- 5.1 All prices quoted are exclusive of VAT which will be added at the appropriate rate.
- 5.2 All prices listed or quoted by us are based on costs prevailing at the time when those prices are published or otherwise stated. We shall be entitled to adjust the price payable by you on delivery to reflect such additional amount as may be necessary to take account of any increase in costs (whether direct or indirectly) involving creating, acquiring, handling or supplying of the goods where such costs have increased after accepted the order.
- 5.3 In addition to the sum quoted, you shall be responsible for
- 5.3.1 all duties, taxes and any other costs of importation and of obtaining any licences relevant to the sale and delivery of and payment for goods (delivery being subject to you obtaining all such licences).
 - 5.3.2 a standard handling charge for each order placed at a rate of £24 or such other sums as we may from time to time notify you as the standard handling charge.
 - 5.3.3 such additional charge incurred by us over and above those that we reasonably expected to incur when the price was quoted, including but not limited to those occasioned by
 - a) your request for delivery outside our normal delivery pattern or trading hours or by instalments.
 - b) your failure to take or accept delivery.
 - c) if our vehicles or a third party delivery vehicle is kept waiting for an unreasonable time
- 5.4 If we quote a price per weight as opposed to a lump sum price or a price per bar, the price quoted is either the weighed weight or the calculated weight based on the size of the steel supplied at its maximum tolerances as contained in the appropriate British Standard and, in any event, delivery to you of a weight or quantity of goods up to 10% less than or greater than that which we have agreed to sell shall under no circumstances be a breach of contract by us or entitle you to reject goods delivered.

Payment

- 6.1 Unless you have an approved credit account with us, all goods must be paid for prior to delivery. If you wish to open a credit account with us you must submit a completed Credit Account Application in the form provided by us for consideration. All parts of the form are to be completed. We may give credit entirely at our discretion and may refuse or withdraw credit without specifying any reason.
- 6.2 If credit is given the following provisions apply:

- 6.2.1 Payment must be made in full on or before the last day of the calendar month following the month of delivery.
- 6.2.2 You shall not be entitled to hold payment of any amount to us because of any disputed claim with you in respect of defective goods or other alleged breach of contract, nor shall you be entitled to set-off against the amount payable under the contract of any monies by way of cross claims, set-off or for other deduction whatsoever.
- 6.2.3 Payment to us shall not in any circumstances be any payments due from a third party.
- 6.3 If payment is not made within the period specified above, interest is payable whether demanded or not on a daily basis at the hire of 4% over the base rate from time to time at HSBC Bank Plc or the rate specified under the Late Payment of Commercial Debts (Interest) Act 1998 or any amendment thereto from the date of invoice until payment.

Title and Risk

- 7.1 Risk in the goods supplied by us shall pass to you when they are delivered to you or are taken into your custody or held on your behalf.
- 7.2 Full legal and equitable property in the goods supplied shall remain with us until you pay to us all sums due to us at the time of payment, whether those sums are due in respect of this agreement or otherwise.
- 7.3 Until legal and equitable property in such goods have passed to us in accordance with clause 7.2 above
 - 7.3.1 You shall hold such goods as the fiduciary agent and bailee of us.
 - 7.3.2 You shall record and store the goods separately from all other goods in a manner immediately identifiable by us and shall procure that such goods are thus recorded and stored when they are in the possession of third parties.
 - 7.3.3 You shall not seek to change or otherwise interfere with any identification marks, labels, batch numbers or serial numbers on such goods.
 - 7.3.4 You may, in the ordinary course of your business, use or agree to sell the goods as principal and not as an agent of us but on the sole condition that the entire proceeds of any sale or insurance proceeds received by you in respect of the goods are:
 - 7.3.4.1 Are held by you on trust for us and we are the primary beneficiary in respect of all sums owing to us from time to time.
 - 7.3.4.2 Are not mixed with any other monies are not paid into any overdrawn bank account.
 - 7.3.4.3 Shall at all times be both identified and identifiable as, and available to us, a fund from which your liabilities to us, whether due in respect of this agreement or otherwise, can at the sole discretion of us be discharged.
- 7.4 We retain the immediate right to possession of the goods and shall be entitled at any time to recover possession of any or all of the goods that are in or under our possession, custody or control, and may for that purpose (acting for through employees or agents where we consider that appropriate and using such transport as

we consider necessary) enter upon any premises occupied by you or to which you have access and in which we believe the goods are situated.

Performance

- 8.1 We may suspend or cancel the whole or part of this agreement if by any reason of circumstances beyond our control (including but without limitation to the foregoing, strike, lockout, dispute, damage to or loss of failure of machinery, insufficient supply of electricity, gas, oil or water, fire, mobilisation, wall blockade, act of God, adverse weather problems with storage, carriage or shipping facilities) either we are prevented or hindered from performing our obligations or performance of those obligations is to a substantial degree rendered difficult. If we exercise our right of suspension, you may within 7 days cancel any remaining part of the contract conditionally on you paying expenses incurred to date and our fair charges. We shall have no liability for any such suspension and on any such calculation whether by us or by you our liability (if any) is limited to repayment of any part of the price received less our fair charges and expenses already incurred by us.
- 8.2 We do not supply goods or undertake work on approval and goods are not returnable except with our expressed written agreement
- 8.3 We reserve the right to deliver and charge for goods within the normal tolerances as to weight, dimensions, quality, quantity and finish.

Claims

- 9.1 At the time of sale or delivery you will satisfy yourself that the goods comply with the contract and will inspect them for apparent defects and damage. You will thereupon sign over acceptance or delivery note and endorse thereon a note of any deficiency, defect or damage found. Such note duly signed shall be conclusive evidence against you the goods are correct and free from apparent defects and damage except as so endorsed. If you refuse or neglect to sign such note, it will be deemed to have been signed without endorsement.
- 9.2 Without prejudice to 7.1, 7.2 and 9.1 above, we shall (subject to our consigning correct goods for delivery) have no liability arising out of non-delivery, shortage in delivery, deterioration or damage in transit but we will (but only in respect of goods delivered or intended for delivery in or in transit in the United Kingdom) where the appropriate claim is received by us in writing within the appropriate period specified below or, in the case of transit of goods by carrier, such shorter period (known or which should reasonably be known to you) as the relevant carrier may lawfully require as conditions of its liability assist any claim you may have against the carrier. The period referred to shall be 7 days from the date you receive our notification of despatch in the case of non-delivery and 3 days from the date of delivery in the case of shortage in delivery, deterioration, damages or any defect or other breach of contract or any defect not apparent from the inspection referred to in 9.1 above.

Specifications

- 10.1 Except where we specifically otherwise agree in writing, the selection and choice of our goods and the assessment of our goods suitability and fitness for your purpose is your sole responsibility. You must satisfy yourself that the goods are suitable for any product or application for which they are to be used or incorporated into such product or application.
- 10.2 Any specifications, formulations, data, literature and statements as to content, suitability, performance or otherwise, issued and descriptions and samples given, by

us in connection with our goods are offered in good faith but are intended to be approximate only and shall not be deemed to constitute representations.

- 10.3 Goods are supplied on condition that you undertake at all times to take and comply with (and to draw to third parties' attention and require them to take and comply with) all instructions and recommendations issued with or contained on or relating to the goods or our relevant data sheets, and all reasonable and prudent precautions, as to installation, use maintenance cleaning and otherwise.
- 10.4 The copyright of our designs, data sheets, packaging and literature shall remain our property and no licence thereunder (except as to the use which the goods are supplied) shall be implied.
- 10.5 Any goods sold or described by us as "non-prime" or "untested" or "random lengths RLS" or "miscellaneous" or any similar descriptions are sold in the actual state, as seen, without warranty and with all faults whether or not the goods have been inspected by you prior to delivery. If you re-sell such goods you shall ensure that a provision in a similar form to this is incorporated in the re-sale agreement unless prior to re-selling the goods, you cause the goods or such part of the goods you are re-selling to comply with a recognised specification or standard.

Services

11. If we are to process, cut, drill or perform any service on goods supplied by you or purchased by you from us the following conditions apply:-
 - 11.1 You must supply, at your own risk, a material list, drawings information and electronic information.
 - 11.2 Electronic information must be in the form of an NC or DST format that is compatible with our ProNC software. We do not accept CAD (Computer Aided Design) files.
 - 11.3 If any drawings are undertaken by us they are subject to your approval and are at your own risk. No processing will be undertaken without such prior approval.
 - 11.4 No warranty is given as to the use or suitability of the goods upon which the service has been carried out for any purpose and we are not responsible for any error or omission in drawings or other information provided by you.
 - 11.5 You are liable for payment in full for any service and the service provided by us cannot be cancelled after the commencement of the service by us. Any revision to the service required prior to the commencement of that service must be accompanied by all relevant material list, drawings information and electronic information as set out above.
 - 11.6 Title to products supplied by you remains with you.
 - 11.7 We may exercise a lien over any of your products in our possession until such time as we have received in full all amounts due to us under the present contract or all other sums due to us from you.
 - 11.8 If after a period of two months such sums as set out in paragraph 11.5 remain outstanding we may sell any products over which we have exercised a lien after giving you 7 days notice of such sale.

Warranties

- 12.1 Except where we specifically otherwise agree in writing any condition, warranty or undertaking as to the quality of the goods or services supplied or suitability for any purpose however or whenever expressed or which may be implied by custom or trade is hereby excluded except if such exclusion is prevented by law.
- 12.2 Without prejudice to the foregoing nothing contained in any British Standard, National edition of a European Standard, ISO Standard or other standard or technical specification as to the suitability of the goods or services for any purpose shall give rise to any legal liability of us except to the extent such exclusion is prevented by law. You must satisfy yourself that the goods are suitable for any product or application for which they are to be used before the goods are incorporated in to such products or application.

Remedies

- 13.1 Subject to clauses 7, 8, 9 and 10 hereof if the goods supplied by us do not comply with your written specifications notified to us at the time that your order is placed in writing and such specifications are accepted by us and if the conditions set out below are each satisfied we shall replace free of charge any goods, which we shall find upon examination (for which you will provide full facilities) not to comply with such specifications. The said conditions (each of which must be fulfilled before any warranty claim can arise) are:
- 13.1.1 The claim is made by you as our original customer and for your benefit.
- 13.1.2 The claim is notified (in detail) in writing to us within 3 days from the date of delivery.
- 13.1.3 The goods have not in any way been altered or modified and are in the same condition as at the date of delivery.

Limitations of Liabilities and Indemnities

- 14.1 Nothing in these conditions shall apply to exclude or restrict liability that cannot be excluded or restricted by law.
- 14.2 The remedy set out in paragraph 13 above are given in lieu of any legal remedy that you may have (where in contract, tort or otherwise) and shall be your sole remedy in respect of goods being defective or otherwise not in compliance with the contract.
- 14.3 Subject to 14.1 and without prejudice to 14.2 save for the remedies set out above where loss or damage arises from breach of contract, negligence, misrepresentation or otherwise neither we nor our employees or agents shall be under any liability to you or to any third parties:
- 14.3.1 for any loss of profit or consequential loss, damage or expense whatsoever incurred or suffered by you howsoever such loss damage or expense may have been caused

- 14.3.2 or to any extent greater than the cover available to us under our policy or policies of insurance.
- 14.4 Without prejudice to the above we shall in no circumstances be liable to you or to third parties for any loss or damage arising directly or indirectly from failure to perform or delay in performing any obligation by reason of circumstances beyond our control or from delay in delivery of completion.
- 14.5 You agree to indemnify us and our employees and agents and hold them harmless from any and all claims, demands by any third party relating in any way to goods supplied by us or services rendered and from any infringement of any patent trade mark or tradename, copyright and the like or from any latent or hidden defects in the quality of the said goods or resulting products or from the dangerous condition thereof and you shall pay any costs, fees (including reasonable lawyers fees) and expenses, judgment awards and fines for an on behalf of us as incurred or as they become due.
- 14.6 Our pricing structure is based upon these limitations of liabilities and indemnities and you are advised to consider obtaining insurance cover for any claims for which we are (pursuant to this condition or otherwise) not liable and for any indemnity liability, which may arise under this condition.

Suspension and Termination

- 15.1 We may terminate the contract, without liability to ourself and treat you in breach of contract in the following circumstances whereupon all credit is withdrawn and any monies owed to us for this or any other contract are immediately payable:-
- 15.1.1 Where you cease to pay your debts as they become due in the ordinary course of business.
- 15.1.2 Where you exceed your credit limit.
- 15.1.3 Where you are in breach of the terms of this contract or any other contract with us.
- 15.1.4 Where a winding up petition is presented other than for bona fide purposes of amalgamation, reconstruction or as a resolution to wind up the company is passed.
- 15.1.5 Where you have a receiver or administrator appointed for the whole or part of your assets.
- 15.1.6 Where any judgment remains unsatisfied.

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- 16.1 Your attention is drawn to the Privacy Notice on our website

- 16.2 We are the data processor of any personal data provided by you under this Agreement.
- 16.3 The nature and purpose of the personal data being processed by us are to enable us to provide you with the goods or services set out in this Agreement.
- 16.4 Your personal data including your name address, email address, financial information, credit card and or banking details will be stored on our computer system.
- 16.5 Subject to obligations under data protection legislation you, under the terms of this agreement, give us written authorisation to share information with our professional advisers, waste collections agents, IT consultants, experts, subcontractors, advisors and any third party necessary to enable us to fulfil our obligations under this agreement.
- 16.6 We will store our personal data for a period of [6] years or such long a period as may be required by us after which your personal data will be destroyed.
- 16.7 You have a right to access to rectification of erasure of data and to object and request the restriction of processing any data portability subject to our legal obligations.
- 16.8 A subject access request can be made to our registered office for the attention of the Data Controller.

Interpretation

- 17.1 These conditions shall be interpreted without reference to their headings.
- 17.2 The contract shall be governed by English Law, and you shall submit to the exclusive jurisdiction of the English Courts.
- 17.3 If any of these provisions held by a court of law shall be invalid shall be severable and shall to the extent necessary to prevent such invalidity be deemed to be omitted from these conditions.
- 17.4 The waiver of any breach of any of these conditions or the non-enforcement of any of these conditions shall not prevent the subsequent enforcement of that condition or the exercise of any right arising from that breach and shall not be deemed a waiver of any subsequent breach.