

TOMRODS LTD.

TERMS AND CONDITIONS OF SALE

1. We only sell or supply goods on these conditions, which in the case of conflict shall override any terms or conditions imposed by you and which can only be varied in writing signed by our duly authorised representative. Each sale contract between you and us is herein referred to as “the contract”.

2. Acceptance

Our quotations are estimates and are without commitment and any order placed is not binding on us unless (expressly or impliedly) accepted.

3. Prices

3.1. We shall be free to increase quoted prices (whether accepted or not) to cover variations in cost to us of materials, manufacture, carriage and insurance when variations in such costs arise between the date of the quotation and the date of completion of the contract. Prices are exclusive of value added tax.

3.2. If we quote a price per tonne as opposed to a lump sum price or price per bar for an order the price quoted is either the weighed weight or the calculated weight based on the size of steel supplied at its maximum tolerances as contained in the appropriate British Standard.

3.3. You shall be exclusively responsible for the payment of all duties, taxes and any other costs of importation and of obtaining all licences relevant to the sale and delivery of and payment for the goods (delivery being subject to you obtaining all such licences).

3.3.1. In addition to the quoted price you will be responsible for a standard handling charge for each order placed at a rate of £24.00 or such other sum as may from time to time be notified by us as the standard handling charge.

3.3.2. We reserve the right to charge a reasonable sum for any delivery in addition to our standard handling charge.

4. Payment

4.1. 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 form for consideration by us. 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.

4.2. If credit is given the following provisions apply:

4.2.1. Payment must be made in full on or before the last day of the calendar month following the month of delivery.

4.2.2. You shall not be entitled to withhold payment of any amount to us because of any disputed claim with you in respect of defective goods or any other alleged breach of contract nor shall you be entitled to set off against the amount payable under the contract any monies by way of cross claim set off or for other deduction whatsoever.

4.2.3. Payment to us shall not in any circumstances be dependent upon payments to you from any third party.

4.3. If payment is not made within the periods specified above interest is payable whether demanded or not on a daily basis at the higher of 4% over sterling base rate from time to time at HSBC Bank Plc. or the statutory rate of interest under the Senior Courts Act 1981 the rate specified under the Late Payment of Commercial Debts (Interest) Act 1998 or any amendment thereto from the date of the invoice until payment.

5. Performance

5.1. Although we shall endeavour (subject to 5.2 below) to meet delivery or completion requirements we shall be under no obligation to deliver goods or supply services by any specified date. Delivery and completion dates quoted by us or included in the contract are given in good faith but are estimates only and without engagement.

5.2. We shall suspend or cancel the whole or any part of the contract if by any reason of circumstances beyond our control (including but without limitation to the foregoing, strike, lockout dispute, damage to or loss or failure of machinery, insufficient supply of electricity, gas, oil or water, fire, mobilisation, war, blockade, act of God, adverse weather problems with storage, carriage or shipping facilities) either we are prevented or hindered from performing our obligation of 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 your 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 any expenses already incurred by us.

5.3. On delivery of the goods to your designated premises you shall be responsible for unloading the goods, which must be effected by your own labour force and lifting tackle. If our driver shall assist or undertake unloading he shall be deemed to be your agent and any unloading done shall be under your supervision.

5.4. Part deliveries shall be deemed to be separate contracts. 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 to you in instalments whether or not so ordered.

5.5. Without prejudice to any other right we may have we shall be entitled to charge for abortive delivery costs, storage and associated costs should you be unavailable for or refuse or defer delivery.

5.6. We do not supply goods or undertake work on approval and goods are not returnable except with our express written agreement.

5.7. We reserve the right to deliver and charge for goods within the normal mill tolerances as to weight, dimensions, quality, quantity and finish.

6. Title and Risk

6.1. Title to goods supplied by us remains vested in us until the purchase price and all other monies owing by you in relation to the goods subject to this contract; and all other goods the subject of any other contract between you and us or the price (whether or not due) are paid in full.

- 6.2. In addition and without prejudice to 6.1 above title to goods supplied by us remains vested in us until such time as there are no monies owing by you to us on any account (whether or not due).
- 6.3. Until full payment has been received by us, you shall hold the goods in a fiduciary capacity for us in a manner, which enables them to be identified as the goods of ours and you shall immediately return the goods to us should our authorised representative so request. All the normal incidents associated with a fiduciary relationship shall apply.
- 6.4. Your right to possession of the goods shall cease if you do anything or fail to do anything, which would entitle an administrator or administrative receiver to take possession of any assets or would entitle any person to present a petition for winding up.
- 6.5. Pending title passing such goods shall be held at your risk immediately on delivery to you or into custody on your behalf and shall be kept separate and insured to their full value by you and in all respects held by you as bailee for us. We shall be entitled at any time to inspect and/or to repossess our goods and you will allow and procure for us any necessary access therefor.
- 6.6. You are licensed by us to possess the said goods but in doing so you confirm a bailment for processing relationship with us. The new product or products or any chattel created shall be separately stored and marked so as to be identifiable as the property of us as bailor.
- 6.7. You grant us an irrevocable licence to enter at any time any vehicles or premises owned or occupied by you or in your possession for the purpose of repossessing and removing any such goods the property in which has remained in us under paragraph 2 hereof. We shall not be responsible for and you will indemnify us against liability in respect of damage caused to such vehicles or premises in such repossession and removal being damage it was not reasonably practicable to avoid.
- 6.8. In the case of goods ordered by you for the purpose of incorporation in the normal course of your trading either in your manufacturing process or into property of a third party you shall notwithstanding that the goods have remained our property, have liberty (for so long as we shall not have repossessed or given you notice of our intention to repossess the goods and as no event conferring a right of termination under 11 below shall have occurred) to use such goods in good faith for either such purpose and (notwithstanding the foregoing) title shall pass to you immediately prior to the goods being incorporated (so as to be incapable of severance) either in such a manufacturing process or into such property as the case may be. In the case of other goods you shall while the goods remain our property not dispose or permit any disposal of them.
- 6.9. If any of the material supplied is incorporated in or used as material for other goods before payment, the property in the whole of such goods shall be and remain with us until such payment has been made. Any sale of such goods shall take place upon commission agency terms. We as Principal shall remunerate the Customer as Commission Agent a commission depending upon the surplus, which the Commission Agent can obtain over and above the price, which will satisfy the Principal.
- 6.10. Where property in such goods has not passed we may nevertheless maintain an action against you for the purchase price and all other monies owing by you in relation to the goods notwithstanding Section 49 of the Sale of Goods Act 1979.

- 6.11. The risk of any loss, deterioration or damage shall nevertheless be borne by you from the moment of appropriation of goods to the contract except to such extent (if any) as we have to benefit the insurance against the risk.
- 6.12. If we store, transport or work on any goods or other property (including goods about to be delivered by us or goods intended for incorporation in or on contract goods or services) belonging to you or any third party we do so at your sole risk and (except as provided in these conditions) we shall have no liability to you or to any other party for loss deterioration or damage to such goods or other property howsoever arising and whether by negligence or otherwise.
- 6.13. Notwithstanding paragraph 3 hereof, you shall be permitted to sell the goods to third parties in the normal course of business. In this respect you shall act in the capacity of a Commission Agent and the proceeds of any such sale shall be held in trust for us in a manner, which enables proceeds to be identified as such. We as Principal shall remunerate you as Commission Agent a commission depending upon the surplus, which the Commission Agent can obtain over and above the sum, stipulated under the original contract of supply, which will satisfy the Principal.

7. Claims

- 7.1. 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.
- 7.2. If you allege there is a shortage in delivery you must arrange for the goods and vehicle on which they were delivered to be weighed at a public weighbridge within three hours of delivery of the goods at your designated premises. You must attach the weighbridge ticket showing the weight of the goods delivered to the delivery notice. You shall bear all costs and expenses in connection with weighing the goods.
- 7.3. Without prejudice to 6.12, 6.13, 7.1 and 7.2 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 14 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 or damage in transit.

8. Specifications

- 8.1 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.
- 8.2 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.
- 8.3 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.
- 8.4 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.
- 8.5 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.

9. Warranties

- 9.1 We warrant subject to the limitations set out in 3.2, 5.2, 5.4, 5.7 and 8.2 that if the goods supplied by us do not comply with your written specifications notified to us at the time that your order is placed (any verbal order must be confirmed 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:
 - 9.1.1. The claim is made by you as our original customer and for your benefit.
 - 9.1.2. The claim is notified (in detail) in writing to us within 3 days from the date of delivery.
 - 9.1.3. The goods have not in any way been altered or modified and are in the same condition as at the date of delivery.
- 9.2 Except where we specifically otherwise agree in writing we offer no (and shall have no liability under any) warranty or condition (express or implied) in respect of goods, materials or services of our suppliers or sub-contractors and any condition warranty statement or undertaking as to the quality of goods, their fitness or suitability for any purpose excluded.

9.3 Without prejudice to the foregoing hereof, nothing contained in any British Standard, Euronorm or any other standard or technical specification whether local, national or international in relation to the quality specification or suitability of the goods for any purpose should give rise to any legal liability unless such specification is incorporated in the manner set out in 9.1 hereof.

10. Limitations of Liabilities and Indemnities

10.1 Nothing in these conditions shall apply to exclude or restrict liability that cannot be excluded or restricted under statute.

10.2 Subject to 10.1 above where loss or damage arises from breach of contract, negligence, misrepresentation or otherwise neither we nor our employees or agents (on whose behalf we contract for the purposes of this condition 10) shall be under any liability to you or to third parties:

10.2.1. For any loss of profit or consequential loss or damage however arising.

10.2.2. Or to any extent greater or other than the cover available to us under our policy or policies of insurance.

10.3 Without prejudice to 5.1 and 5.2 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.

10.4 You shall indemnify us and our employees and agents against all third party claims relating in any way to goods supplied by us or arising from breach of or negligence in connection with the contract to the extent that there are no proceeds of our public and product liability insurances available (after meeting any liability to you covered thereby) to meet such claims.

10.5 In relation to the sale of goods sold or described as “non-prime” or “untested” or “random lengths (RLS)” or “miscellaneous” or with a similar description you shall also indemnify us against all claims made against us and all losses, liabilities, costs and expenses consequent thereon, which arise out of loss or damage to property or injury to or death of any person caused or alleged to be caused or consequent upon the supply of a product (as defined in Section 1 of the Consumer Protection Act 1987) to you or to any third party if the goods are resold by you. This also applies to sales of goods, which have a component or components or include or otherwise manufactured from any “non-prime”, “untested”, “random lengths (RLS)” or “miscellaneous” or similar described goods supplied by us whether or not such claim is made pursuant to or in accordance with the directive of the Council of European Communities dated 25th July 1985 (number 85/374/EEC).

10.6 Our pricing structure is based upon these limitations of liabilities and indemnities and you are advised to consider yourself 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.

11. Supervision and Termination

11.1 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:

- 11.1.1. Where you cease to pay your debts as these become due in the ordinary course of business.
- 11.1.2. Where you exceed your credit limit.
- 11.1.3. Where you are in breach of the terms of this contract or any other contract with us.
- 11.1.4. 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.
- 11.1.5. Where you have a receiver or administrator appointed for the whole or part of your assets.
- 11.1.6. Where any judgment remains unsatisfied.
- 11.1.7. Where in the case of an individual you or one of your partners are made bankrupt or make arrangements with your creditors.
- 11.1.8. Where we have reasonable cause to expect that all or any of the above are likely to occur or an event analogous to the above occurs.

12. Assignment

You may not assign the contract or any rights thereunder without our prior written consent.

13. Interpretation

- 13.1. These conditions shall be interpreted without reference to their headings.
- 13.2. The contract is deemed to be made at Thirsk and shall be governed by English Law, and you shall submit to the exclusive jurisdiction of the English Courts.
- 13.3. The Uniform Law on International Sales shall not apply to the contract.
- 13.4. The provision of these conditions held by a court of law to be invalid shall be severable and shall to the extent necessary to prevent such invalidity be deemed to be omitted from these conditions and any liability, which would otherwise have been excluded or limited shall nevertheless be subject to the remaining provisions of these conditions.
- 13.5. The provisions of these conditions shall remain in full force and effect notwithstanding that the parties' obligations under the contract may have been performed or discharged.
- 13.6. 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.