

Terms and Conditions of Sale Fabricated Products (UK)

1. Interpretation

The definitions and rules of interpretation below apply in these terms:

"Buyer" the person firm company or organisation whose order for the Goods is accepted by the Seller

"Seller" means Fabricated Products (UK) Limited registered in England under number 05004247

"Goods" means the goods (including any instalment of the goods or any part of them, any parts, and or services) which the Seller is to supply in accordance with these Terms

"Contract" means the contract for the purchase and sale of the Goods

"Order" means the Buyer's order for the Goods as set out in the Buyer's purchase order form or the Buyer's written acceptance of the Seller's quotation

"Terms" means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller

1.1 Any reference in these Terms to any statute shall be construed as a reference to that statute as amended re-enacted or extended at the relevant time.

1.2 The headings in these Terms are for convenience only and shall not affect their interpretation.

2. Basis of the Sale

2.1 These Terms apply to the Contract to the exclusion of any other term 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 the Goods in accordance with these Terms. The Buyer is responsible for ensuring that the terms of the Order and any applicable specifications are complete and accurate. Each Order is accepted by the Seller entirely at its discretion and shall constitute an individual contract between the Seller and the Buyer.

2.3 The Order shall only be deemed to be accepted when the Seller issues a written acceptance of the Order at which point the Contract shall come into existence.

2.31 Some vessels will require a proof drawing, at which point the Contract shall come into existence. The Buyer will be responsible for ensuring that the proof drawing is complete and accurate and shall be asked to sign and return a copy of the Order and proof drawing.

2.32 Buffer vessels, we will issue a proof drawing for you to sign, signing this drawing

states that you agree to these terms. All materials/manufacturing will not commence till we receive the deposit & the signed drawing of the Buffer Vessel(s). The buyer is to ensure we receive all information & drawings back in time to meet any delivery dates. In the event of any delay in meeting target dates for the delivery of the vessel(s) Fabricated Products will not be liable for any costs

2.4 The Sellers' employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Seller in writing and signed by a duly authorised representative of the Seller. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not confirmed but nothing in these Terms affects the liability of either party for fraudulent misrepresentation.

2.5 Any typographical clerical or other error or omission in any sales literature quotation price list acceptance of offer invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

2.6 The Contract constitutes the entire agreement between the parties. The Buyer acknowledges that it has not relied on any statement, promise or representative made or given by or on behalf of the Seller which is not set out in the Contract.

2.7 Any samples, drawings, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures 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.

3. Orders and Specifications

3.1 The quantity quality and description of any specification for the Goods shall be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller). In the event of a conflict between the two the Seller's quotation will prevail.

3.2 If the Goods are to be manufactured or any process is to be applied to the Goods by the Seller in accordance with a specification submitted 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 (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses incurred by the Seller) in settlement of any claim for actual or alleged 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. This clause shall survive termination of the Contract.

3.3 The Seller reserves the right to make any changes in the specification of the Goods which are required to conform to any applicable safety or other statutory requirements or where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.

The Buyer may make changes to the specification of the Goods provided to the Seller if made in writing within 2 days of the Buyer submitting the original specification.

4. Deposit

4.1 Upon commencement of the Contract under clause 2.3 & 2.31, the Buyer shall pay to the Seller a non-refundable deposit of 30% of the value of the Order.

4.2 No work shall commence under the Contract until the Seller has received the deposit in cleared funds.

5. Price of the Goods

5.1 The price of the Goods shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price list in the Seller's published price list current at the date of delivery of the Goods. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which time they may be altered by the Seller without giving notice to the Buyer.

5.2 The Seller reserves the right, by giving written 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 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 manufacture) any change in delivery dates quantities or specifications for the Goods which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions. The giving of such notice shall bind both parties to the new price and shall not entitle either party to cancel the Contract.

5.3 Except as otherwise stated in writing by a duly authorised representative of the Seller or under the terms of any quotation or in any price list of the Seller all prices are given by the Seller on an ex-works basis, and where the Seller agrees to deliver the Goods otherwise than at the Seller's premises the Buyer shall be liable to pay the Seller's charges for transport packaging and insurance.

5.4 The price of Goods is exclusive of any applicable value added tax and any other applicable tax or duty which is from time to time in force (whether initially charged on or payable at a later date by the Buyer to the Seller).

5.5 The price of the Goods is exclusive of delivery charges.

6. Terms of Payment

6.1 The Seller shall be entitled to invoice the Buyer for the price of the Goods in stages on or at any time after or before the delivery of the Goods.

6.2 30 % deposit with your official order.
A further 60% in progress payments and on receipt of main materials into our works.
Final 10% on Final Inspection at our works.

6.3 The Buyer shall pay the invoices within 30 days of the date of the Seller's invoice. Payment shall be made to the bank account nominated in writing by the Seller and as detailed on the Seller's invoice. The time of payment of the price shall be of the essence of the Contract. Receipts for payment will be issued upon request.

6.4 No payment may be withheld by the Buyer for any reason whatsoever nor may any counterclaim of the Buyer be set-off against any payment due to the Seller without the prior written consent of the Seller.

6.5 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:

6.5.1 Cancel the Contract or suspend any further deliveries to the Buyer;

6.5.2 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

6.5.3 Charge the Buyer interest (both before and after any judgement) on the amount unpaid at the rate of two per cent per annum above National Westminster Bank plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and sell to third parties Goods ordered but not delivered under this or any other contract between the Seller and the Buyer.

7 **Delivery**

7.1 Delivery of the Goods shall be deemed to take place either at the location set out in the Order or such other location as the parties may agree (“**Delivery Location**”) at any time after the Seller notifies the Buyer that the Goods are ready.

7.2 The cost of delivery is an extra cost to the price payable for the Goods. Delivery charges will depend on the size of the Good and the Delivery Location.

7.3 Delivery of the Goods shall be completed on the Good’s arrival at the Delivery Location. Acceptance of the Goods shall occur upon delivery.

7.4 Delivery of the Goods shall take place via a carrier. We do not accept any liability for the Goods whilst in transit. The carrier may require a signature to document the delivery of the Goods. It shall be your responsibility to ensure that the person signing the carrier’s paperwork is authorised to do so. We do not accept any liability if the person signing for the delivery is not authorised to do so.

7.5 The Seller will use its reasonable endeavours to supply the Goods on the date or dates specified in the Contract, but any dates given for supply of the Goods are approximate only and are not guaranteed by the Seller. The Seller shall not be liable for any delay in delivery of the Goods however caused and any failure of the Seller to supply the Goods by a specified date or dates shall not entitle the Buyer to repudiate or cancel the Contract. Time for supply or delivery shall not be of the essence of the Contract. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

7.6 Deliveries at an approximate set time during the day and deliveries at weekends will be charged extra.

7.7 Delivery by Hi-Ab will be charged a minimum of £250.00 extra depending on delivery address post code.

7.8 Where the Goods are to be delivered in instalments each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Terms or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

7.9 If the Buyer fails to take delivery of the Goods or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer’s reasonable control or by reason of the Seller’s fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

7.9.1 Store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) for storage (storage and insurance of the Goods shall be at the Buyers risk and expense). Such reasonable costs are liable to change but as a guide the Buyer will be charged at 10p per quoted per volume litre per day based over a 7 day week;

7.9.2 If the Buyer fails to take delivery of the Goods within 7 days of notification that they are ready for delivery the Seller shall have the right to sell, dispose of or otherwise deal with the Goods and the Buyer shall be liable to the Seller for all loss (including loss of profits) or damage which the Seller shall suffer as a consequence of the Buyer’s failure to take delivery of the Goods or of such sale.

7.10 Non-delivery of the Goods shall be notified to the Seller within 7 days of the date of delivery indicated by the Seller.

8 **Quality**

8.1 The Seller warrants that on delivery to the carrier that the Goods shall:

8.1.1 conform in all material respects with their description and specification

8.1.2 be free from material defects in design, material and workmanship

8.1.3 be of satisfactory quality within the meaning of the Sale of Goods Act 1979

8.1.4 be fit for the purpose held out by the Seller.

9 **Inspection of the Goods, Defects and Returns**

9.1 Upon the Goods being ready for delivery, the Buyer shall be notified of a right to inspect the Goods prior to transit. The Buyer shall at this point be entitled to inspect the Goods at the Seller’s premises during normal business hours (9.00 am to 4.30 pm Monday to Friday). The Buyer and Seller shall agree a suitable time and date. If the Buyer fails to attend the inspection, the Goods shall be deemed to be in good working order, defect free and ready for delivery.

9.2 The inspection of the Goods prior to transit is to allow the Buyer the right to check and inspect the Goods for defects.

9.3 If any alterations, snags or other errors are required this will be made by agreement with the Seller before despatch and delivery.

10 **Exclusions**

10.1 The Seller shall not be liable for Goods’ failure to be of satisfactory quality and free from material defects where:

10.1.1 the Buyer makes any further use of such Goods

10.1.2 the defect arises because the Buyer failed to follow the Seller’s oral or written instructions as to the storage, commission, installation, use and maintenance of the Goods

10.1.3 the defect arises as a result of the Seller following any drawing, design or specification supplied by the Buyer

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

10.1.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions, or

10.1.6 the Goods differ from their description or specification as a result of changes made to ensure that they comply with applicable statutory or regulatory requirements.

10.2 The Seller shall not be responsible for the use of Crane(s), Offloading, Positioning, Valves, Air vents, Insulation, Trace Heating, Galvanising, Baffle Plates, Inspection Hatches and Commissioning which may be required to deliver and/or install the Goods unless agree in writing prior to delivery.

11 **Right to Cancel**

11.1 Where the goods met the conditions set out in clause 8, the Buyer shall only exercise a right to cancel at the Seller’s discretion. Where cancellation is accepted by the Seller, the Buyer shall be responsible for the full value of the Order.

12 **Risk and Property**

12.1 The risk in the Goods shall pass to the Buyer on delivery.

12.2 Title to the Goods shall not pass to the Buyer until the Seller has received payment in full for the Goods (and any other goods or services that the Seller has supplied to the Buyer in respect of which payment has become due).

12.3 Until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller’s fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller’s property, but the Buyer may resell or use the Goods in the ordinary course of business.

12.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in existence and have not been resold) the Seller shall be entitled at any time to require the Buyer to deliver up the goods to the Seller and if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods.

12.5 The Buyer shall 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.

12.6 In the event of certain Goods having been paid for by the Buyer and other Goods not having been so paid for, the onus of proof shall be on the Buyer to show that any Goods remaining in its possession are Goods for which the Seller has been paid.

13 **Liability**

13.1 Nothing in these terms and conditions shall limit or exclude the Seller’s liability for:

13.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors

13.1.2 fraud or fraudulent misrepresentation

13.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979, or

13.1.4 defective products under the Consumer Protection Act 1987.

13.2 Subject to clause 13.1:

13.2.1 the Seller shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and,

13.2.2 the Seller’s total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence) breach of statutory duty or otherwise, shall in no circumstances exceed £100,000.

13.3 The Seller has obtained insurance cover in respect of its own liability for individual claims not exceeding £100,000 per claim. The Seller’s liability is therefore limited to £100,000 and the Buyer is responsible for making its own arrangements for the insurance of any excess loss

14 **Buyer’s insolvency or incapacity**

14.1 If the Buyer becomes subject to any of the events listed in clause 14.2, or the Seller reasonably believes that the Buyer is about to become subject to any of them and notifies the Buyer accordingly, then, without limiting any other right or remedy available to the Seller, the Seller may cancel or suspend all further deliveries under the Contract or under any other contract between the Buyer and the Seller without incurring any liability to the Buyer, and all outstanding sums in respect of Goods delivered to the Buyer shall become immediately due

14.2 For the purposes of clause 14.1, the relevant events are:

14.2.1 the Buyer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- 14.2.2 the Buyer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors [other than (where the Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer];
- 14.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
- 14.2.4 (being an individual) the Buyer is the subject of a bankruptcy petition or order;
- 14.2.5 a creditor or encumbrancer of the Buyer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 14.2.6 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Buyer;
- 14.2.7 (being a company) a floating charge holder over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
- 14.2.8 a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
- 14.2.9 any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2.1 to clause 14.2.8 (inclusive);
- 14.2.10 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business;
- 14.2.11 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; and
- 14.2.12 (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 14.3 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

15 Force majeure

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A **Force Majeure Event** means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of Sellers or subcontractors.

16 General

16.1 Assignment and subcontracting.

16.1.1 The Seller may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

16.1.2 The Buyer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.

16.2 Notices.

16.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post, recorded delivery, commercial courier, fax.

16.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 16.2.1; if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second business day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one business day after transmission.

16.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

16.3 Severance.

16.3.1 If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

16.3.2 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

16.4 Waiver.

Waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

16.5 Third party rights.

A person who is not a party to the Contract shall not have any rights under or in connection with it.

16.6 Variation.

Except as set out in these Conditions, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Seller.

16.7 Governing law and jurisdiction.

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.