

TERMS AND CONDITIONS OF BUSINESS

1 DEFINITIONS

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

Brexit: the UK ceasing to be a member state of the European Union on 31 January 2020.

Business Day: day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Buyer: the person, firm or company who purchases the Goods from the Company as named in the Order.

Company: Royston Sheet Lead Limited, a company incorporated in England and Wales with registration number 03031508 whose registered office is c/o Rayner Essex, Tavistock House South, Tavistock Square, London, WC1H 9LG.

Contract: the contract between the Company and the Buyer for the sale and purchase of the Goods, incorporating and in accordance with these conditions.

Covid 19: the disease known as coronavirus disease (COVID-19) and the virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and any mutation thereof.

Force Majeure Event: an event, circumstance or cause beyond a party's reasonable control

Goods: any goods agreed in the Contract to be supplied to the Buyer by the Company as detailed in the Order and/or the Buyer's acknowledgement of Order (including any part or parts of them).

Order: the Buyer's order for the Goods.

Specification: any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Buyer and the Company as being the Specification.

2 INTERPRETATION

2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

2.2 A reference to a party includes its personal representatives, successors and permitted assigns.

2.3 A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2.5 A reference to **writing** or **written** includes email.

3 APPLICATION OF TERMS

3.1 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 law, trade custom, practice or course of dealing.

3.2 Any variation to these conditions shall have no effect unless expressly agreed in writing and signed by a director of the Company. 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.

- 3.3 Each order or acceptance of a quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions and no order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 3.4 The Order shall only be deemed to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 3.5 The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these Conditions. The parties agree the Contract shall be on these conditions to the exclusion of all other terms and conditions including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document.
- 3.6 Any samples, drawings, descriptive matter or advertising produced by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 3.7 A quotation for the Goods given by the Company shall not constitute an offer.

4 GOODS

- 4.1 The Goods are described in the Company's catalogue as modified by any applicable Specification.
- 4.2 The Buyer shall indemnify the Company against all liabilities, costs, expenses, damages and losses (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) 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 the Specification. This clause shall survive termination of the Contract.
- 4.3 The Company reserves the right to amend the specification of the Goods or the Specification if required by any applicable statutory or regulatory requirement, and the Company shall notify the Buyer in any such event.

5 DELIVERY AND NON-DELIVERY

- 5.1 Unless otherwise agreed between the parties, the Company (or its third party agents) shall deliver the Goods to a delivery address notified to the Company by the Buyer in the Order or such other location at the Parties may agree in writing the ("Delivery Location").
- 5.2 Any dates specified by the Company for delivery of the Goods are intended to be an estimate and time for delivery shall not be of the essence. The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or Covid 19 or Brexit or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 5.4 If the Buyer fails to take delivery of the Goods within three Business Days of the Company notifying the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract in respect of the Goods:

- 5.4.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Company notified the Buyer that the Goods were ready; and
- 5.4.2 the Company shall store the Goods until delivery takes place, and charge the Buyer for all related costs and expenses (including insurance).
- 5.5 If ten Business Days after the day on which the Company notified the Buyer that the Goods were ready for delivery the Buyer has not accepted actual delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Buyer for any excess over the price of the Goods or charge the Buyer for any shortfall below the price of the Goods.
- 5.6 If the Company delivers up to and including 5% more or less than the quantity of Goods ordered the Buyer may not reject them, but on receipt of notice from the Buyer or the Company that the wrong quantity of Goods was delivered, the Company shall make a pro rata adjustment to the invoice for the Goods.
- 5.7 The Company may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any other instalment or the Contract.
- 5.8 If the Company fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Company shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Buyer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.9 Unless otherwise agreed by the Company the Buyer shall provide at its own expense adequate and appropriate equipment for unloading.

6 RISK AND TITLE

- 6.1 The Goods are at the risk of the Buyer from the time of completion of delivery.
- 6.2 Title to the Goods shall not pass to the Buyer until the Company has received payment in full (in cash or cleared funds) all sums due to it in respect of the Goods and all other sums which are or which become due to the Company including for any other goods that the Company has supplied to the Buyer.
- 6.3 Until title to the Goods has passed to the Buyer, the Buyer shall:
 - (a) hold the Goods on a fiduciary basis as the Company's bailee;
 - (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way as they remain readily identifiable as the Company's property;
 - (c) not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
 - (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company;
 - (e) notify the Company immediately if it becomes subject to any of the events listed in Clause 11.1.2 to Clause 11.1.4; and

- (f) give the Company such information as the Company may reasonably require from time to time relating to:
 - (i) the Goods; and
 - (ii) the ongoing financial position of the Buyer.

6.4 At any time before title to the Goods passes to the Buyer, the Company may require the Buyer to deliver up all Goods in its possession and if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover them.

6.5 The Buyer grants the Company and its agents an irrevocable licence at any time to enter premises where the Goods are or may be stored in order to recover them where the Buyer's right to possession has terminated.

7 **PRICE**

7.1 Due to daily fluctuations in the London Metal Exchange and/or other applicable markets the Company advises the Buyer to confirm current prices when placing its order and, unless otherwise agreed by the Company in writing, the price for the Goods shall be the price agreed in the Customer's account at the date of this Contract.

7.2 The Company may, by giving notice to the Buyer at any time up to two Business Days before delivery, charge additional fees on the Goods to reflect any increase in the cost of the Goods that is due to:

7.2.1 any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs) or the effects of Covid 19 or Brexit;

7.2.2 any request by the Buyer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or

7.2.3 any delay caused by any instructions of the Buyer or failure of the Buyer to give the Company adequate or accurate information or instructions.

7.3 The price of the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.

8 **PAYMENT**

8.1 The Buyer shall pay each invoice submitted by the Company:

8.2 within 30 days of the date from the last day of the month in which the Goods were delivered or such other period as agreed in writing between the parties or set out in the Order; and

8.2.1 in full and in cleared funds to a bank account nominated in writing by the Company, and

8.2.2 Payment of the price for the Goods under a Contract is due in pounds sterling. The Buyer accepts that time for payment shall be of the essence.

8.3 No payment shall be deemed to have been received until the Company has received cleared funds and receipts will only be issued on request.

8.4 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the Buyer shall be liable to pay interest to the Company on such overdue sum from the due date for payment until payment of the overdue sum at the annual rate of 4% above the base lending rate from time to time

of the Bank of England, accruing on a daily basis until payment is made, whether before or after any judgment, and at 4% a year for any period when that base rate is below 0%.

- 8.5 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law)

9 DESCRIPTION AND QUALITY

- 9.1 The quantity and description of the Goods shall be as set out in the Order placed by the Buyer or the acknowledgement of Order by the Company as accepted by the Company.

- 9.2 The Company warrants that on delivery Goods shall:

9.2.1 conform in all material respects with any applicable Specification; and

9.2.2 be free from material defects in design, material and workmanship.

- 9.3 The Buyer shall be obligated to carry out a visual inspection of the Goods on delivery and to immediately notify the Company of any defects or damage to the Goods. Signed acceptance by the Buyer of acceptance of the Goods on delivery shall be deemed to constitute acceptance by the Buyer that the Goods were not in any way defective or damaged on delivery. The Company shall not be obligated to provide any compensation for any defects or damage to the Goods which are not notified in accordance with this Clause 9.3.

- 9.4 Subject to Clause 9.2 and 9.3, if:

9.4.1 the Buyer gives notice in writing to the Company within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in Clause 9.2 or in the case of a visible defects in accordance with Clause 9.3;

9.4.2 the Company is given a reasonable opportunity of examining such Goods; and

9.4.3 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 or damaged Goods, or refund the price of the defective Goods in full and the Buyer's exclusive remedy in respect of any breach of Clause 9.2 shall be as set out in this Clause 9.4.

- 9.5 The Company shall not be liable for the Goods' failure to comply with the warranty set out in Clause 9.2 if:

9.5.1 the Buyer makes any further use of such Goods after giving notice in accordance with Clause 9.5;

9.5.2 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 good trade practice regarding the same;

9.5.3 the defect arises as a result of the Company following any drawing, design or Specification supplied by the Buyer;

9.5.4 the Buyer alters or repairs such Goods without the written consent of the Company;

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

9.5.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or

- 9.5.7 the Customer fails to make give notification in accordance the requirements of Clause 9.3 and/or Clause 9.4.
- 9.6 Except as provided in this Clause 9, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in Clause 9.3.
- 9.7 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.
- 9.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Company.
- 10 LIMITATION OF LIABILITY**
- 10.1 The Company's total financial liability to the Buyer (including any liability for the acts or omissions of its employees, agent and subcontractors) under or in connection with this Contract including but not limited to:
- (a) any breach of these conditions;
 - (b) any use made or resale by the Buyer of any of the Goods; and
 - (c) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract;
- shall be limited to the price of the Goods.
- 10.2 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 10.2.1 death or personal injury caused by negligence;
 - 10.2.2 fraud or fraudulent misrepresentation;
 - 10.2.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 10.2.4 defective products under the Consumer Protection Act 1987.
- 10.3 Subject to Clause 10.2 the following types of loss are wholly excluded from the Company's liability:
- 10.3.1 loss of profits;
 - 10.3.2 loss of sales or business;
 - 10.3.3 loss of agreements or contracts;
 - 10.3.4 loss of anticipated savings;
 - 10.3.5 loss of use or corruption of software, data or information;
 - 10.3.6 loss of or damage to goodwill; and
 - 10.3.7 indirect or consequential loss.
- 10.4 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 10.5 This Clause 10 shall survive termination of the Contract.

11 TERMINATION

- 11.1 Without limiting its other rights or remedies, the Company may terminate this Contract with immediate effect by giving written notice to the Buyer if:
- 11.1.1 the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
 - 11.1.2 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
 - 11.1.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
 - 11.1.4 the Buyer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 11.2 Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in Clause 11.1.2 to Clause 11.1.4, or the Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under this Contract on the due date for payment.
- 11.3 Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 11.4 On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Company shall submit an invoice, which shall be payable by the Buyer immediately on receipt.
- 11.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 11.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.

12 FORCE MAJEURE, COVID 19 AND BREXIT

The Company shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event or Covid 19 or Brexit. In such circumstances the Company shall be entitled to a reasonable extension of the time for performing such obligations.

13 CONFIDENTIALITY

- 13.1.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business affairs of the other party, except as permitted by Clause 13.1.2
- 13.1.2 Each party may disclose the other party's confidential information:

- 13.1.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this Clause 13.1.2 **Error! Reference source not found.**; and
- 13.1.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 13.1.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

14 NOTICES

- 14.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
- 14.2 Any notice shall be deemed to have been received:
 - 14.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 14.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
- 14.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15 GOVERNING LAW AND JURISDICTION

- 15.1 The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales
- 15.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.

16 GENERAL

- 16.1 Unless otherwise stated in these Conditions, no variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.2 The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Company including but not limited to by a Force Majeure Event, Covid 19 or Brexit provided that if the event in question continues for a continuous period in excess of 120 days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 16.3 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 16.4 No failure or delay by the Company 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 prevent or restrict

the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

16.5 Assignment and other dealings.

16.5.1 The Company may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.

16.5.2 The Buyer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

16.6 The Buyer consents to the Company processing its personal data for legal, administrative and management purposes. The Buyer accepts that such information may be made available to companies within the Company's group or certain selected third parties who the Company feels offer goods and services that would be of interest to the Buyer. At all times the parties shall comply with the provisions of the Data Protection Act 1998.

16.7 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this Clause 16.7 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

16.8 The Buyer agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. The Buyer agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

16.9 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

16.10 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

16.11 Nothing in this agreement is intended to, or shall operate to, create a partnership between the parties.