

## Terms and Conditions of Sale

The customer's attention is drawn in particular to the provisions of clause 8.

### 1. Interpretation

1.1 In these Conditions, the following definitions apply:

<b>Business Day</b>	a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;
<b>Conditions</b>	the terms and conditions set out in this document as amended from time to time in accordance with clause 10.8;
<b>Contract</b>	the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions;
<b>Customer</b>	the person or firm who purchases the Goods from the Supplier;
<b>Customer's Specification</b>	any drawing, design, measurements, metrics, data, information or specification supplied by the Customer in relation to the Goods;
<b>Delivery Period</b>	has the meaning given in clause 3.6.1;
<b>Due Date</b>	has the meaning given in clause 5.4;
<b>Force Majeure Event</b>	has the meaning given in clause 9;
<b>Goods</b>	the goods (or any part of them) set out in the Order;
<b>Order</b>	the Customer's order for the Goods, as set out in the Customer's purchase order form or the Customer's written acceptance of the Supplier's quotation; and
<b>Supplier</b>	The Expanded Metal Company Limited (registered in England and Wales with company number 0563444).

1.2 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.3 A reference to writing or written does not include faxes or emails.

## **2. Basis of Contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer 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 Customer to purchase the Goods in accordance with these Conditions. The Customer shall ensure that the terms of the Order and any relevant specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Contract constitutes the entire agreement between the parties. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in the Contract. Any samples, drawings, descriptive matter, or advertising issued by the Supplier and any descriptions, particulars of weight and dimensions or illustrations contained in the Supplier's sales literature are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or any other contract between the Supplier and the Customer for the sale of the Goods. The Supplier reserves the right to change the specification of any Goods described in its sales literature at any time without notice.
- 2.5 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for the period shown on the quotation.
- 2.6 In the case of a conflict between the Order, the Supplier's quotation and these Conditions, these Conditions shall take precedence.

## **3. Delivery**

- 3.1 The Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree, or where the location is not in the United Kingdom then the INCOTERMS agreed with the Customer shall apply, at any time after the Supplier notifies the Customer that the Goods are ready.
- 3.2 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location.
- 3.3 The Supplier will deliver the Goods as near to the Delivery Location as a safe hard road permits.

- 3.4 The Customer shall provide the labour for unloading and stacking the Goods at its own expense.
- 3.5 Damage caused to the Goods due to inadequate access to the Delivery Location or careless unloading shall be at the Customer's risk, cost and expense.
- 3.6 Where Goods are ordered by the Customer for delivery:
- 3.6.1 if a period is stated for delivery (**Delivery Period**) and such a period is not extended
- 3.6.2 by agreement in writing the Goods shall be delivered within that period; and
- 3.6.3 if no Delivery period is stated the Goods shall be delivered as soon as is practicable.
- 3.7 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. If the Supplier fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall not be liable for any delay in or failure in delivery of the Goods that is caused by a Force Majeure event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 3.8 The Supplier shall ensure that if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on the packaging. The Customer shall be charged for any such packaging materials not returned in good condition to the Supplier within 30 days of receipt at the Customer's expense.
- 3.9 The Supplier shall have no liability for Goods that are lost in transit or where a shortage of delivery is made unless:
- 3.9.1 in the case of shortage of delivery, the Customer endorses short details on the carrier's delivery note or receipt and the Supplier and carrier receive notice in writing of the shortage within 3 Business Days of the Customer's receipt of the Goods; and
- 3.9.2 in the case of Goods lost in transit, notice given by the Customer in writing of the non-delivery is not received by the Supplier and carrier within 7 days of the date of the advice note or invoice (as the case may be) issued by the Supplier.
- 3.10 If the Customer fails to take delivery of the Goods within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract:

- 3.10.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day following the day on which the Supplier notified the Customer that the Goods were ready; and
- 3.10.2 the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).
- 3.11 If 7 Business Days after the Supplier notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.
- 3.12 The Supplier 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 Customer to cancel any other instalment.

#### **4. Quality**

- 4.1 The Supplier warrants that, on delivery, the Goods shall:
- 4.1.1 subject to clauses 4.2 and 4.3, conform in all material respects with their description and any applicable specification; and
- 4.1.2 be free from material defects in design, material and workmanship.
- 4.2 The Supplier's specification of sheet size, strand width, thickness and weight are approximate only and whilst every effort is made to ensure that specifications are accurate the manufacture and supply of the Goods are subject to normal trade tolerances.
- 4.3 Where specifications of dimensions or weight are quoted in imperial measurements the Supplier reserves the right to supply any convenient metric equivalent or vice versa.
- 4.4 Subject to clause 4.5, if:
- 4.4.1 the Customer gives notice in writing to the Supplier within 7 days of receipt that some or all of the Goods do not comply with the warranty set out in clause 4.1; and
- 4.4.2 the Supplier is given a reasonable opportunity of examining such Goods; and
- 4.4.3 the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost,
- the Supplier shall, at its option, repair or replace the defective Goods, refund the price of the defective Goods in full (or, in lieu thereof, at the option of the Supplier, shall allow credit to

the Customer of the amount of the price of the Goods, rejected or a proportionate amount thereof).

- 4.5 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 4.1 if:
- 4.5.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 4.4;
  - 4.5.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice;
  - 4.5.3 the defect arises as a result of the Supplier following the Customer's Specification;
  - 4.5.4 the defect arises due to any errors, discrepancies or misinformation in the Customer Specification;
  - 4.5.5 the Customer alters or repairs such Goods without the written consent of the Supplier;
  - 4.5.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or
  - 4.5.7 the Goods are delivered in a damaged condition and details of the damage are not noted by the Customer on the carrier's delivery note or receipt and notice in writing giving full particulars of damage is not received by the Supplier and carrier within 3 Business Days after receipt of the Goods at the Delivery Location.
- 4.6 If the Customer fails to give notice in writing to the Supplier in accordance with clause 4.4.1 the Customer will be deemed to have accepted the Goods.
- 4.7 Except as provided in this clause 4, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 4.1.
- 4.8 The Supplier shall not be liable for any damage to the Goods or any testing equipment when testing is carried out by the Customer or at the Customer's request.
- 4.9 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 4.10 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 5. Title and Risk**
- 5.1 The risk in the Goods shall pass to the Customer on completion of delivery unless otherwise stated.

- 5.2 Title to the Goods shall not pass to the Customer until the Supplier has received payment in full (in cash or cleared funds) for:
- 5.2.1 the Goods; and
  - 5.2.2 all other sums which are or which become due to the Supplier for sales of the Goods or any other products to the Customer.
- 5.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 5.3.1 hold the Goods on a fiduciary basis as the Supplier's bailee;
  - 5.3.2 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;
  - 5.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
  - 5.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - 5.3.5 notify the Supplier immediately if it becomes subject to any of the events listed in clause 7.2; and
  - 5.3.6 give the Supplier such information relating to the Goods as the Supplier may require from time to time, but the Customer may resell or use the Goods in the ordinary course of its business.
- 5.4 If before title to the Goods passes to the Customer the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment (**Due Date**) or becomes subject to any of the events listed in clause 7.2, or the Supplier reasonably believes that any such event is about to happen and notifies the Customer accordingly, then, provided that the Goods have not been resold, or irrevocably incorporated into another product, and without limiting any other right or remedy the Supplier may have, the Supplier may at any time require the Customer to deliver up the Goods and, if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 5.5 If the Goods are recovered from the Customer in accordance with clause 5.4, any Goods so recovered shall be sold and the proceeds set-off against the amounts due to the Supplier by the Customer and if said proceeds are not equal to the amount of the payment due to the Supplier by the Customer the Customer shall remain liable to pay to the Supplier the amount

remaining due together with any interest accruing thereon payable calculated in accordance with clause 6.7.

## **6. Price and Payment**

- 6.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date of delivery.
- 6.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 6.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - 6.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the specification; or
  - 6.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 6.3 The price of the Goods is exclusive of the costs and charges of packaging, insurance and transport of the Goods, which shall be paid by the Customer when it pays for the Goods.
- 6.4 The price of the Goods is exclusive of amounts in respect of value added tax (**VAT**). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 6.5 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 6.6 The Customer shall pay the invoice in full and in cleared funds within 30 days of the date of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier. Time of payment is of the essence.
- 6.7 If the Customer fails to make any payment due to the Supplier under the Contract by the Due Date, then the Supplier may:
- 6.7.1 require the Customer to pay interest on the overdue amount at the rate of 4% per annum above Lloyds Banking Group's base lending rate from time to time. Such interest shall accrue on a daily basis from the Due Date until the date of actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount;

- 6.7.2 require the Customer to make payment in advance of delivery for any undelivered Goods;
  - 6.7.3 refuse to deliver any undelivered Goods ordered by the Customer, whether under this Contract or otherwise, without incurring liability to the Customer for any non-delivery or delay in the delivery; or
  - 6.7.4 terminate the Contract.
- 6.8 The Customer shall pay all amounts due under the Contract in full without any deduction or withholding except as required by law and the Customer shall not be entitled to assert any credit, set-off or counterclaim against the Supplier in order to justify withholding payment of any such amount in whole or in part. The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

## **7. Customer's Insolvency or Incapacity**

- 7.1 If the Customer becomes subject to any of the events listed in clause 7.2, or the Supplier reasonably believes that the Customer is about to become subject to any of them and notifies the Customer accordingly, then, without limiting any other right or remedy available to the Supplier, the Supplier may cancel or suspend all further deliveries under the Contract or under any other contract between the Customer and the Supplier without incurring any liability to the Customer, and all outstanding sums in respect of Goods delivered to the Customer shall become immediately due.
- 7.2 For the purposes of clause 7.1, the relevant events are:
- 7.2.1 the Customer 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;
  - 7.2.2 the Customer 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 Customer is a



company) these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;

- 7.2.3 (being an individual) the Customer is the subject of a bankruptcy petition or order; or
- 7.2.4 a creditor or encumbrancer of the Customer 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;
- 7.2.5 (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 Customer;
- 7.2.6 (being a company) a floating charge holder over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
- 7.2.7 a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
- 7.2.8 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 7.2.1 to clause 7.2.7 (inclusive); or
- 7.2.9 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or substantially the whole of its business.

## **8. Limitation of Liability**

- 8.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
  - 8.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - 8.1.2 fraud or fraudulent misrepresentation;
  - 8.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979;
  - 8.1.4 defective products under the Consumer Protection Act 1987; or
  - 8.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

8.2 Subject to clause 8.1, the Supplier shall not be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit or indirect or consequential loss arising under or in connection with the Contract.

8.3 Subject to clause 8.1 and only where the Supplier has followed the Customer's Specification in the production of the Goods, the Supplier shall not be liable and shall have no responsibility whatsoever, howsoever arising, to the Customer or its customers, employees, agents or subcontractors, for:

8.3.1 death or personal injury;

8.3.2 compliance of the Goods with any applicable safety regulations; or

8.3.3 any performance issue relating to the Goods.

## **9. 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 suppliers or subcontractors.

## **10. General**

### **10.1 Assignment and subcontracting**

10.1.1 The Supplier 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.

10.1.2 The Customer 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 Supplier.

### **10.2 Intellectual Property Rights**

The Customer shall keep the Supplier indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional

fees and expenses awarded against or incurred or paid by the Supplier as a result of or in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply of Goods in accordance with a specification that is supplied to the Supplier by the Customer, or produced by the Supplier and agreed in writing by the Customer, to the extent that the claim is attributable to the acts or omissions of the Customer, its employees, agents or subcontractors. This clause 10.2 shall survive termination of the Contract.

### **10.3 Notices**

10.3.1 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 10.3, and shall be delivered personally, sent by pre-paid first-class post, recorded delivery or commercial courier.

10.3.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 10.3.1;

10.3.2.1 if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting; or

10.3.2.2 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

10.3.3 The provisions of this clause 10.3 shall not apply to the service of any proceedings or other documents in any legal action.

### **10.4 Severance**

10.4.1 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.

10.4.2 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.

### **10.5 Tooling**

Any tooling manufactured by or on behalf of the Supplier in order to satisfy performance of the Contract remains the property of the Supplier.

#### **10.6 Waiver**

A 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.

#### **10.7 Third party rights**

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

#### **10.8 Variation**

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 Customer.

#### **10.9 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 non-exclusive jurisdiction of the courts of England and Wales.