

CONDITIONS OF SALE AND DELIVERY

General

Ferro (Great Britain) Limited (described as the Seller), enters into contracts of sale only upon the basis that the conditions set out below govern the contract. No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

1. Orders, Quotations:

Where a prospective Buyer submits an order to the Seller, the issue to that party of the Seller's acknowledgement of order form shall constitute the terms of an offer upon the basis of which the Seller is willing to contract, and the terms subject to which any such "order" was submitted, shall be of no effect. Acceptance of goods delivered pursuant to such an acknowledgement of order shall constitute a contract incorporating only the terms set out in this document.

2. Prices:

Prices are based on the Seller's costs and expenses and shall be those ruling at the date of Invoice. The Seller reserves the right between the date of acceptance of order and the date of invoice to increase prices to cover increases in the Seller's costs and expenses incurred in performing the contract and to invoice at the price prevailing at the date of invoice.

3. Terms of Payment:

Prices are quoted nett. Terms of settlement are strictly nett cash payable within 30 days of the goods being invoiced and unless otherwise agreed and acknowledged.

4. Delivery:

- a) All delivery dates are approximate but the Seller will make every effort to meet the delivery date indicated and in the event of delayed delivery, the Seller shall not be liable for loss or damage of whatever nature arising therefrom.
- b) Property in the goods will pass from the Seller to the Buyer when the Seller delivers the goods to the Buyer or to a carrier or other bailee or custodian for the purpose of transmission to the Buyer.
- c) In the event of failure by the Buyer to accept a delivery or delayed delivery, the Seller shall have the right to cancel such delivery and all other outstanding deliveries and to charge the Buyer with any loss of profit suffered and expense incurred.
- d) Each part delivery shall be considered a separate transaction which will not affect the rights or liabilities of either party under the contract as to the remaining deliveries.
- e) Non-delivery or delayed delivery due to war, civil commotion, strikes, lock-outs, machine breakdown, fire, force majeure or any cause whatever beyond the Seller's control will not involve liability on the part of the Seller, and the Seller shall be entitled at his option either to cancel the order or any part thereof or to an extension of time for delivery corresponding to the duration of the event causing the delay.

5. Retention of Title Clause:

- a) The legal right to the goods supplied hereunder by the Seller will only be transferred to the Buyer when he has paid the Seller in full for the goods and all other goods agreed to be sold by the Seller to the Buyer for which payment is due but the risk on the goods and all liability to third parties in respect thereof shall pass to the Buyer on delivery.
- b) Until the date of payment the Buyer unless otherwise directed by the seller is required to store the goods in such a way that they are clearly identifiable as the property of the Seller.
- c) Until such time as the legal right to and the property in the goods passes to the Buyer:
 - (i) The Buyer shall hold the goods at the Sellers fiduciary agent and the bailee and shall keep the goods separate from those of the Buyer and third parties and properly stored protected and insured but the Buyer shall be entitled to resell or use the goods in the ordinary course of his business and shall keep all such proceeds separate from any monies or property of the Buyer and third parties and in the case of tangible proceeds properly stored, protected and insured.
 - (ii) 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 and the Buyer shall appoint the Seller and its agents as his irrevocable attorney for this purpose.
- d) The Buyer shall not be entitled to pledge or in any 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 monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

- e) The Buyer may sell the goods and new articles in the normal course of its business but shall pursue claims for and hold the entire proceeds of their sale as a fiduciary on behalf of the Seller upon terms that the entire proceeds of sale are held in trust for the Seller and shall not be mingled with other monies or paid into any overdrawn bank account and shall be at all times identifiable as the Seller's monies.

6. Damage, Deficiencies or Loss:

No claim for damage, deficient receipt or loss will be considered unless notice in writing is given both to the Seller and the Carrier within the following time limits:

- (i) Damage to a consignment or part thereof - within 3 days of receipt.
- (ii) Non-delivery of a consignment - within 3 days of receipt of the reminder of the consignment.
- (iii) Non-delivery of the total consignment - within 10 days of date of advice or dispatch.

The Buyer's failure to give notice of any claim for damage, deficient receipt or loss in accordance with the above provisions shall constitute an unqualified acceptance of the goods forming such consignment and a waiver by the Buyer of all claims in connection therewith.

7. Quantity Variations:

Any deficiency or surplus not exceeding 10 per cent of the quantity of products ordered shall be considered as due execution of the contract and charged pro rata.

8. Liability for Defective Products and Technical Assistance:

In view of the difficulty and cost of insuring against liability for defective products, where it is proved that the goods sold by the Seller are defective, unfit for the Buyer's purpose or otherwise do not conform to the contract, the following provisions LIMIT THE LIABILITY OF THE SELLER. Buyers are asked to note that the prices quoted reflect savings made possible to the Seller in its insurance premiums by virtue of these provisions:

- a) Death, personal injury: liability is not excluded.
- b) Loss or damage other than death or personal injury:- the Seller's liability is limited to replacement of goods shown to be defective and the Seller accepts no liability for loss, damage, interruption of production, loss of profits or other consequential loss, whether it is caused by the negligence of the Seller, its servants or agents, or by any other cause, in the design, production or delivery of the goods. Any condition, warranty or other stipulation as to the quality of the goods or their fitness for any purpose incorporated by Salute Common Law or otherwise is excluded.
- c) Where the Seller provides technical advice, design or assistance to a prospective or actual Buyer that technical advice, design or assistance is given with the limitation of liability as though it were a contract of sale and governed by the terms of sub-clause (b) hereof.

9. Indemnity:

The Buyer shall indemnify the Seller against all damages, penalties, costs and expenses for which the Seller may become liable through any work to be done in accordance with the Buyer's specification which is an infringement of a Patent, Copyright or Registered Design.

10. Special Products:

In the event that the Buyer cancels an order for goods made up specifically at the request of the Buyer or comprising goods not customarily stocked by the Seller the Buyer shall pay upon cancellation as liquidated damages the Seller's published price for such goods as are completed at cancellation and an equitable price for such goods as are in process at cancellation based upon the Seller's costs, expenses and profit reasonably expected and incurred in processing such goods and in accordance with the degree of progress attained.

11. Determination:

If the Buyer shall make default in or commit a breach of the contract or any other of his obligations to the Seller or if the Buyer shall become insolvent or bankrupt or make any composition with Creditor or being a Company shall have a Receiver appointed or enter into liquidation either voluntary or compulsory or if any execution or distress shall be levied against the Buyer's goods the Seller shall have the right to determine any contract the subsisting without giving prior notice of the Buyer but without prejudice to all rights and remedies of the Seller herein and the Buyer shall recompense the Seller in full for all damages and losses incurred by the Seller as a result.

12. Jurisdiction:

The Contract shall in all respects be governed by and construed in accordance with English law and shall be deemed to have been made in England and the Buyer and the Seller agree to submit to the exclusive jurisdiction of the English Courts.