

Hadley Industries PLC and Associated and Subsidiary Companies
TERMS & CONDITIONS OF SALE - U.K.(H/AFEB 06)

1. **General**

1.1 All quotations are made and all orders are accepted subject to the following conditions. All conditions of the Customer or of her terms, conditions, warranties, or representations are excluded from the contract or any variation thereof unless expressly accepted by the Company in writing. The Customer confirms that it has not entered into this agreement on the basis of any representation that is not expressly incorporated into these conditions. Nothing in these conditions shall exclude Liability for any fraudulent statement or act made prior to the date of these conditions.

1.2 Quotations shall only be available for acceptance for a maximum period of 30 days from the date thereof and may be withdrawn by the Company within such period at any time by written or oral notice.

1.3 If any statement has been made to the Customer by the Company, its servants or agents upon which the Customer relies other than in the documents enclosed with the Company's quotation or acknowledgement of order then before such statement forms part of the Contract, the Customer must set out that statement in a document to be attached to or endorsed on the order and that document must be signed or initialed by an authorised representative of the Company to confirm that the statement forms part of the Contract. In any such case the Company may confirm, reject or clarify the point and submit a new quotation.

1.4 Notwithstanding that samples may be or have been submitted by the Company to the Customer is not and shall not be deemed to be a sale by sample. Any samples submitted to the Customer are intended to illustrate only the substance and general character of the materials and the Customer shall have no claim if the colour or composition of the bulk supplied fails to correspond with the sample in such respect unless the particular requirement is specified by the Customer and accepted by the Company in writing.

2. **Delivery**

2.1 Time for delivery is given as accurately as possible but is not guaranteed. The Customer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated.

2.2 In cases where the Customer requests delivery to a specific site, the onus is on the Customer to ensure that the goods have been delivered before incurring site costs.

2.3 The date of delivery shall in every case be dependent upon prompt receipt of all necessary information, final instructions or approvals from the Customer. Alterations by the Customer in design specifications or quantities required may result in delay in delivery.

2.4 The Company will endeavour to comply with reasonable requests by the Customer for postponement of delivery but shall be under no obligation to do so. Where delay is incurred by the Company the Customer shall pay all costs and expenses including a reasonable charge for storage and transportation occasioned thereby and the Company shall be entitled to invoice the Goods in accordance with these Conditions.

2.5 Where the Customer accepts an order for the supply of Goods to be called off by the Customer over a period then unless otherwise agreed by the Company in writing, such call offs must be made so as to complete delivery of all Goods within 12 months from the date of the Customer's order.

2.6 The Customer is responsible in all cases for unloading the delivery vehicle and shall be responsible for all loss of or damage to the Goods during the course of such unloading.

2.7 A delivery note or notes for the Company must be signed on receipt of the Goods.

2.8 The Company shall have the right to make delivery by instalments and in that event each delivery shall stand as a separate contract. Failure to make any instalment delivery shall not entitle the Customer to repudiate either that separate contract or the whole contract.

2.9 Where delivery is made by the Company to the Customer, the Company promises the Customer will ensure the provision to the Company of full and adequate access to the point at which delivery is to take place and all other facilities and services necessary to enable the Company to deliver in accordance with the Customer's requirements. The decision of the Company's representative as to the nearest point of accessibility to the Customer's works shall be accepted as final and shall be deemed to be the point of delivery.

2.10 The Company accepts no responsibility for damage of any kind caused by its transport to any access road or to the place of delivery but the making good of any damage to such transport by defective approaches to the place of delivery shall be charged to and paid for by the Customer.

2.11 Unless otherwise expressly agreed any packaging supplied by the Company is intended to be only sufficient to protect the Goods for all normal conditions of transit and for the normal period of transit only.

3. **Risk and Title**

3.1 Risk shall pass to the Customer so that the Customer is responsible for all loss damage or deterioration to the Goods:

3.1.1 If the Company delivers the Goods by its own transport at the time when the Goods or a relevant part thereof arrive at the place of delivery or in all other circumstances at the time when the Goods or a consignment or other part thereof leave the premises of the Company whether or not the Company arranges transport and where the Goods are delivered by carrier any claims for loss or damage in transit must be made by the Customer against the carrier in accordance with the carrier's conditions.

3.3 Title to the Goods or any part thereof shall pass to the Customer only upon the happening of any one of the following events:

3.3.1 the Customer has paid to the Company all sums due and payable by it to the Company under this or any other contract between the Company and the Customer, or

3.3.2 when the Company serves on the Customer notice in writing specifying that title in the Goods or such part thereof has passed.

3.4 The Company may recover Goods in respect of which title has not passed to the Customer at any time and the Customer hereby agrees to the Company, its directors, agents, servants, consultants or advisors to enter the premises of the Customer for the purposes either of satisfying itself that the Condition 3(5) below is being complied with by the Customer or recovering any Goods in respect of which title has not passed to the Customer.

3.5 Until title to the Goods has passed to the Customer pursuant to the terms hereof it shall possess the Goods as a bailee of the Company on the terms of this contract. If the Company so requires, the Customer shall store the Goods separately from all other Goods and shall ensure that they are clearly identifiable as belonging to the Company.

3.6 Without prejudice to the foregoing sub-conditions and in the event that the Customer shall in the course of its business dispose of the Goods to a customer being a bona fide purchaser without notice of the Company's rights then the Customer shall have a fiduciary duty to the Company to account to the Company for the proceeds (which shall be kept separate and identifiable from the Customer's own monies) but may retain therefrom an excess of such proceeds over the amount outstanding under this or any other prior contract between them.

3.7 Should the Customer default on any of its obligations under the contract the Company's licence to the Customer to sell Goods on will be deemed to be withdrawn immediately.

4. **Cancellation**

4.1 Cancellation will only be agreed to by the Company on condition that all costs and expenses incurred by the Company up to the time of the cancellation and all loss of profits and other costs, loss or damage resulting to the Company by reason of such cancellation will be paid forthwith by the Customer to the Company.

5. **Prices**

5.1 All prices are unless otherwise stated quoted net ex-works exclusive of VAT and are subject to fluctuation in the event of any increase in the cost of labour due to local or national awards or increases in the cost of materials and overheads. Any increase in such costs during the period of production will be added to the quoted price.

5.2 In the event of any alteration being required by the Customer in design or specification the Company shall be entitled to make an adjustment of the contract price corresponding to such alteration.

5.3 The cost of carriage shall, unless otherwise stated, be charged extra.

5.4 Packaging materials shall, unless otherwise stated, be charged extra but the Customer will be credited in full with the amount charged upon the return of the Customer in clean, dry and sound condition.

6. **Terms of Payment**

6.1 Unless otherwise agreed by the Company in writing the terms of payment shall be net cash monthly account due and payable on the last day of the month following the month in which the Goods were despatched or would have been despatched save for postponement otherwise than due to default on the part of the Company. The time for payment shall be of the essence of the contract. The Company shall be entitled to submit its invoice with its delivery advice note or at any time thereafter save that where delivery has been postponed at the request of or by the default of the Customer then the Company may submit its invoice at any time after the Goods are ready for delivery or would have been ready in the ordinary course but for the request or default as aforesaid.

6.2 Where Goods are delivered by instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these Conditions.

6.3 No disputes arising under the contract nor delays beyond the reasonable control of the Company shall interfere with prompt payment in full by the Customer.

6.4 In the event of default in payment by the Customer the Company shall be entitled without prejudice to any other right or remedy to suspend all further deliveries on any contract or contracts between the Company and the Customer without notice and to charge interest on any amount outstanding at the higher of the rate of 4% per annum above the Base Rate of HSBC Bank PLC in force at the time when payment was due or the rate allowed by law.

7. **Quantities**

7.1 Where Goods are ordered by reference to numerical quantities the Company reserves the right to under or over deliver the quantity ordered by plus or minus 10% in accordance with trade custom.

8. **Shortages and Defects Apparent on Inspection at Delivery**

8.1 The Customer shall have no claim for short ages or defects which should be apparent on visual inspection at the time of delivery unless the shortages or defects are brought to the attention of the driver of the delivery vehicle and are clearly marked on the signed copy of the delivery note at the time of delivery. The Customer acknowledges that rust, oxidation or discoloration is a defect which it is reasonable for the Customer to be expected to notice at the time of delivery.

8.2 The Customer shall have no claim for shortages or defects capable of being apparent on subsequent visual inspection (not being shortages or defects falling within Condition 8(1)) unless:

8.2.1 the Customer inspects the Goods and notifies the Company by telephone, fax or telex before fixing or otherwise using the Goods or cutting or removing bands and in any event within three (3) working days of arrival at its premises or other agreed destination and

8.2.2 a written complaint is made to the Company before fixing or otherwise using the Goods and in any event within seven (7) days of receipt of the Goods or such shorter period as the carrier's conditions (if applicable) require specifying the shortage or defect and

8.2.3 the Company is given an opportunity to inspect the Goods and investigate any complaint before any use is made of the Goods.

If a complaint is not made to the Company as herein provided then the Goods shall be deemed to be in all respects in accordance with the contract and the Customer shall be bound to pay for the same accordingly.

9. **Defects Not Apparent on Inspection at Delivery**

9.1 The Customer shall have no claim in respect of defects not apparent on visual inspection at the time of delivery or within three (3) working days thereafter (and, for this purpose, rust, oxidation and discoloration shall be regarded as being a defect which is apparent on visual inspection at the time of delivery) unless:

9.1.1 a written complaint is sent to the Company as soon as reasonably practicable after the defect is discovered and no use (whether for this purpose being taken to include any sale, disposal or the parting of possession) is made of the Goods after the defect is discovered and no alteration made thereto before the Company is given an opportunity to inspect the Goods in accordance with this Condition and

9.1.2 the complaint is sent within six (6) months of the date of delivery of the Goods or in the case of items not manufactured by the Company within the guarantee period specified by the manufacturer of such item.

9.2 The Customer shall not be entitled to any claim in respect of any repairs or alterations undertaken by the Customer without the prior specific written consent of the Company nor in respect of any defect arising by reason of fair wear and tear or damage due to misuse or incorrect use or unsuitable storage.

9.3 The Customer shall not be liable for loss or damage suffered by reason of use or installation of the Goods after the Customer becomes aware of a defect or after circumstances which should reasonably have indicated to the Customer the existence of a defect.

9.4 The Company may within 21 days of receiving such a written complaint (or within 30 days where the Goods are situated outside the United Kingdom) inspect the Goods and the Customer shall if so required by the Company take all steps necessary to enable the Company to do so.

10. **Guarantee**

10.1 Save as otherwise provided terms implied under the Sale of Goods Act 1979 are excluded from this contract to the fullest extent permitted by law.

10.2 In the event of the condition of the Goods being such as might or would (subject to these Conditions) entitle the Customer to claim damages or to repudiate the contract the Customer shall first ask the Company to repair or supply satisfactory substitute Goods and the Company shall thereupon be entitled at its option to repair or take back the defective Goods and to supply satisfactory substitute Goods free of cost and within a reasonable time or to reimburse the purchase price thereof. If the Company does so repair the Goods or supply satisfactory substitute Goods the Customer shall be bound to accept such repaired or substituted Goods to the exclusion of any other remedy and the Company shall have no liability for any loss or damage whatsoever arising from the initial delivery of the defective Goods or from the delay before the defective Goods are repaired or the substitute Goods are delivered or the purchase price reimbursed.

11. **Liability**

11.1 For the purposes of this contract "Liabilities" means actions, awards, costs, claims, damages, losses (including without limitation any direct or indirect consequential losses), demands, expenses, fines, loss of profits, loss of reputation, judgments, penalties and proceedings and any other losses and/or liabilities.

11.2 The Company shall have no Liability for any matters which are outside its reasonable control.

11.3 The Company shall have no Liability to the Customer for any:-

11.3.1 consequential losses;

11.3.2 loss of profits and/or damage to goodwill;

11.3.3 economic and/or other similar losses;

11.3.4 special damages and indirect losses, and/or

11.3.5 business interruption, loss of business, contracts, opportunity and/or production.

11.4 The Customer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer.

11.5 The Company's total Liability to the Customer shall not exceed sums paid or payable by the Customer in respect of the Goods.

11.6 Each of the limitations and/or exclusions in this contract shall be deemed to be repeated and apply as a separate provision for each of:

11.6.1 Liability for breach of contract and/or under this contract;

11.6.2 Liability in tort (including negligence);

11.6.3 Liability for breach of statutory duty; and

11.6.4 Liability for breach of Common Law.

Nothing clause 11.4 above which shall apply once only in respect of all the said types of Liability.

11.7 Except in this contract shall exclude or limit the Liability of the Company for death or personal injury due to its negligence or any Liability which is due to the Company's fraud or any other Liability which it is not permitted to exclude or limit as a matter of law.

11.8 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.

12. **Confidential Information**

12.1 The Customer agrees that it will keep confidential and not use except for purposes contemplated by this contract, all information relating to the Goods and/or services provided and all confidential business information regarding the Company, which may be disclosed to it or which it may learn except where such information is public knowledge or is required to be disclosed by law.

13. **Intellectual Property Rights**

13.1 Nothing shall affect, or grant any right to, any intellectual property rights owned by and/or licensed to the Company.

13.2 All intellectual property rights arising as a result of performance of this contract (including improvements and/or adjustments to Goods) shall belong to the Company unless otherwise agreed in writing.

13.3 No right or licence is granted under this contract to the Customer under any patent, trade mark, copyright, registered design or other intellectual property right except the right to use or resell the Goods in accordance with this contract. The Customer shall not grant any sub-licences to any third party.

13.4 The specifications and designs of the Goods (including the copyright, design right or other intellectual property in them) shall belong to the Company. Where any designs or specifications have been supplied by the Customer for manufacture by or to the order of the Company then the Customer warrants that the use of those designs or specifications for the manufacture, processing, assembly or supply of the Goods shall not infringe the rights of any third party.

13.5 All drawings documents and other information supplied by the Company are supplied on the express understanding that all intellectual property rights including copyright are reserved to the Company and that the Customer will not without the written consent of the Company either give away, loan, exhibit or copy any such drawings or extracts therefrom or copies thereof or use them in any way except in connection with the Goods in respect of which they are issued and except in accordance with this contract.

14. **Customer's Drawings and Specifications**

14.1 The Customer shall be solely responsible for ensuring that all drawings information advice and recommendations given to the Company either directly or indirectly by the Customer or by the Customer's agents, servants, consultants or advisors are accurate, correct and suitable. Examination or consideration by the Company of such drawings information advice or recommendations shall in no way limit the Customer's responsibility hereunder unless the Company specifically agrees in writing to accept responsibility.

14.2 The Customer must accept sole responsibility for any discrepancies which occur between the quantities or sizes of Goods agreed to be supplied by the Company and the quantities or sizes which are needed by the Customer in order to satisfy the particular purpose for which the Customer requires the Goods.

14.3 Without prejudice to any other right or remedy the Company may have, the Customer agrees to indemnify and keep indemnified the Company against any and all liabilities and increased administration and professional and legal costs on a full indemnity basis suffered by the Company (without set-off, counterclaim and/or reduction) and arising out of or in connection with the manufacture of Goods to the drawings or specifications of the Customer including any infringement of a Patent, Copyright, Registered Design or Design Right or Design Copyright or other Intellectual Property right and any breach of contract by the Customer, whether or not such losses were foreseeable or foreseen at the date of this Agreement.

15. **Data and Technical Information**

Any illustrations, performance details, examples of installations and methods of assembly and other technical data issued by the Company is provided for general guidance only and forms no part of the contract unless the Customer shall have complied with Condition 1(3) above relating to statements and representations.

16. **Termination and Insolvency**

16.1 Without prejudice to any other right, or remedies to which it may be entitled the Company may immediately terminate this and any other contract between the Company and the Customer by written notice and without Liability if the Customer:-

16.1.1 fails to make any payment when due;

16.1.2 breaches the terms of this contract (and if remediable the breach has not been remedied within 7 days of receiving written notice requiring it to be remedied);

16.1.3 persistently breaches any one or more terms of this contract;

16.1.4 ceases or threatens to cease to carry on business; and/or

16.2 is declared or becomes insolvent or bankrupt, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things, takes or suffers any similar action in any jurisdiction or any step is taken (including, without limitation, the making of an application of the giving of any notice) by it or by any other person in respect of any of these circumstances.

16.3 If any of the events in 16.1 occur then the price of all Goods or services rendered by the Company to the Customer under this is and any other contract between the Company and the Customer shall immediately become payable.

17. **Force Majeure**

Without prejudice to Condition 2(1), the Company shall not be under any Liability for any delay, loss or damage caused wholly or in part by act of God governmental restriction condition or control any laws rules or regulations of the country of origin of the Goods non-arrival of imported Goods inability to obtain transport or loading facilities or by reason of any act done or not done pursuant to a trade dispute whether such dispute involves its employees or not by reason of any other act matter or thing beyond its reasonable control including failure by the other party to carry out the provisions of these Conditions.

18. **Tools**

18.1 Subject to sub-condition (2) below and unless otherwise expressly agreed in writing tools shall remain the property of the Company notwithstanding that the Customer may have paid or be liable to pay part of the cost of them.

18.2 Where tools of any of them are loaned to the Company by the Customer they shall remain the property of the Customer and shall, where reasonably practicable be clearly identified as such. The Company shall not be liable in respect of damage to or the destruction of such tools save where it is shown to have been negligent in its custody or use of them when its Liability shall be limited to the repair or replacement of the tools so far as may be necessary for the purposes of the contract or any future contract with the Customer.

18.3 Neither the Customer nor the Company shall disclose to any third party any measurements dimensional or design details or any other information in respect of the tools owned by the other without previous consent in writing.

19. **Consumer Protection Act 1987 (the 'Act')**

19.1 In circumstances where the Company supplies Goods or parts thereof to the Customer for incorporation with, or for use ancillary to, any composite products to be produced, manufactured, processed or supplied by the Customer then:

19.1.1 the Customer shall forthwith on demand produce for inspection by the Company copies of all written instructions, information and warnings to be supplied by the Customer in relation to the said composite products provided nevertheless that such inspection or right to inspect shall not of itself constitute acceptance or approval of the part of the Company of such instructions, information or warnings, and

19.1.2 the Customer shall indemnify, reimburse and compensate the Company for all losses and damages (including costs, expenses and charges for legal actions in which the Company may be involved) that the Company may incur in the event that any claim or claims are made against the Company pursuant to the Act relating to the said composite products of the Customer or Goods or parts thereof supplied hereunder in circumstances in which the said Goods or parts supplied by the Company were either:

19.1.3 not the defective part of the said composite product, or

19.1.4 were only rendered the defective part or became a defective product by reason of actions or omissions of the Customer, or

19.1.5 were only rendered the defective part or became a defective product by reason of instructions or warnings given by the Customer or other supplier of the said composite product or the Goods or parts thereof supplied hereunder, or

19.1.6 were supplied by the Company in accordance with a specification and/or standard stipulated by the Customer.

19.2 For the purposes of this condition the word "defective" shall be interpreted in accordance with the definition contained in the Act.

19.3 The Customer must satisfy itself that the Goods or parts thereof of the Company's supply are suitable for any application in or for which they are to be used prior to incorporation or use.

20. **Legal**

20.1 This contract is governed by and interpreted in accordance with English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.