



# SWUK STEEL DECKING SUPPLIES LIMITED

## TERMS AND CONDITIONS OF SALE

### 1. Definitions and Interpretation

1.1 In these Conditions the following words and expressions have the following meanings unless inconsistent with the context:

“Additional Charges”	the costs of carriage, any additional packaging, any taxes, duties or other charges levied by any Governmental or authority in respect of or by reason of the sale, delivery, export or import of the Goods, courier and messenger costs and any other additional charges payable by the Customer in addition to the Price;
“Conditions”	these terms and conditions;
“Contract”	any agreement for the supply of Goods from the Supplier to the Customer in accordance with Condition 2.4;
“Customer”	the person which has accepted these Conditions;
“Goods”	all goods supplied by the Supplier to the Customer pursuant to the Contract as detailed in the Order Acknowledgement;
“Incoterms”	the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made;
“Order Acknowledgement”	the Supplier’s written confirmation of the Contract which sets out the specific details of the Contract;
“Price”	the price due from the Customer for the supply of the Goods as detailed in the Order Acknowledgement;
“Proposal”	any proposal, tender, estimate or quotation submitted to the Customer by the Supplier

prior to the Contract being made;

“Supplier”

SWUK Steel Decking Supplies Ltd

“Working Day”

any day from Monday to Friday other than a statutory holiday or public holiday in England.

- 1.2 References to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified or re-enacted and in force from time to time, and any subordinate legislation made from time to time under the relevant statute or statutory provision.
- 1.3 References to persons include natural persons, firms, partnerships, companies, corporations, associations and organisations, (in each case whether or not having separate legal personality).
- 1.4 Use of any gender includes the other genders.
- 1.5 Words in the singular include the plural and words in the plural include the singular.
- 1.6 Any reference to “writing” or any cognate expression includes communications by post, email and facsimile but excludes text messages.
- 1.7 The headings to Conditions do not affect the interpretation of these Conditions.
- 1.8 Any phrase introduced by the term “include”, “including”, “in particular” or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term.

## **2. Basis of Contract**

- 2.1 These Conditions shall apply to the sale and supply by the Supplier of all Goods purchased by the Customer and these Conditions shall govern the Contract to the exclusion of any other terms and conditions introduced or submitted by the Customer.
- 2.2 No variation of these Conditions shall be binding unless agreed in writing by a director of the Supplier and no collateral or supplemental contract may be made or construed unless confirmed in writing by a director of the Supplier.
- 2.3 Any Proposal submitted to the Customer will not constitute an offer and shall remain valid for the period stated therein, but if no period is specified such Proposal shall be valid for the date of issue.
- 2.4 Each order or acceptance of a Proposal for the supply of Goods by the Customer shall be deemed to be an offer by the Customer to purchase the Goods subject to these Conditions. The Contract shall be made when the Supplier issues an Order Acknowledgement and not before.

- 2.5 The Supplier may at any time without notifying the Customer make any changes to the Goods which do not materially affect the nature or quality of the Goods.
- 2.6 The Supplier's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Supplier in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed save that nothing in this Condition excludes the Supplier's liability for fraudulent misrepresentation.
- 2.7 In the event that the Customer wishes to cancel an order, it may only do so with the written consent of the Supplier and on the terms that the Customer shall indemnify the Supplier in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Supplier as a result of cancellation.
- 2.8 Any typographical, clerical or other omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier.

### **3. Prices**

- 3.1 Except as otherwise stated in the Order Acknowledgement or as agreed by the parties in writing, the Price is Ex Works (as defined in the Incoterms) the Supplier's principal place of business and is exclusive of transport costs and insurance costs. Where the Customer requests delivery the Supplier shall be entitled to charge the Customer for the costs of delivery as an Additional Charge which will appear separately on the Supplier's invoice, to be paid in accordance with Condition 4 below.
- 3.2 The Supplier reserves the right to charge the Customer, for any additional work undertaken over and above that which would have been otherwise required, (including any expenses or financial penalties incurred by the Company) as a result of any instructions supplied by the Customer being incomplete, incorrect, inaccurate, illegible, out of sequence, in the wrong form, or provided to the Supplier too late to enable it to meet a deadline.
- 3.3 All Prices quoted are exclusive of VAT or any other sales tax which will be charged at the rate in force at the time of despatch.

### **4. Payment Terms**

- 4.1 The payment terms in this Condition apply save to the extent that they are inconsistent with any specific payment terms set out in the Order Acknowledgement or otherwise agreed in writing between the parties.
- 4.2 The Supplier shall be entitled to invoice the Customer for the Price and where applicable any Additional Charges on or at any time after despatch of the Goods or any instalment thereof. In the event that any Additional Charges arise following the issue by the Supplier of the invoice, the Supplier will invoice the Customer as and when the Additional Charges arise.

- 4.3 The Customer shall make payment for the Price and where applicable any Additional Charges in sterling by electronic transfer, cheque or debit or credit card, unless agreed otherwise in writing. Any payment received by the Supplier in any other currency or by any other method will not be deemed to be payment for the Goods in question. Payment will not be deemed payment for the Goods in question unless and until it is received in full and in cleared funds.
- 4.4 Each invoice from the Supplier shall be paid by the Customer without any set-off or other deduction:
- 4.4.1 on despatch of the Goods; or
- 4.4.2 where credit terms have been agreed between the parties in writing within 30 days from the invoice or otherwise in accordance with the agreed credit terms.
- 4.5 The Supplier's invoices shall be payable in accordance with these Conditions, notwithstanding that delivery of the Goods may not have taken place and title in the Goods may not have passed to the Customer. The time of payment of the Supplier's invoices shall be of the essence of the Contract.
- 4.6 If the Customer either fails to pay in full any undisputed invoice from the Supplier by the due date for payment or exceeds the maximum outstanding credit facility agreed by the Supplier in writing, without prejudice to any other right or remedy the Supplier may have:
- 4.6.1 all invoices issued by the Supplier in respect of any Goods sold or supplied and any Additional Charges pursuant to this Contract and any sums due for goods under any other contract which may exist between the parties shall immediately fall due for payment;
- 4.6.2 the Supplier shall be entitled (without prejudice to any other right or remedy it may have) to:
- 4.6.2.1 cancel or suspend any further deliveries to the Customer under any order;
- 4.6.2.2 sell or otherwise dispose of the Goods and/or any goods which are the subject of any order by the Customer, whether or not appropriated thereto, and apply the proceeds of sale to the overdue payment or reduction in the excess over the maximum credit facility;
- 4.6.2.3 charge the Customer interest (both before and after any judgment) on the amount unpaid, at the rate of 3% per annum above the bank rate implemented by the Bank of England monetary committee from time;
- 4.6.2.4 charge the Customer collection fees of 10% of outstanding balance, if the need arises to use a 3<sup>rd</sup> party collection agency.
- 4.6.2.5 appropriate any payment made by the Customer to such of the Goods (or goods supplied under any other order) as the Supplier may think fit; and

4.6.2.6 by notice to the Customer unilaterally vary the Customer's credit available and/or payment terms for future Contracts.

4.7 Unless otherwise agreed in writing by the Supplier, all queries from the Customer regarding any invoice must be received within 14 days of the date of the invoice.

## **5. Packaging**

5.1 The packaging of Goods shall be entirely at the discretion of the Supplier and the Supplier shall have the right to pack all Goods in such manner and in such quantities as the Supplier thinks fit and shall not be obliged to comply with any packaging requests or instructions from the Customer unless agreed by the Supplier and the Customer in writing.

5.2 The cost of any additional packaging requests or instructions agreed by the parties or deemed necessary by the Supplier shall be an Additional Charge.

## **6. Risk and Title**

6.1 Risk of damage to or loss of the Goods shall pass to the Customer at the point when the Customer or a representative of the Customer collects the Goods from the Supplier's principal place of business save in the following situations:

6.1.1 where the Supplier is responsible for delivery risk shall pass at the time of delivery to the address set out in the Order Acknowledgement or other such address as may be agreed between the parties from time to time ("**Delivery Address**"); or

6.1.2 if the Customer wrongfully fails to take delivery, risk shall pass to the Customer at the time when the Supplier has tendered delivery of the Goods or notified the Customer that the Goods are available for collection.

6.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, title in the Goods shall not pass to the Customer until the Supplier has received in cash or cleared funds payment in full of:

6.2.1 the Price and any Additional Charges; and

6.2.2 all other sums payable by the Customer to the Supplier under the Contract or in respect of any other order for which payment is then due.

6.3 Until such time as title in the Goods passes to the Customer:

6.3.1 the Customer shall hold the Goods as the Supplier's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Supplier's property, but shall be entitled to resell or use the Goods in the ordinary course of its business;

- 6.3.2 if Goods are damaged or destroyed by an insured risk prior to the same being paid for by the Customer, the Customer shall receive the proceeds of any such insurance as trustee for the Supplier,
- 6.3.3 the Supplier shall be entitled at any time to require the Customer to deliver up the Goods to the Supplier and if the Customer fails to do so forthwith, to enter upon any premises of the Customer or third party where the Goods are stored and mark identify and repossess the Goods and the Customer grants the Supplier an irrevocable license to enter any premises of the Customer for such purposes; and
- 6.3.4 the Customer 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 Supplier, but if the Customer does so all monies owing by the Customer to the Supplier shall (without prejudice to any other right or remedy of the Supplier) forthwith become due and payable.

## **7. Delivery**

- 7.1 Goods shall be delivered when they are:
  - 7.1.1 collected from the Supplier's principal place of business;
  - 7.1.2 delivered to the Delivery Address; or
  - 7.1.3 delivered CFR to the Delivery Address (in accordance with the Incoterms) where the Goods are for export outside of the United Kingdom; or
  - 7.1.4 as otherwise agreed between the parties in writingany requests from the Customer for delivery shall entitle the Supplier to impose an Additional Charge in accordance with Condition 3.1.
- 7.2 The Supplier shall reasonably endeavour to deliver the Goods on the date(s) indicated by the Supplier in the Order Acknowledgement or the date(s) agreed between the parties in writing from time to time (the "**Anticipated Delivery Date**"), but the time of delivery shall not be of the essence.
- 7.3 The Supplier shall have the right to deliver Goods ordered in instalments.
- 7.4 In the event that the Supplier is unable for any reason to fulfil any delivery of the Goods on any Anticipated Delivery Date the Supplier shall not be deemed to be in breach of contract or have any liability to the Customer. Failure by the Supplier to deliver any one or more of the instalments on any Anticipated Delivery Date or any claim by the Customer in respect of the Goods delivered in any one or more instalments shall not entitle the Customer either to treat the Contract as a whole as repudiated or to reject or refuse to take delivery of any of the Goods delivered in any other instalment.
- 7.5 If the Customer fails to take delivery of the Goods (otherwise than by reason of the Supplier's fault) or fails to give the Supplier adequate instructions for delivery then, without prejudice to any other right or remedy available to the Supplier, the Supplier may:

- 7.5.1 store the Goods until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage and redelivery; or
- 7.5.2 sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) charge the Customer for any shortfall below the Price and any Additional Charges under the Contract.
- 7.6 The Customer shall accept delivery of the Goods and shall promptly unload the Goods. For the avoidance of doubt, the Supplier or the Supplier's carrier shall not be responsible for unloading the Goods and the Customer shall be charged for wasted time at the Supplier's standard rate and any other expenses incurred by the Supplier for:
  - 7.6.1 any delay in unloading;
  - 7.6.2 each repeat delivery where the Supplier or Supplier's carrier leaves the delivery point and subsequently returns to the delivery point with the Goods; and/or
  - 7.6.3 as a result of the Customer's inability or unwillingness to accept delivery and/or delay in unloading the Goods.
- 7.7 Subject to Condition 7.8 the Customer shall notify the Supplier in writing of any shortfall of Goods delivered within 14 Working Days of delivery, or in the event of non-delivery of a consignment, within 1 Working Day of the Anticipated Delivery Date and the Supplier shall be entitled to make good any shortage or non delivery of a consignment of the Goods.
- 7.8 The Customer shall take delivery of Goods tendered notwithstanding that the quantity delivered shall be either greater or lesser than the quantity purchased provided that:
  - 7.8.1 such discrepancies in quantity shall not exceed 5%; and
  - 7.8.2 the Price shall be adjusted pro rata to the discrepancy.
- 7.9 Upon delivery the Customer will be required to sign the Supplier's delivery note as conclusive evidence that delivery was made and all persons present at the Delivery Address shall have deemed authority to sign the delivery note on the Customer's behalf.

## **8. Supplier Warranties and Liability**

- 8.1 Subject to the Conditions set out below the Supplier warrants that upon delivery the Goods will:
  - 8.1.1 comply in all material respects with any specification for the Goods set out in the Order Acknowledgement or otherwise agreed between the parties in writing For the avoidance of doubt the Supplier may from time to time make changes in the specification of the Goods which are required to comply with any applicable safety or statutory requirements or which do not materially affect the quality of the Goods; and
  - 8.1.2 the Goods will have been manufactured in accordance with any applicable British Standard as set out in the Order

Acknowledgement or otherwise agreed between the parties in writing.

- 8.2 Subject as expressly provided in these Conditions, all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law. In particular, the Supplier makes no warranty as to the fitness of the Goods for any particular purpose even if that purpose is stated in the Customer's order. This exclusion includes recommendations or advice from the Supplier to the Customer relating to a specific enquiry. The Customer must satisfy itself as to the fitness for the purpose for which the Goods are intended.
- 8.3 The Supplier shall not be liable for a breach of any warranty in Condition 8.1 unless:
- 8.3.1 the Customer gives written notice of the defect to the Supplier and if the defect is as a result of damage in transit within 3 Working Days of receipt specifying the batch number, details of the defect and delivery date. In the event of a defect which is not apparent on delivery the Customer shall inform the Supplier of such defect immediately on discovery but in any event within 7 Working Days of delivery; and
- 8.3.2 the Supplier is given a reasonable opportunity after receiving the notice of examining the Goods and the Customer complies with any request from the Supplier to return Goods to the Supplier's principal place of business at the Customer's cost for examination to take place there. The reasonable cost of packaging and carriage of returned Goods incurred by the Customer will be reimbursed by the Supplier if the Goods are found to be damaged or defective.
- 8.4 The Supplier shall not be liable for breach of warranty under Condition 8.1 if:
- 8.4.1 the Customer makes any further use of the Goods after giving notice under Condition 8.3; or
- 8.4.2 the defect arises because the Customer has failed to follow the Supplier's or manufacturer's instructions (whether oral or in writing) as to the storage, installation, commissioning, proper use and maintenance of the Goods or (if there are none) good trade practice; or
- 8.4.3 the Customer alters or repairs the Goods without the written consent of the Supplier.
- 8.5 Where any valid claim in respect of the Goods is made by the Customer the Supplier shall be entitled at its option to:
- 8.5.1 replace, or repair or correct the Goods (or the part in question) found not to conform to warranty at the Supplier's cost; or
- 8.5.2 at the Supplier's sole discretion, refund to the Customer the Price (or a proportionate part of the Price) of the relevant part of the Goods found not to conform to warranty,
- and subject to Condition 8.7 the Supplier shall have no further liability to the Customer.

- 8.6 Subject to Condition 8.7, the Supplier's liability in connection with the sale and supply of Goods and/or Service shall be as follows:-
- 8.6.1 in respect of any loss of profits, loss of business, loss of goodwill, loss of anticipated savings, loss of use or for any type of consequential, special or indirect loss or damage, the Supplier's liability shall be nil; and
- 8.6.2 in respect of all other direct loss (whether in contract, tort or otherwise) the Supplier's total liability under the Contract shall not exceed the Price paid for the Goods.
- 8.7 Nothing in these Conditions seeks to limit the Supplier's liability for personal injury or death caused by the Supplier's negligence in respect of which the Supplier's liability shall be unlimited.
- 8.8 Subject to Condition 8.7, the Supplier shall have no liability under these Conditions or otherwise if the Goods have not been paid for by the due date for payment in accordance with Condition 4.4.
- 8.9 Any claim by the Customer under this Condition 8 in respect of any Goods shall not entitle the Customer to withhold or delay payment in respect of any other Goods in respect of which no such claim has been made whether or not those Goods form part of the same consignment.

## **9. Termination**

- 9.1 Without prejudice to any other remedies or rights whether under the Contract or otherwise, the Supplier may terminate the Contract at any time by written notice to the Customer and the notice taking effect as specified in the notice if:
- 9.1.1 the Customer commits a material breach of any of these Conditions, and (if such a breach is remediable), fails to remedy that breach within 14 days of being notified in writing;
- 9.1.2 the Customer suspends, or threatens to suspend, payment of its debts or makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 9.1.3 a creditor or encumbrancer 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 any property or assets of the Customer;
- 9.1.4 the Customer suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or
- 9.1.5 the Supplier reasonably apprehends that any of the events mentioned above is about to occur and notifies the Customer accordingly.
- 9.2 For the purposes of Condition 9.1.1, a breach shall be considered capable of remedy if the Customer can comply with the provision in question in all

respects other than as to the time of performance (provided that time of performance is not of the essence).

- 9.3 The Supplier may terminate the Contract if the Customer fails to pay any sum due, including any interest accrued, in full cleared funds in accordance with Condition 4.

## **10. Consequences of termination**

- 10.1 Upon termination of the Contract for any reason

10.1.1 the Customer shall immediately pay to the Supplier all outstanding invoices, and in respect of any part of the Price or other sums payable by the Customer but for which no invoice has been submitted, the Supplier may submit an invoice which shall be payable immediately on receipt; and

10.1.2 the accrued rights of the parties as at termination and the continuation of any provision expressly stated to survive or implicitly surviving termination, shall not be affected.

## **11. Force Majeure**

- 11.1 The Supplier shall not be liable to the Customer or be deemed to be in breach of this Contract by reason of any delay in performing, or any failure to perform, any of its obligations in relation to the Contract, if the delay or failure was due to any cause beyond the Supplier's reasonable control such as (but without limitation) any strike, lock-out or other form of industrial action, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or government order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors or inability to procure materials required for performance of the Contract.

- 11.2 The Supplier shall promptly notify the Customer in writing when such circumstances cause a delay or failure in performance and when they cease to do so.

## **12. Third party rights**

- 12.1 A person who is not a party to the Contract will not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

## **13. Notice**

- 13.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices sent by post shall be deemed served on the next Working Day following posting where the recipient's address is in the United Kingdom, or 7 Working Days following posting where the recipient's address is outside of the United Kingdom. Any notice delivered personally or sent by

fax or e-mail shall be deemed served at the time of personal delivery or transmission, provided the same occurs on a Working Day. To prove service it shall be sufficient to show that the e-mail or fax was transmitted to the e-mail address or fax number of the other party or that the envelope containing the notice was properly addressed and posted.

**14. Entire agreement**

14.1 Each Contract constitutes the entire agreement between the parties in relation to its subject matter, supersedes any previous agreement or understanding and may not be varied except in writing between the parties. All other terms and conditions express or implied by statute or otherwise, are excluded to the fullest extent permitted by law.

**15. No partnership or agency**

15.1 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for or to bind another party in any way.

**16. Further assurance**

16.1 Each party to the Contract shall at the request and expense of the other execute and do any deeds and other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.

**17. Assignment**

17.1 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

17.2 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any manner with all or any of its rights or obligations under the Contract.

**18. Severance**

18.1 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions shall remain in full force and effect.

**19. Waiver**

19.1 If either party fails or delays or compromises in exercising a right or remedy under the Contract, the right or remedy is not to be treated as having been waived, restricted or varied and agreement by either party to refrain from exercising a right in one particular instance will not prevent it from exercising it in full in the future.

**20. Cumulative remedies**

20.1 All rights and remedies available to either of the parties under the terms of the Contract or under the general law are to be cumulative, and no exercise by either of the parties of any such right or remedy is to restrict or prejudice the

exercise of any other right or remedy granted by the Contract or otherwise available to that party.

**21. Governing law and jurisdiction**

- 21.1 The Contract and any dispute or claim arising out of or in connection with it or its subject matter will be governed by and construed in accordance with the law of England and Wales.
- 21.2 The parties irrevocably agree that the courts of England and Wales will have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter.

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**Structural Steel Decking and Roof Decking Specialists**

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