

# PARKSIDE STEEL (STOCKHOLDERS) LTD

## CONDITIONS OF SALE

**YOUR ATTENTION IS DRAWN IN PARTICULAR TO CONDITIONS 27, 28, 29, 30, 31, 32, 45, 46 and 47**  
**In these conditions the expression “The Company” means,**  
**PARKSIDE STEEL (STOCKHOLDERS) LTD.**

### BASIS OF CONTRACT

1. All contracts for the sale of goods (the “**Goods**”), and where appropriate services (the “**Services**”), by the Company named overleaf (“the Company”) shall be deemed to incorporate these conditions to the exclusion of any other terms and conditions, including any implied by trade, custom, practice or course of dealing. Any terms and conditions in an order or any terms and conditions of purchase of the person or firm who purchases the Goods and Services from the Company (the “**Buyer**”) which are inconsistent with these conditions shall have no effect.
2. If subsequent to any contract for sale which is subject to these conditions a contract of sale is made with the same Buyer, howsoever made, without express reference to any conditions such contract shall be deemed to be subject to these conditions.
3. These conditions constitute the entire agreement between the Company and the Buyer. The Buyer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Company which is not set out in the conditions.
4. Any samples, drawings, descriptive matter or advertising issued by the Company and any descriptions of the Goods or illustrations or descriptions of the Services contained in the Company’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods and/or Services described in them. They shall not form part of the contract between the Company and the Buyer or have any contractual force.
5. All Goods quoted from stock are quoted subject to the Goods remaining unsold on receipt of the Buyer’s order and in any event any quotation given by the Company shall not constitute an offer, and is only valid for a period of 7 days from date of issue.
6. Any typographical, clerical or other error or omission in any literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company. The Buyer shall be responsible for ensuring the accuracy and sufficiency of any order and the accuracy of any accompanying specifications and for providing sufficient data, information and where relevant, samples to enable the Company to proceed with its order. The Company shall not be liable for the consequence of any inaccuracy in an order or specification and will be entitled to charge the Buyer for the costs it incurs by any variations to an order.
7. Any variation of these conditions shall only be effective if agreed in writing and signed by a Director of the Company.

### TESTING

8. The Company shall not be required to supply test certificates unless the same are requested at the time of placing the order and the Company may charge a fee for any certificate supplied. It shall be the responsibility of the Buyer to ensure that the capacity and performance of the Goods are sufficient and suitable.
9. The Company will supply CE markings when requested on order placement and any such markings maybe subject to an addition charge.

Upon placing an order the Buyer is required to indicate if the Goods are intended for use and/or sale for use in a construction setting and therefore require the application of applicable CE markings. It shall be the Buyer’s responsibility to confirm the relevant execution class for which a CE mark is required. The Company shall only apply CE markings to Goods if indicated as being required by the Buyer and in the execution class the Buyer has confirmed is applicable and the Company shall have no responsibility for advising or determining whether a CE mark is required and if so which execution class is applicable.

The application of a CE mark by the Company at the Buyer’s request shall not indicate or imply any liability on the part of the Company for determining such CE marking is accurately applied or correctly reflects the purpose for which the Buyer intends to use the Goods.

If an order is silent on the issue of CE markings and no process is applied to the Goods the Company shall nevertheless endeavour to transfer to the Buyer the benefit of any certification given by the original producer or supplier of the Goods.

### PRICING AND PAYMENT

10. Unless otherwise agreed in writing by the Company the price payable by the Buyer shall be the Company’s ruling price at the date of despatch of each delivery.
11. The Company may invoice the Buyer on or at any time after delivery/collection of the Goods or performance of the Services. All invoiced amounts are subject to the addition of VAT at the prevailing rate. Payment is due in net cash by the end of the

month following the date of the invoice. Time for payment shall be of the essence. Interest at the rate of 4 per cent per annum above Lloyds Bank Plc Base Rate shall be payable by the Buyer in respect of all overdue accounts.

12. A charge may be made for carriage, pallets, cases and packaging etc. where appropriate. No allowances will be made when collection is arranged by the Buyer.
13. If the Buyer fails to make any payment on the due date, then the Company shall be entitled, without prejudice to any other right or remedy, to;
  - (a) (if the Goods have not been delivered or the Buyer has not collected the same) retain the Goods and charge the Buyer for the reasonable cost (including insurance) of storage and the Buyer irrevocably licences the Company to sell the Goods so retained to any bona fide third party at the best price reasonably obtainable on condition that the Company shall account to the Buyer for the excess (after deducting all the Company's charges, reasonable storage and selling expenses) obtained over the unpaid amount due under these conditions; and
  - (b) cancel the order or suspend any further delivery of the Goods and/or Services to the Buyer.
14. Where payment is agreed to be made by instalments, any delay or default by the Buyer in making payment in respect of any one instalment shall render all the remaining instalments due forthwith, and interest will be charged with immediate effect until the actual date of payment in accordance with Condition 11.
15. Any liability of the Company under these conditions shall be subject to and conditional upon the due performance and observance by the Buyer of all obligations appearing in these conditions, and, subject to these conditions, the Buyer shall not be entitled to withhold or delay payment or exercise any right of set off whatsoever and howsoever arising or arisen which might otherwise be available to it.

## **DELIVERY**

16. Dates or periods for delivery of the Goods or performance of the Services are approximate and are given for information only and time of delivery or performance is not of the essence.
17. If the Company fails to deliver the Goods or perform the Services, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement Goods or Services of similar description and quality in the cheapest market available, less the price of the Goods and/or Services.
18. The Company shall not be liable for delay in delivery or failure to make delivery of any Goods or performance of Services due to fire, adverse weather conditions, war, civil commotion, industrial dispute, shortage of raw materials and fuel, shortage of labour, failure of transport networks, breakdown of plant and machinery, late receipt of the Buyer's specification or other necessary information, acts, orders or regulations of Governments or other regulatory bodies, delay on the part of any subcontractor or supplier or any cause whatsoever beyond the reasonable control of the Company or any of its associated companies concerned with the processing or delivery of the Goods or performance of the Services ("**Force Majeure Event**").
19. Each part delivery or instalment of the Goods or performance of the Services shall be deemed to be sold under a separate contract which shall be invoiced and paid for separately. No failure by the Company to deliver any one or more instalments of the Goods or perform any one or more instalments of the Services shall entitle the Buyer to cancel any other instalments.
20. If the Buyer fails to accept or take delivery of the Goods or Services, then except where such failure or delay is caused by a Force Majeure Event or by the Company's failure to comply with its obligations under these conditions in respect of the Goods or Services:
  - (a) delivery of the Goods and passing of risk and performance of the Services shall be deemed to have been completed at 9.00am on the day following the day on which the Company notified the Buyer that the Goods and/or Services were ready; and
  - (b) the Company may store the Goods until delivery takes place, and charge the Buyer for all reasonable related costs and expenses (including insurance).
21. If 10 days after the Company notified the Buyer that the Goods were ready for delivery the Buyer has not taken delivery of them, the Company may resell or otherwise dispose of part or all of the Goods.
22. Claims by the Buyer for non-delivery of Goods or non performance of Services shall only be considered by the Company if:
  - (a) in any case of partial non-delivery of Goods or partial non performance of Services the Buyer:
    - (i) advises the Company in writing within 7 days of receipt of the Goods and prior to their use or resale or 14 days of performance of the Services; and
    - (ii) gives the Company the opportunity to inspect the Goods or Services within a further 3 days and before the Goods have been used or resold;
  - (b) in any case of total non-delivery of Goods the Buyer advises the Company in writing within 7 days of the date of the Company's despatch documents.
23. In any case of total or partial non-delivery of Goods or damage to goods in transit, where the Goods are transported by an independent freight carrier, the Company shall only consider a claim if the Buyer has complied in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.
24. The Buyer shall not be entitled to reject the Goods if the Supplier delivers up to and including 10 per cent more or less than the quantity or weight of Goods ordered but a pro-rata adjustment shall be made to the Order invoice on receipt of notice from the Buyer that the wrong quantity or weight of Goods was delivered.

25. (a) The Company reserves the right to supply the Goods or perform the Services from any of its sites or from those of its associated companies or from any location or to sub-contract any part of the contract and unless otherwise agreed the method of carriage of the Goods shall be at the discretion of the Company.
- If the Company so agrees the Goods may be collected from the site by the Buyer. In such event when the Buyer is notified that the Goods are ready for collection delivery shall be deemed to have been completed at 9:00am on the day following the day on which the Company notifies the Buyer the Goods were ready. If the Goods are not collected by the Buyer the Company may despatch the Goods itself at the Buyer's expense and risk or store them at the expense and risk of the Buyer.
- (b) The Company reserves the right to charge to the Buyer any costs, charges or expenses incurred by the Company as a result of vehicle or wagon detention in consequence of any act or omission of the Buyer, its servants or agents, or as a result of special requirements or of stipulations of the Buyer not provided for in the contract.

## **GOODS - QUALITY**

26. The Company accepts no responsibility for the accuracy of drawings, patterns or specifications supplied by the Buyer. The Buyer shall indemnify the Company against all claims whatsoever for damages and costs and against all liability in respect of any infringement of patent or other intellectual property rights resulting from compliance with the Buyer's instructions express or implied.
27. Subject to Conditions 28, 29, 30, 31 and 34 the Goods supplied by the Company will comply with the specification and standard, if any, detailed on the Company's despatch documents and be free from material defects in design, materials and workmanship.
28. (a) Notwithstanding the provisions of Condition 27 above, any condition or warranty, statement or undertaking as to the quality of the Goods or their fitness or suitability for any purpose however and whenever expressed or which may be implied by statute, custom of the trade or otherwise is hereby excluded.
- (b) Without prejudice to the foregoing, no statement or undertaking contained in any British Standard, Euronorm, ISO Recommendation, or other standard or technical specification as to the suitability of the Goods for any purpose shall give rise to any legal liability. The Buyer shall satisfy itself that the Goods are suitable for any product or application for which they are to be used before the Goods are incorporated into such product or application.
29. Where the contract provides for testing or inspection of the Goods by or on behalf of the Buyer before delivery whether at the Company's site or elsewhere, then upon the Company giving notice of the availability of the Goods for inspection/testing the Buyer shall inspect and/or test the Goods within 7 days of such notice. If the Buyer does not inspect or test the Goods within the time specified or within 14 days of such testing or inspection the Buyer does not notify the Company in writing that the Goods are not in accordance with the contract, specifying the matter complained of, then the Buyer shall conclusively be deemed to have accepted the Goods as being in accordance with the contract and shall not thereafter be entitled to reject the Goods on the grounds of anything which such testing or inspection has or would have revealed.
30. The Buyer shall be deemed to have accepted the Goods and it shall be conclusively agreed that the Goods are in accordance with the contract unless
- (a) The Buyer gives notice in accordance with Condition 29 herein or
- (b) In respect of material suffering from any defect apparent from careful inspection or reasonable testing the Buyer
- (i) advises the Company in writing within 14 days of receipt of the Goods and prior to their use or resale; and
- (ii) gives the Company the opportunity to inspect the Goods within a further 3 days and before they have been used or resold;
- (c) with regard to a defect in the quality or state of the Goods or other respect in which the Goods are not in accordance with the contract which would not be apparent upon careful inspection or reasonable testing, the Buyer serves upon the Company written notice of such defect forthwith upon its discovery and in any event not more than 12 months after receipt of the Goods specifying the matters complained of and affording to the Company a reasonable opportunity of inspecting the Goods before any making good or replacement is undertaken. The Buyer shall not be excused from providing such opportunity by reason only of the incorporation of the Goods in the property of a third party or the location of the Goods in, upon or under the premises or land of a third party.
31. In no circumstances shall the Company be liable under Condition 27 if:
- (a) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice;
- (b) the defect arises as a result of the Company following any drawing, design or specification supplied by the Buyer;
- (c) the Buyer alters or repairs such Goods without the written consent of the Company;
- (d) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal working conditions;
- (e) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory standards; or
- (f) the price for the Goods have not been paid by the due date.
32. Provided that the Buyer has complied with the requirements as to notice in Conditions 29 and 30, whichever may be applicable, and subject to the provisions of Condition 31 herein, if the Goods or any part thereof are defective in quality or state or (save for discrepancy in weight or quantity) are otherwise not in accordance with the contract then, the Company shall undertake at its option either:

- (c) repay or allow the Buyer the invoice price thereof (including carriage, pallets, cases, packings and test certificates where appropriate) and any reasonable transport costs incurred by the Buyer in carrying the relevant Goods from the place of original delivery of such Goods to the Company's site from which they were despatched or to such other place as the Company may nominate, or
  - (d) repair or replace the Goods.
33. The undertakings in Condition 32 herein are in lieu of any other legal remedy and the liability of the Company shall be for all purposes limited to the giving of any appropriate credit or repayment or to the replacement of the Goods in accordance with that condition. Under no circumstances shall the Company be liable for any other loss, damage or expense whatsoever occasioned by any breach of contract, negligence or breach of any duty of the Company whatsoever and howsoever such loss, or expense may have been caused provided that nothing in these conditions shall exclude or limit or purport to exclude or limit the liability of the Company where such exclusion or limitation is void or unenforceable under any applicable law.
34. Goods sold as "non-prime" or as "untested" or goods accepted by the Buyer pursuant to Conditions 29 or 30 herein which the Company and the Buyer agree to be "non-prime" are sold in their actual state, as seen, without warranty and with all faults whether or not the Goods have been inspected by the Buyer prior to delivery. Any statement, specification, description or other information provided by the Company in respect of such Goods is given in good faith but the Company can accept no responsibility for its accuracy. Under no circumstances will the Company be under any obligation to replace or make good such Goods or entertain any claim whatsoever in respect thereof. If the Buyer shall re-sell such Goods the Buyer shall ensure that a provision in similar form to this condition is incorporated in the re-sale agreement unless prior to reselling the Goods, the Buyer has caused the Goods or such part of the Goods as the Buyer resells to comply with a recognised specification or standard.
- The Buyer shall indemnify the Company against all claims made against the Company and all losses, liabilities, costs and expenses consequent thereon which arise out of loss or damage to property or injury to or death of any person caused or alleged to be caused by or consequent upon the supply of a product as defined in Section 1 of the Consumer Protection Act 1987 to the Buyer as "non-prime" or "untested" Goods sold to the Buyer by the Company or which has as a component or components, includes or is otherwise manufactured from any "non-prime" or "untested" Goods supplied by the Company whether or not such claim is made pursuant to the said Act or the legislation of any member state of the European Community made pursuant to or in accordance with the directive of the Council of European Communities date 25<sup>th</sup> July 1985 (No. 85/374/EEC).
35. The Company shall have the right to make any changes to the Goods and/or Services which are necessary to comply with any applicable law or safety requirement, or which do not materially affect the nature or quality of the Goods and/or Services, and the Company shall notify the Buyer in any such event.

## **TITLE**

36. Title to the Goods shall not pass to the Buyer until the earlier of:
- (a) the time the Company receives payment in full (in cash or cleared funds) for the Goods ;and
  - (b) the Buyer resells the Goods, in which case title to the Goods shall pass to the Buyer at the time specified in condition 38.
37. Until title to the Goods has passed to the Buyer, the Buyer shall:
- (a) store the Goods separately from all other goods held by the Buyer so that they remain readily identifiable as the Company's property;
  - (b) not remove, deface or obscure any identifying mark or packaging or relating to the Goods;
  - (c) maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
  - (d) notify the Buyer immediately if it becomes subject to any of the events listed in Condition 43; and
  - (e) give the Company such information relating to the Goods as the Company may require from time to time.
38. Subject to Condition 39, the Buyer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Company receives payment for the Goods. However, if the Buyer resells the Goods before that time:
- (a) it does so as principal and not as the Company's agent; and
  - (b) title to the Goods shall pass from the Company to the Buyer immediately before the time at which resale by the Buyer occurs.
39. If before title to the Goods passes to the Buyer the Buyer becomes subject to any of the events listed in Condition 43, then, without limiting any other right or remedy the Company may have:
- (a) the Buyer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
  - (b) the Company may at any time:
    - i. require the Buyer to deliver up all Goods in its possession which have not been resold, or irrevocably incorporated into another product; and
    - ii. 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.

## SERVICES

40. The Company warrants to the Buyer that the Services will be provided using reasonable care and skill.
41. The Buyer shall:
  - (a) co-operate with the Company in all matters relating to the Services;
  - (b) provide the Company with such information and materials as the Company may reasonably require to supply the Services, and ensure that such information is accurate in all material respects; and
  - (c) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start.
42. If the Company performance of any of its obligations in respect of the Services is prevented or delayed by any or omission by the Buyer or failure by the Buyer to perform any relevant obligation (**Buyer Default**):
  - (a) the Company shall without limiting its other rights or remedies have the right to suspend performance of the Services until the Buyer remedies the Buyer Default, and to rely on the Buyer Default to relieve it from the performance of any of its obligations to the extent the Buyer Default prevents or delays the Company's performance of any of its obligations;
  - (b) the Company shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Buyer's failure or delay to perform any of its obligations as set out in Condition 41; and
  - (c) the Buyer shall reimburse the Company on written demand for any costs or losses sustained or incurred by the Company arising directly or indirectly from the Buyer Default.

## TERMINATION

43. The Company shall be entitled without prejudice to its other rights and remedies either to terminate wholly or in part any or every contract between itself and the Buyer or to suspend any further deliveries or performance under any of every contract immediately in any of the following events:
  - (a) if any debt is due and payable by the Buyer to the Company but is unpaid;
  - (b) if the Buyer has failed to provide any letter of credit, bill of exchange or any other security required by the contract provided that in such event the aforesaid rights of termination or suspension shall apply only in regard to the particular contract in respect of which the Buyer shall have so failed;
  - (c) if the Buyer has failed to take delivery of the Goods or Services under any contract between it and the Company otherwise than in accordance with the Buyer's contractual rights;
  - (d) if the Company obtains any unfavourable reports on the financial standing of the Buyer;
  - (e) the Buyer 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 or limited liability partnership) 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;
  - (f) the Buyer 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 Buyer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
  - (g) (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Buyer, other than for the sole purpose of a scheme for a solvent amalgamation of the Buyer with one or more other companies or the solvent reconstruction of the Buyer;
  - (h) (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 Buyer;
  - (i) (being a company) the holder of a qualifying floating charge over the Buyer's assets has become entitled to appoint or has appointed an administrative receiver;
  - (j) a person becomes entitled to appoint a receiver over the Buyer's assets or a receiver is appointed over the Buyer's assets;
  - (k) (being an individual) the Buyer is the subject of a bankruptcy petition or order;
  - (l) a creditor or encumbrance or the Buyer 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;
  - (m) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 43(a) to Condition 43(l) (inclusive);
  - (n) the Buyer suspends, threatens to suspend, ceases or threaten to ceases to carry on all or a substantial part of its business;
  - (o) the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the contract has been placed in jeopardy; and
  - (p) (being an individual) the Buyer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

The Company shall be entitled to exercise its aforesaid rights of termination or suspension at any time during which the event or default giving rise thereto has not ceased or been remedied and, in the event of any suspension, the Company shall be entitled as a condition of resuming delivery under any contract between it and the Buyer to require payment of, or such security as it may require for the payment of, the price of any further delivery.

44. 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.

#### **SET OFF**

45. The Buyer shall not be entitled to withhold payment of any amount payable under the contract to the Company because of any disputed claim of the Buyer in respect of defective Goods or Services or any other alleged breach of the contract. All amounts due from one party to the other shall be paid in full without any set off or deduction (other than as required by law).

#### **LIMITATION OF LIABILITY**

46. Nothing in these Conditions shall limit or exclude the Company's liability for:
- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;
  - (b) fraud or fraudulent misrepresentation;
  - (c) any other liability which cannot be excluded at law.
47. Subject to Condition 46:
- (a) the Company shall under no circumstances whatever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the contract; and
  - (b) the Company's total liability to the Buyer in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods and/or the Services.

#### **GENERAL**

48. The Company's rights shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver by the Company in respect of any breach shall operate as a waiver in respect of any subsequent breach.
49. If any provision or part-provision of these conditions is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall not affect the validity and enforceability of the rest of these conditions.
50. No contract of sale which is subject to these conditions may be assigned by the Buyer without the prior written consent of the Company. The Company may at any time assign, transfer, subcontract or deal in any manner with all or any of its rights under these conditions and may subcontract or delegate any or all of its obligations to a third party.
51. A person who is not a party to a contract of sale which is subject to these conditions shall have no rights to enforce them.
52. The provisions of these conditions shall remain in full force and effect notwithstanding that the parties' obligations under any contract may have been performed or discharged.

#### **GOVERNING LAW AND JURISDICTION**

53. The contract between the Company and the Buyer shall be deemed to have been made in England and shall be governed in all respects by English law. The Buyer shall submit to the exclusive jurisdiction of the English Courts.

**September 2014.**