

## The Sebden Group - Terms & Conditions for the supply of Goods (2021)

(Business sales not via website)

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

### 1. Interpretation

#### 1.1 Definitions:

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.3.

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

**Customer:** the person or firm who purchases the Goods from the Supplier.

**Delivery Location:** has the meaning given in clause 4.2.

**Force Majeure Event:** an event, circumstance or cause beyond a party's reasonable control.

**Goods:** the goods (or any part of them) set out in the Order.

**Order:** the Customer's order for the Goods, as set out in the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation, as the case may be.

**Sebden Group:** means and includes Sebden Steel Service Centres and any subsidiary or holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company.

**Sebden Steel Service Centres:** means Sebden Steel Service Centres Limited (Registered no. 02553464) whose registered office is at Craven House Craven Road, Broadheath, Altrincham, Cheshire, WA14 5HE.

**Specification:** any specification for the Goods, that is agreed in writing by the Customer and the Supplier.

**Supplier:** means Sebden Steel Service Centres or the relevant Sebden Group company from whom you purchase Goods, as identified in the Order or in writing by the relevant Sebden Group company.

#### 1.2 Interpretation:

(a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

(b) A reference to a party includes its successors and permitted assigns.

(a) A reference to legislation or a legislative provision is a reference to it as amended or re-enacted. A reference to legislation or a legislative provision includes all subordinate legislation made under that legislation or legislative provision.

(b) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

(c) A reference to a **holding company** or a **subsidiary** means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

(d) A reference to **writing** or **written** includes email and fax.

### 2. Basis of contract

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order and any applicable Specification submitted by the Customer are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written acceptance of the Order or (if earlier) when the Supplier delivers the Goods or notifies the Customer that the Goods are ready for collection, as the case may be, at which point the Contract shall come into existence.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for the date it is issued, or for any validity period expressly stated in the quotation.

### 3. Goods

3.1 The Goods are described in the Specification of the Goods.

3.2 The Supplier reserves the right to amend the Specification of the Goods if required by any applicable statutory or regulatory requirement, and the Supplier shall notify the Customer in any such event.

### 4. Delivery

4.1 The Supplier shall ensure that if the Supplier requires the Customer to return any packaging materials to the Supplier, that fact is clearly stated on or with the delivery note. The Customer shall make any such packaging materials available for collection at such times as the Supplier shall reasonably request. Returns of packaging materials shall be at the Supplier's expense.

4.2 Where it has been agreed in writing that the Supplier shall arrange to deliver the Goods to or for the Customer, the Supplier shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after the Supplier notifies the Customer that the Goods are ready.

4.3 Where the Supplier is not arranging delivering the Goods to or for the Customer, the Customer shall collect the Goods from such location as may be specified on the Supplier's invoice (or advised by the Supplier prior to delivery) (**Delivery Location**) within 3 Business Days of the Supplier notifying the Customer that the Goods are ready. The Customer may make collection of Goods from the Supplier only by prior appointment with the Supplier.

4.3 Delivery is completed on the completion of unloading (in the case of delivery of the Goods by the Supplier as anticipated in clause 4.2) or on the completion of loading (in the case of collection of the Goods by the Customer as anticipated in clause 4.3) of the Goods at the relevant Delivery Location.

4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.5 If the Supplier is liable to the Customer for failure to deliver any Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods concerned. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

4.6 If the Customer fails to take delivery of the Goods (or where appropriate, collect the Goods) within 3 Business Days of the Supplier notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Supplier's failure to comply with its obligations under the Contract in respect of the Goods:

(a) delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which the Supplier notified the Customer that the Goods were ready; and

(b) the Supplier shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance and the Supplier's storage charges).

4.7 If 10 Business Days after the day on which the Supplier notified the Customer that the Goods were ready for delivery (or where appropriate, collection) the Customer has not taken actual delivery of them (or where appropriate collected them), the Supplier may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

4.8 The Supplier may deliver the Goods by instalments, which shall be invoiced and paid for separately. Each instalment shall constitute a separate contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

4.9 The Customer is responsible for checking quantities of Goods at the time of delivery, and in the event of any numerical shortages in the quantity of Goods the Customer shall make an appropriate endorsement on the delivery note. If the Goods are packaged in such a way that they cannot be readily quantified prior to unloading and signature of the delivery note then any shortages must be notified to the Supplier within 2 Business Days of delivery. A signature on the delivery note by the Customer or its representative on site shall be confirmation that the quantities specified on the delivery note were received. In the absence of a person being available to sign the delivery note, the Supplier reserves the right to charge for the removal of the Goods back to its premises and the subsequent costs of redelivery.

### 5. Quality

5.1 The Supplier warrants that the Goods shall on delivery conform in all material respects with any applicable Specification.

5.2 Subject to clause 5.3, if:

(a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery (and in accordance with the timescales referred to in clause 5.3) that some or all of the Goods do not comply with the warranty set out in clause 5.1;

(b) the Supplier is given a reasonable opportunity of examining such Goods before they are used, processed or re-sold; and

(c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Customer's cost, the Supplier shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 The Supplier shall only be liable for any breach of the warranty condition in clause 5.1 if such breach is notified to the Supplier in writing:

(a) within 7 days of delivery of the Goods to the Customer (or its agent), in respect of any defect in the Goods which is reasonably apparent on visual inspection; and/or

(b) within 7 days of becoming aware of any defect in the Goods which is not reasonably apparent on visual inspection.

5.4 The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 if:

(a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

(b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

(c) the defect arises as a result of the Supplier following Specification supplied by the Customer;

(d) the Customer alters or repairs such Goods without the written consent of the Supplier;

(e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions;

(f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or

(g) the Goods differ from the Specification within the usual mill tolerances as to quality, size, finish and weight.

5.5 Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1. Without prejudice to the generality of the foregoing, the Supplier shall have no liability for:

(a) loss of sales or manufacturing process, or claims made by third parties to whom the Customer has sub-sold or re-sold the Goods in question; or

(b) any losses sustained by the Customer of the kind referred to in clause 8.5, including claims for loss of profit, or additional costs and/or expenses, or claims for compensation arising out of the condition or use of the Goods or their re-sale by the Customer.

5.6 The Customer acknowledges that the Supplier is a steel stockholder, and as such is not an expert in the use of steel for specified processes or applications. Any advice or recommendation given by the Supplier's employees or agents to the Customer relating to the potential fitness of the Goods for any particular purpose(s) or use(s) which is not confirmed in writing by the Supplier is not intended to be relied upon by the Customer, and (subject to clause 8.3) the Supplier shall not be liable to the Customer for any such advice or recommendation given.

5.7 All other express or implied conditions, statements, representations or warranties (whether arising by statute or otherwise) are hereby expressly excluded. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

### 6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer until the earlier of the following:

(a) the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

(b) the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

6.3 Until title to the Goods has passed to the Customer, the Customer shall:

(a) store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property;

(b) not remove, deface or obscure any identifying mark or packaging on 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 Supplier immediately if it becomes subject to any of the events listed in clause 9.1(c) to clause 9.1(e); and

(e) give the Supplier such information as the Supplier may reasonably require from time to time relating to:

(i) the Goods; and

(ii) the ongoing financial position of the Customer.

6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before the Supplier receives payment for the Goods. However, if the Customer resells the Goods before that time:

(a) it does so as principal and not as the Supplier's agent; and

(b) title to the Goods shall pass from the Supplier to the Customer immediately before the time at which resale by the Customer occurs.

- 6.5 The Customer's right to under clause 6.4 to resell the Goods or use them in the ordinary course of its business shall terminate automatically if the Customer becomes subject to any of the events listed in clause 9.1(c) to clause 9.1(e). In any such event, the Customer shall deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, the Supplier may enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 6.6 Without limiting clause 6.5, at any time before title to the Goods passes to the Customer, the Supplier may:
- by notice in writing, terminate the Customer's right under clause 6.4 to resell the Goods or use them in the ordinary course of its business; and
  - require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product and if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Price and payment**
- 7.1 The price of the Goods shall be the price set out in the Order.
- 7.2 The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- any factor beyond the Supplier's control (including foreign exchange fluctuations, government levies, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
  - any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
  - any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 7.3 The price of the Goods excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice.
- 7.4 The Supplier may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.5 The Customer shall pay each invoice submitted by the Supplier:
- within 30 days after the end of the month in which the invoice is dated, or in accordance with any alternative credit terms agreed by the Supplier and confirmed in writing to the Customer; and
  - in full and in cleared funds to a bank account nominated in writing by the Supplier, and time for payment shall be of the essence of the Contract.
- 7.6 If the Customer fails to make a payment of any amount due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 9 (Termination):
- the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each date at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when the base rate is below 0%, or the Supplier may claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Customer shall pay the interest immediately on demand. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the due date until payment; and
  - all other amounts payable by the Customer to the Supplier for Goods supplied under the Contract (and for any other goods that the Supplier has supplied to the Customer) shall immediately fall due for payment.
- 7.7 All amounts due under the Contract shall be paid by the Customer in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8. Limitation of liability**
- 8.1 The limits and exclusions in this clause reflect the insurance cover the Supplier has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- death or personal injury caused by negligence;
  - fraud or fraudulent misrepresentation;
  - breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
  - defective products under the Consumer Protection Act 1987.
- 8.4 Subject to clause 8.3, the Supplier's total liability to the Customer under the Contract shall not exceed the invoice price of the Goods (excluding VAT).
- 8.5 Subject to clause 8.3, the following types of loss are wholly excluded:
- loss of profits;
  - loss of sales or business;
  - loss of agreements or contracts;
  - loss of anticipated savings;
  - loss of use or corruption of software, data or information;
  - loss of or damage to goodwill; and
  - indirect or consequential loss.
- 8.6 This clause 8 shall survive termination of the Contract.
- 9. Termination**
- 9.1 Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:
- the Customer fails to make payment of any amount due to the Supplier under the Contract, within 3 Business Days of the Customer being notified in writing to do so;
  - the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of the Customer being notified in writing to do so;
  - the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), obtaining a moratorium, being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
  - the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
  - the Customer's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 9.2 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 9.1(c) to clause 9.1(e), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- 10. Force majeure**
- The Supplier shall not be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the Supplier shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for 3 months, the Supplier may terminate the Contract by giving 7 days' written notice to the Customer.
- 11. General**
- 11.1 Assignment and other dealings.**
- The Supplier may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
  - The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.
- 11.2 Entire agreement.**
- The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
  - Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 11.3 Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.4 Waiver.** No failure or delay by the Supplier to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy by the Supplier. No single or partial exercise of such right or remedy by the Supplier shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.5 Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract. If any provision of the Contract is deemed deleted under this clause 11.5 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.6 Notices.**
- Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).
  - Any notice shall be deemed to have been received:
    - if delivered by hand, at the time the notice is left at the proper address;
    - if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.
  - This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
  - A notice given under the Contract is not valid if sent by email or fax.
- 11.7 Third party rights.**
- Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
  - The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 11.8 Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 11.9 Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.