

The following standard terms and conditions apply to every contract or arrangement entered into by Us for the supply of Goods to You.

## 1. DEFINITIONS

In these Terms:-the following words and expressions have the following meanings:-

**"Business Day"** 9am to 5am Monday to Friday (inclusive) other than on public holidays in England;

**"Contract"** the contract between Us and You for the provision of the Goods, subject to the Terms;

**"Defect"** the condition and/or any attribute of the Goods (including, but not limited to, failure to perform to the required standard), and/or any other circumstance, which would but for these Terms, entitle You to bring a claim against Us (whether for breach of contract, negligence, breach of statutory duty, or otherwise);

**"Delivery Address"** the address set out in the Order or Quotation for delivery of the Goods;

**"Directors"** one of Our directors;

**"Goods"** the goods specified in the Quotation, or the Order, to be sold by Us to You (including any instalment of the Goods or any part of them);

**"Loss"** any direct loss, including (without limitation), loss by reason of damage, deterioration, delay, non-delivery, mis-delivery, the costs of labour and materials expended in the performance of the Contract, and (without limitation) any consequential, special, indirect, incidental or punitive damages or loss of profits, expenses or anticipated profits, loss of business, loss of rent, depletion of goodwill or other form of economic loss, howsoever arising together with any costs, fees, damages, charges, penalties, fines, interest, or other expenses;

**"Month"** a calendar month (and "Monthly" shall be construed accordingly);

**"Order"** the verbal or written order placed by You with Us for the supply of Goods;

**"Order Acknowledgement"** the acknowledgement of the Order submitted by Us to You;

**"Person"** any individual, body corporate, limited liability partnership, governmental body or any entity having a separate legal personality;

**"Price"** the monies payable to You to Us in return for the provision of the Goods pursuant to the Contract, as set out in the Quotation or the Order;

**"Quotation"** the quotation submitted by Us to You for the supply of Goods;

**"Special Conditions"** any terms or conditions relating to the Goods which are set out in the Quotation or the Order and which are agreed by Us;

**"Terms"** the terms and conditions for the sale and supply of Goods as set out in this document, together with any Special Conditions;

**"Us", "We", "Our"** Oliver Ashworth Limited (CRN 9361226), trading as Ashworth;

**"You", "Your"** the Person who enters into the Contract with Us, and who accepts provision of the Goods, whose details are set out in the Quotation or the Order;

**"Writing"** any form of written communication, but where Writing is specified, communication by email must be following up by a written letter properly address to Us (FAO the Directors at Our registered office

- 1.1. the singular includes the plural and vice versa, and words importing one gender include all genders.
- 1.2. headings are for ease of reference only.

## 2. THE CONTRACT

- 2.1. All Quotations are made, and all Orders are accepted, subject to these Terms.
- 2.2. Only these Terms apply to the Contract, and also to all other contracts or arrangements between Us and You for the provision of any Goods (other than any Special Conditions relevant to particular contracts). These Terms override any other terms, conditions or warranties You may seek to impose. Your acceptance of the Goods (or any part thereof) shall be conclusive evidence that these Terms are accepted by You. These Terms supersede any previous terms and conditions which may have regulated dealings between Us and You.
- 2.3. No amendment or variation to the Contract is valid unless agreed to in Writing by a Director.
- 2.4. The latest version of these Terms is available on Our website. We reserve the right to amend these Terms from time to time by giving 20 days' notice. If You do not agree to Our proposed amendments, then You must notify Us in Writing of Your objections within 10 days of receipt of Our notice. If You do not do so within that time period, You will be deemed to have agreed and accepted Our variation to the Terms as notified to You, which will take effect from the expiry of 20 days from the date of Our notice.
- 2.5. No Contract shall have been formed until the Quotation has been signed by You or on Your behalf or We have accepted the Order (which can be confirmed either by conduct on Our part in selling the Goods to You, or on the telephone by Us, or by Our submission of the Order Acknowledgement to You).
- 2.6. The Quotation is available for acceptance for a maximum period of 30 days from the date when given and may be withdrawn by Us within such time at any time by oral or written notice.
- 2.7. Once a Quotation has been accepted by You, or an Order has been accepted by Us, it may not be cancelled by You except with Our written agreement and on terms that You shall indemnify Us in full against all Loss incurred by Us as a result of such cancellation, including Our reasonable administrative costs relating thereto.
- 2.8. Once rejected by You, a Quotation will not be capable of being subsequently accepted by You unless agreed in Writing with Us or unless reissued by Us.

- 2.9. Any advice or recommendation given by Us or Our employees or agents to You or Your employees or agents as to the Goods which is not confirmed in Writing by Us is followed or acted upon entirely at Your own risk, and accordingly We shall not be liable for any such advice or recommendation which is not so confirmed. You confirm to Us that You have not relied on, nor been induced to enter into the Contract by, any representation, promise or other statement not recorded in the Terms.
- 2.10. You shall be responsible for ensuring the accuracy of the terms of the Order, and shall give Us all information necessary to enable Us to proceed with the Contract. Any failure so to do will allow Us to charge You monies (in addition to the initially agreed Price) for any delay or additional work necessary, or to terminate the Contract by immediate Written notice.
- 2.11. The quantity, quality and description of and any specifications for the Goods shall be those set out in the Quotation (if accepted by You) or the Order (if accepted by Us on the Order Acknowledgement). It is Your responsibility to ensure the accuracy of the terms of any Order (including any applicable design, drawing or specification).
- 2.12. We reserve the right to make any changes in the specification of the Goods, which do not materially affect the quality or performance of the Goods.
- 2.13. Whilst we take every precaution in the preparation of Our catalogues, technical circulars, price lists and other literature, these documents are for Your general guidance only and statements included in these documents shall not constitute representations by Us and We shall not be bound by them.

## 3. THE PRICE

- 3.1. The Price shall be that set out in the Quotation (if accepted by You), or the Order Acknowledgement, or in accordance with Our price list for Goods as at the relevant moment in time.
- 3.2. We reserve the right, at Our option, to require payment of the Price in full or in part, or the payment of a non-refundable deposit, prior to despatch of the Goods, and reserve the right to withhold delivery of the Goods or any part of them until such payment is received.
- 3.3. We reserve the right, by giving notice in writing to You at any time prior to completion of the Contract, to increase the Price to reflect any increase in the cost to Us in executing the Contract due to any factor beyond Our control (including, without limitation, any increase in currency fluctuations, or any change in delivery dates, quantities or specifications for the Goods arising as a result of any error or omission or changes deemed necessary by You, or any delay or interruption in the Contract not attributable to Us.
- 3.4. All Prices are exclusive of VAT and similar taxes, which You shall be additionally liable to pay to Us upon presentation of a suitable invoice from Us.
- 3.5. We have the option of supplying any Goods ordered by You in imperial measurements in the nearest equivalent metric measurements and the Goods may be charged in metric measure allowing for conversions.

## 4. PAYMENT

- 4.1. We will invoice You for all Goods supplied on delivery (or upon notification that such Goods are ready for collection).
- 4.2. You may pay for the Goods in full in cleared funds in accordance with the time for payment specifically agreed with You by Our Company Signatory
- 4.3. Interest on overdue amounts shall accrue from the date when payment became due until the date of payment at the rate of 8% per annum (calculated and compounded daily) and shall accrue at such a rate both before and after judgment. You agree to reimburse Us all costs and expenses (including legal costs on a full indemnity basis) incurred in the collection of any overdue amount. Any delay, waiver or failure by Us to enforce the provision of this Term in relation to a particular overdue invoice or amount shall not be taken as a waiver by Us in respect of other overdue invoices or amounts, and We specifically reserve the right to invoice the provisions of this Term in relation to any overdue invoice or amount, irrespective of previous dealings
- 4.4. If You fail to make any payment due to Us on the due date, then without prejudice to any other right or remedy available to Us, We shall be entitled to immediately cancel or suspend the Contract so far as any Goods which remain to be delivered, by giving written notice to that effect to You.
- 4.5. If You have an account with Us, We may require You to set up Monthly Direct Debit payments to Us. We may make an administration charge, and also charge for any additional costs incurred in processing payments not made in accordance with this Term.
- 4.6. No right of set off shall exist in respect of any claim by You against Us unless and until such claim is accepted by Us in Writing (including the amount of any such claim that We accept), and You are not entitled to withhold all or any part of any sum which has become due to Us under the Contract (or under any other contracts or agreements with Us).
- 4.7. If Goods are delivered and the quantity of such delivery is proven to be short of the amount set out in the Order Acknowledgement or Quotation, You will still be liable to pay the Price for the quantity of Goods actually delivered.
- 4.8. We may set off any monies You owe Us against monies We owe You, at any time.
- 4.9. Time of payment of the Price is of the essence of the Contract.

4.10. If the Goods are to be delivered in instalments, then We reserve the right to invoice You on the delivery of each instalment separately, and You shall pay for such invoices in accordance with these Terms. If You fail to pay any instalment of the Price when due, then (without prejudice to any other right or remedy We may have), the whole of the Price for each remaining instalment shall become immediately due and payable (irrespective of the non-delivery).

## 5. DELIVERY

5.1. Delivery shall be effected: -

- 5.1.1. when You collect the Goods from Our premises; or
- 5.1.2. when the Goods leave Our premises (whether carried by Us or by an independent carrier) for delivery to You at the Delivery Address; or
- 5.1.3. such Goods leave the premises of Our supplier (if Goods are to be delivered direct from Our supplier to You at the Delivery Address).

5.2. Delivery dates are given in good faith, but are estimates only.

5.3. Time for delivery shall not be of the essence of the Contract.

5.4. For the avoidance of doubt, and without detracting from any other provisions of the Terms, We shall not be liable for any Loss whatsoever (including for the avoidance of doubt of any liability to any third party) resulting from any delay in delivery of the Goods, or failure to deliver the Goods in a reasonable time – whether such delay or failure is caused by Our negligence or otherwise howsoever.

5.5. We reserve the right to make delivery by instalments and tender a separate invoice in respect of each instalment. Our failure to deliver any one or more instalments or any claim by You in respect of any one or more instalments, shall not entitle You to treat the Contract as a whole as repudiated.

5.6. The Price agreed included Our normal delivery charges but We may make an additional charge if We incur further costs or expenses such as (but not limited to): -

- 5.6.1. those caused by delivery of less than a full load;
- 5.6.2. complying with Your request for delivery outside Our normal delivery pattern or trading by instalments;
- 5.6.3. orders of small value which are not economical for Us to deliver free.

5.7. You must provide any necessary facilities (including free space) to enable Us to unload the Goods at the delivery Address. If Our delivery vehicle is kept waiting for an unreasonable time, or it is obliged to return without completing delivery, an additional charge will be made.

5.8. You may collect Goods from Us during Our trading hours at Our trade counter. If they are not collected within 14 days from when We notify You that they are available, a storage charge will be payable before the Goods are released.

5.9. If You fail to take delivery, accept or collect the Goods within the agreed time, in Our discretion, We may make an additional charge, and invoice You for the Goods, or treat the Contract as repudiated and, in any case, recover Our Losses from You.

5.10. If You collect Goods from Us, You are solely responsible for size, weight and positioning of the load on the vehicle. You will be responsible (and We accept no liability) for any damage caused to Your vehicle by overloading or incorrect distribution of the load.

5.11. If the Goods are to be deposited other than on Your private premises, You shall be responsible for compliance with all regulations, and for all steps which need to be taken for the protection at all time of Persons or property.

5.12. You will indemnify Us in respect of all Losses We may incur as a result of delivery in accordance with Your instructions. This indemnity will be reduced in proportion to the extent that such Losses are due to Our proven contributory negligence.

## 6. INSPECTION

6.1. You shall inspect the Goods at the place and time of unloading or collection, but nothing in the Terms shall require You to break packaging and/or unpack Goods which are intended to be stored before use.

6.2.

- 6.2.1. You must advise Us by telephone immediately and give Us Written notice within three Business Days of unloading any claim for short delivery.
- 6.2.2. If You do not give Us that notice within that time, the Goods will be deemed to have been delivered in the quantities shown in the delivery documents.
- 6.2.3. You shall not be entitled, and irrevocably and unconditionally waive any rights to reject the Goods or claim any damages whatsoever, for short delivery howsoever caused.
- 6.2.4. Our liability for short delivery is limited to making good the shortage.

6.3.

- 6.3.1. Where it is, or would have been, apparent on a reasonable inspection that the Goods are not in conformity with the Contract or (where the Contract is a contract for sale by sample) that the bulk does not compare with the sample. You must advise Us by telephone immediately and give Us Written notice within three Business Days of inspection.

6.3.2. If you fail to give Us that notice within that time, the Goods will be deemed to have been accepted and You shall not be entitled, and irrevocably and unconditionally waive any rights, to reject the Goods.

## 7. TITLE AND RISK

7.1. Risk in the Goods shall pass to You when the Goods are delivered, or if You wrongfully fail to take delivery of the Goods, at the time when We have tendered delivery of the Goods.

7.2. Title to the Goods shall not pass to You until We receive payment in full (in cash or cleared funds) for the Goods, and other goods that We have supplied to You and all other monies that You owe to us, in which case title to the Goods shall pass at the time of payment of all such sums.

7.3. Until title to the Goods has passed to You, You shall: -

- 7.3.1. store the Goods separately from all other goods held by You so that they remain identifiable as Our property;
- 7.3.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.3. maintain the Goods in satisfactory condition and keep them insured against all risks from their full price from the date and delivery; and
- 7.3.4. give Us such information relating to the Goods as We may require from time to time.

7.4. Subject to Term 7.5, You may resell or use the Goods in Your ordinary course of business (but not otherwise) before We receive payment for the Goods. However, if You resell the Goods before that time: -

- 7.4.1. You do so as Our principal and not as Our agent; and
- 7.4.2. title to the Goods shall pass from Us to You immediately before that time at which the resale by You occurs.

7.5. If before title to the Goods passes to You, You become subject to any of the events listed in Term 7.9 then, without limiting any other right or remedy We may have: -

- 7.5.1. Your right to resell the Goods or use them in the ordinary course of business ceases immediately; and
- 7.5.2. We may at any time:-

- 7.5.2.1. require You to deliver up all Goods in Your possession which have not been resold, or irrevocably incorporated into another product; and
- 7.5.2.2. if You fail to do so promptly, enter Your premises or the premises of any third party where the Goods are stored in order to recover them (without notice).

7.6. In the event of Term 7.5.2.2 applying, You (by entering into the Contract) grant to Us, or Our agents, an irrevocable licence to enter Your premises to recover and remove the Goods and recover all sums owing to Us (including the costs of Our having taken such action). If the Goods are not situated at Your premises, but at the premises of a third party with whom You have contracted, then You shall procure that We (or Our agents) are granted rights of access to that third party's premises, and shall be permitted to remove the Goods from those premises. To facilitate this right You (by entering into this Contract) irrevocably authorise Us (or Our agents) to act as Your attorney when dealing with such third party. This right shall continue to subsist notwithstanding the transaction of the Contract, and shall be without prejudice to any other rights We may have under the Contract.

7.7. You shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain Our property, but if You do so, then all monies owing by You to Us shall (without prejudice to any other right or remedy We may have) become immediately due and payable.

7.8. Notwithstanding the provisions of Terms 7.1 to 7.7, We may bring an action for the Price at any time after the Price has become payable under these Terms.

7.9. If any of the following events occur, then the provisions of Terms 7.5 and 7.6 shall apply: -

- 7.9.1. if Term 4.6 applies; or
- 7.9.2. If You become Insolvent.

7.10. Insolvent means: -

- 7.10.1. You are unable to pay Your debts as they fall due within the meaning of section 123 of the Insolvency Act 1986;
- 7.10.2. a receiver, administrative receiver, liquidator or other licenced insolvency practitioner is appointed over any of Your assets; You (being an individual) are made bankrupt or a petition for Your bankruptcy is lodged;
- 7.10.3. the passing of a resolution for voluntary winding up, or the summary of a meeting to pass such a resolution without Our prior Written approval;
- 7.10.4. a petition is presented for Your winding up, or for an administration order in relation to You.

**8. QUALITY**

8.1. Where we are not manufacturer of the Goods, We shall use commercial endeavours to transfer to You the benefit of any warranty or guarantee given to Us. Any such Goods only carry the manufacturer's guarantee or warranty.

8.2. Suitability of dual-certified carbon steel tubes under UK/European legislation: from the 20 April 2021, unlike BS EN10217-1 TR2 Grades and BS EN10217-2 GH Grades, all BS EN10217-1 TR1 Grades are no longer acceptable for use in applications under the Pressure Equipment Directive (PED-2014/68/EU) ("the Directive"), which was implemented into UK law by the Pressure Equipment (Safety) Regulations 2016. This is because TR1 grades do not meet the essential requirements of that Directive in respect of ageing (determined by the chemical composition) or ductility (specified as minimum Charpy impact requirements). Therefore, when purchasing pipework, it is important to understand the technical differences between products and the legislation or regulations being applied, to ensure that steel tubes of appropriate type, grade and technical delivery conditions are specified or selected for the application(s) concerned. This includes the user ensuring the suitability of the products for the operating pressure and temperature ranges required. In addition, BS EN10255 products are only deemed suitable for fuel, air and gas applications if supplied CE marked to conformity system CAT3 with supporting documentation. Any additional manufacturer's product claims, above and beyond those listed within the relevant standard(s), need to be supported with the appropriate technical statements for the user to approve in order to confirm suitability. This is particularly relevant with regards to products supplied outside the scope of a product standard.

**9. LIMITATION OF LIABILITY**

9.1. Subject to Term 9.2 the following provisions set out Our entire financial liability (including any liability for the acts or omissions or Our employees) to You in respect of: -

- 9.1.1. any breach of these Terms;
- 9.1.2. any representation, statement, mis statement or tortious act of omission including negligence arising under or in connection with the Contract.

9.2. All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

9.3. Nothing in these Terms excludes or limits Our liability: -

- 9.3.1. for death of personal injury caused by Our negligence; or
- 9.3.2. under section 2(3) Consumer Protection Act 1987; or
- 9.3.3. for any matter which would be illegal for us to exclude or attempt to exclude Our liability; or
- 9.3.4. for fraud or fraudulent misrepresentation.

9.4. Subject to Term 9.2 and Term 9.3 Our total liability in contract, tort (including negligence or breach of statutory duty) misrepresentations, restitution, mis statement or otherwise arising in connection with the performance or contemplated performance of the Contract shall be limited to the Price.

9.5. Subject to Term 9.2, 9.3 and 9.4 We shall not be liable to You for any Loss caused directly or indirectly by Our actions, inactions, breach of contract, negligence, misrepresentation, mis statement or breach of statutory duty.

9.6. If You instruct Us to manufacture any Goods which infringe the intellectual property of a third party, then You shall be liable for any such infringement and shall fully and effectively indemnify Us on demand against any Loss We may suffer or incur as a result of or flowing from such infringement.

9.7. If We manufacture any Goods to Your design and specification, and those Goods themselves prove to be defective, faulty, unsatisfactory or dangerous, or cause harm or damage to Persons, on account of their design and specification, then You shall fully and effectively indemnify Us on demand against any Loss We may suffer or incur (in respect of any claim by third parties or otherwise) as a result of or flowing from the manufacture of such Goods.

**10. ASSIGNMENT**

You cannot assign or transfer the Contract (or any of Your rights or obligations made under it) without Our prior written consent.

**11. EXCUSABLE EVENTS**

We will make reasonable commercial efforts to honour Our obligations to You. However, if We are unable to do so because of events or circumstances beyond Our reasonable control (including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, power failure, fuel shortages, inclement weather, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials), then We will give You verbal or written notice of those circumstances within a reasonable time of their occurrence.

**12. GENERAL**

12.1. Each right or remedy of Ours under the Contract is without prejudice to any other rights and remedy of Ours whether under the Contract or not.

12.2. If any provision of the Contract is found by any court, tribunal, or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, be to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provisions shall continue in full force and effect.

12.3. Failure or delay by Us in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of Our rights under the Contract.

12.4. Any waiver by Us of any breach of, or any default under, any provision of the Contract by You shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

12.5. It is not intended that any terms of the Contract shall be enforceable by virtue of the Contract (Right of Third Parties) Act 1999 by any Person that is not a party to it.

12.6. This Contract shall be governed by and construed in accordance with English law, and You submit to the exclusive jurisdiction of the English courts in the interpretation of the Contract of the resolution of any dispute arising under it.

**13. COMMUNICATIONS**

13.1. Routine transmissions between Us and You may be undertaken by email to the relevant email address supplied by each one to the other.

13.2. All communications between Us and You relating to Terms 6.2, 6.3 or 8.4 or about the Contract shall be in Writing and delivered by hand or sent by pre-paid first-class post.

**14. CORRESPONDENCE BY EMAIL**

Whilst We have taken all reasonable precautions in the scanning of emails and attachments prior to leaving Our network, We cannot accept liability for any Loss arising from the alteration of the contents of any email or attachment, or as a result of any virus being passed on. It is Your responsibility to take all prudent safeguards in relation to the prevention or corruptions of Your systems by viruses.