

ELG Utica Alloys Singapore Pte Ltd - General Conditions of Sale

1 Definitions

- "Buyer" means the person, firm or company from whom the Order is received.
"Seller" means ELG Utica Alloys Singapore Pte Ltd.
"Goods" means the articles or things or any of them described in the Order.
"Price" means the total sum specified by the Seller in its acceptance of the Order.
"Specification" means the technical description (if any) of the Goods contained or referred to in the Order.
"Order" means the Order placed by the Buyer for the supply of the Goods.
"Cash" means notes and coins of the realm and shall not include cheques.

2 Scope

- (a) These terms and conditions shall apply to all trading between the Seller and the Buyer and acceptance by the Seller of the Buyer's Order is conditional upon acceptance by the Buyer of the following conditions which override all other terms and conditions inconsistent therewith whether express implied or otherwise:
(b) Neither the Buyer nor the Seller shall be bound by any variation, waiver of, or addition to these conditions, except as agreed by both parties in writing and signed on their behalf in the case of the Seller by a director of the Seller, and in particular
(1) where the Buyer requires the Goods for a particular purpose, the Seller shall be deemed to have no notice of such purpose unless that purpose is agreed by the Buyer and the Seller in writing and signed on their behalf.
(2) the Seller and the Buyer acknowledge that there is no usage or course of trading in existence which could affect the terms of this contract in any way.
(3) any stipulation or conditions on a Buyer's Order form shall be deemed to be inapplicable to any Order placed with the Seller unless expressly agreed to by a director in writing when acknowledging the Order in question.

3 Limitation of Liability

- (a) To the extent applicable by law, including but not limited to the Supply of Goods Act Cap. 394 and the Sale of Goods Act Cap 393, all conditions or warranties of every kind whether express or implied by law or otherwise are hereby expressly excluded, and the Seller shall not be liable for damage or loss of any kind including but not limited to any incidental, indirect or consequential loss and whether caused by negligence or otherwise which may arise out of or result from this contract or the supply of Goods hereunder.
(b) Examination of the Goods has been made by or on behalf of the Buyer prior to the signing of the Order and no description or representation on the part of the Seller is given or implied by this agreement nor is any warranty condition description or representation to be taken to have been given or implied from anything said or written in the negotiations between the parties or their representatives prior to this agreement.
(c) The description given in the Order or elsewhere of the Goods has been given by way of identification thereof only and the use of such description shall not constitute a sale by description.
(d) Notwithstanding that a sample of the Goods has been exhibited to and inspected by the Buyer, it is hereby declared that such sample was so exhibited and inspected solely to enable the Buyer to judge for himself of the quality of the bulk, and not so as to constitute a sale by sample under this contract. The Buyer shall take the Goods at his own risk as to their corresponding with the said sample or as to their quality condition or sufficiency for any purpose.
(e) No forbearance or indulgence by the Seller shown or granted to a Buyer, whether in respect of these conditions or otherwise shall in any way affect or prejudice the rights of the Seller against the Buyer or be taken as a waiver of these conditions.

4 Buyer's Warranties etc

- (a) The Buyer warrants and covenants with Seller that Buyer will have the means for timely and accurately monitoring the radioactivity level of shipments received from the Seller at the time of delivery at Buyer's facility or at such other place for delivery as agreed in writing between the parties. Buyer warrants and covenants that it will maintain such monitoring equipment in accordance with all manufacturer's recommendations and in accordance with all statutory and other legal requirements.
(b) Buyer further warrants and covenants with Seller that Buyer shall use the aforesaid equipment to monitor radioactivity levels of all shipments received from Seller in a timely and thorough manner to determine whether the radioactivity level of such shipment is above acceptable levels. In the event that Buyer determines that such shipment is above acceptable levels, Buyer shall immediately, or in any event within fourteen (7) days of receipt of the Goods, notify Seller of this determination and thereafter shall promptly segregate and maintain such material in secure manner for a reasonable period following such notice allowing Seller time to responding accordance with such notice. Buyer shall cooperate fully with Seller in this regard. If the Buyer should fail to give such notice of unsatisfactory radioactivity levels within the abovementioned timeframe, the Goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be bound to accept them and pay for the same accordingly.
(c) Upon receiving notice from Buyer that the material does not meet acceptable radioactivity level, Seller shall have the right, but not the obligation to re-test the material. If by re-testing the material Seller reasonably demonstrates that the radioactivity of such material is at or below acceptable levels, then Buyer agrees to accept such material without further objection or cost to Seller.
(d) In the event that Seller does not re-test such material or does not reasonably demonstrate that the radioactivity of such material is at or below acceptable levels, then Seller shall bear the necessary costs of further shipment or disposition of the material in accordance with law. Buyer agrees to hold such material in a secure area for a reasonable time following notice to Seller so as to afford Seller the opportunity to properly transport or dispose of such material. Seller agrees to bear all expenses that are necessary and reasonable for the return or other shipment of the material and Buyer agrees to cooperate fully with Seller in this regard.
(e) In the event that Buyer accepts the material following the radioactivity monitoring as required in this provision, then such material shall be conclusively presumed to be within the acceptable limits for radioactivity and Buyer agrees that it will make no future claims, allegations, representations or assertions to the contrary. In the event that Buyer for any reason fails or refuses to test the material with regard to acceptable levels of radioactivity as covenanted herein, such failure or refusal shall constitute a complete waiver and full release of Seller as to all claims and causes of action that the Buyer otherwise has or may have and Buyer agrees to indemnify Seller with regard to any such claims or losses arising out of radioactivity associated with such materials or alleged to be associated with such materials.

5 Rejection

- (a) The Buyer shall inspect the Goods immediately on the delivery thereof and shall in the case of any allegation of nonconformity of the Goods with the type or quality of metal specified in the Order within 14 days and in any other case within three days from such delivery give notice in writing to the Seller of any matter or thing by reason whereof he alleges that the Goods are not in accordance with the contract and/or of whether he rejects them. If the Buyer shall fail to give such notice the Goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be bound to accept and pay for the same accordingly.
(b) If the Buyer gives notice that he rejects the Goods and such rejection shall afterwards become ineffectual by reason of the Buyer dealing with the Goods as owner, or by reason of any other conduct on the part of the Buyer inconsistent with such rejection, the Buyer shall be bound to pay the purchase money therefore in full and shall have no claim for damages or compensation by reason of any nonconformity of the Goods with the contract.
(c) If the Buyer rejects the Goods under clause 5(a) hereof, the Seller may elect to supply other Goods complying with the specification contained in the Order to the Buyer within 14 days of the date of the notice of rejection and if those Goods are not properly rejected by the Buyer the Seller shall be deemed to have complied with his obligation under this contract and no claim by the Buyer arising out of the Seller's rejection of the original Goods shall lie against him.

6 Retention of Title

- (a) Title to the Goods shall not pass to the Buyer and the Seller reserves the right to dispose of the Goods until all sums due from the Buyer to the Seller have been paid in full or until such time as the Buyer sells the Goods by way of bona fide sale at full market value.
(b) Without prejudice to the generality of clause 6(a), title to the Goods supplied under this contract shall not pass to the Buyer and the Seller reserves the right to dispose of the Goods until payment in full for the Goods has been received by the Seller under the terms of this contract or until such time as the Buyer sells the Goods by way of bona fide sale at full market value.
(c) For so long as the Buyer remains in possession of the Goods whilst title thereto remains with the Seller:-
(i) the relationship of the Buyer to the Seller shall be fiduciary in respect of the Goods or other products in which they are incorporated or used, and
(ii) the Buyer shall store the Goods separately from any other Goods and in a secure manner so that they are identifiable as the property of the Seller.
(d) At any time after Buyer's outstanding amount vis a vis the Seller exceeds any credit limit agreed between the parties or in the absence of such agreement exceeds the amount of credit which the Seller in his absolute discretion is prepared to allow to the Buyer or if the Buyer shall be default in payment on the due date of any sum due by the Buyer to the Seller, or if the Buyer shall commit an act of bankruptcy or suffer any execution to be levied upon his property, or if, being a company, it suffers a receiver to be appointed of its undertaking or is placed in liquidation otherwise than for the purpose of reconstruction or amalgamation then, in any such event, the Seller may recover or resell the Goods or any part of them and may by its servants or agents enter upon the premises of the Buyer for the purpose of repossessing the Goods. The Buyer hereby grants to the Seller a license for that purpose.
(e) (i) In the event of the Buyer incorporating the Goods with any other Goods in a manufacturing

- process or otherwise altering the Goods in any way, the product produced thereof shall be the property of the Seller until title to the Goods themselves would otherwise have passed to the Buyer under these conditions and all the Seller's rights hereunder shall extend to such products.
(ii) If any other Goods with which the Goods are mixed or incorporated are the property of any third party then the product shall be treated as owned by the Seller and the owner of these other Goods as tenants in common in the proportion (by value) in which the respective Goods have been incorporated therein until title to the Goods themselves would otherwise have passed to the Buyer under these conditions and all the Seller's rights hereunder shall extend to those other Goods.
(f) (i) If the Buyer shall resell the Goods or any product made therefrom then the Buyer shall hold the proceeds of the sale thereof or any debt due to the Buyer representing the same (or so much thereof as is attributable to the supplier's interest therein under clause 6(e)(i) hereof) upon trust for the Seller until title to the Goods would otherwise have passed to the Buyer under these conditions.
(ii) Pursuant to the trust referred to in clause 6(f)(i) the Buyer shall not permit such proceeds of sale to be mingled with its own monies but shall pay the same into a separate trust account designated with the name of the Seller.
(iii) If the Buyer shall fail to comply with this sub clause (f), in addition to any other rights, under this contract the Seller shall have the right to trace the proceeds of sale of the Goods or products. A like right for the Seller shall apply where the Buyer uses the Goods or products in any way so as to be entitled to payment from a third party.
(g) If the Seller, having exercised its rights to recover the Goods or any products made therefrom shall sell such Goods or products, whether or not this contract shall in the meantime have been terminated, he shall apply the proceeds of sale in payment of all sums then due from the Buyer to the Seller and shall hold any balance remaining to the Order of the Buyer.
(h) Any debt due to the Buyer which is subject to the trust referred to in clause 6(f) hereof (or much there of as aforesaid, as the case may be) shall upon demand be assigned by the Buyer to the Seller together with all such rights (if any) as the Buyer may have against its debtor for recovery of the same.

7 Payment

- (a) Unless otherwise stated in the Sales Contract, payments are due net 30 days.
(b) If the price of the Goods is not paid on the date upon which it becomes due whether by virtue of clause 7(a) hereof or by virtue of any agreement varying the time during which payment of the price is to be made as to payment the following consequences shall ensue:
(1) compound interest shall be payable by the Buyer as well after as before any judgement which may be obtained by the Seller in respect thereof on
(i) the price of the Goods and
(ii) on any other sums which by virtue of clause 7(b)(2) and/or 8(e), hereof shall thereupon become due from the Buyer to the Seller such interest shall be calculated from the date upon which payment of the price became due with half yearly rests at the highest rate permitted by law for the time being applicable and varying in accordance with any variation in that base rate and
(2) any credit arrangements subsisting between the Buyer and the Seller whether in respect of the Goods which are the subject of this contract or otherwise shall terminate and all and any sums due from the Buyer to the Seller on any account whatsoever shall become due and payable forthwith.
(c) The Seller reserves the right to vary the price at any time by notice in writing given by the Seller to the Buyer PROVIDED that if any such variation shall increase the price of the Goods by more than 10% the Buyer shall have the option within fourteen days of the giving of the said notice by notice in writing to the Seller either to proceed with the Order at the price so varied or to cancel such part of the Order as may be affected by the said variation.
(d) The time herein mentioned within which the Buyer is to pay the price of Goods shall be of the essence of this contract.

8 Delivery

- (a) Subject to clause 8(b) hereof the Goods shall be delivered by the Seller at, or dispatched for delivery to, the place or places and in the manner specified in the Order or as subsequently agreed.
(b) The performance of all contracts is subject to variation or cancellation by the Seller owing to any act of God, war, strikes, Governmental regulations or orders, national emergencies, lock-outs, fire, flood, drought, tempest or any other cause (whether or not of a like of nature) beyond the control of the Seller or owing to any inability by the Seller to procure materials or articles required for the performance of the contract and the Seller shall not be held responsible for any inability to deliver caused by any such contingency or for any loss consequent thereon.
(c) Unless otherwise specified in the Order the Seller shall be deemed to have made a due delivery of the Goods if the Goods are collected by a carrier nominated by the Buyer and such delivery shall be deemed to have taken place at the moment when the Goods are received into the possession of the Buyer his servant, agent, representative or such carrier.
(d) Any claim for damage to or partial loss of the Goods in transit must be submitted in writing to both the carrier and the Seller within three days of delivery. In the case of non-delivery of the whole consignment claims must be submitted in writing to both the carrier and the Seller within seven days of receipt by the Buyer (or the Buyer's agent) of notification of dispatch of the Goods. In the absence of claims within the terms mentioned above the Goods shall be deemed to have been delivered in accordance with the contract.
(e) If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Seller shall at his absolute discretion and without prejudice to his right hereunder if his storage facilities permit, store the Goods until their actual delivery, and the Buyer shall pay to the Seller on the actual delivery of the said Goods in addition to any sum due under Clause 7 hereof such sum represents the costs (including insurance and the cost of any abortive deliveries) of his so doing.

9 Risk

- Notwithstanding any of these conditions of sale, the risk of any loss or damage to or deterioration of the Goods from whatever cause arising shall pass to the Buyer on delivery of the Goods and the Buyer shall be liable to insure the same and shall pay all sums due under this contract whether or not the Goods are lost destroyed damaged or stolen.

10 Termination

- If the Buyer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving Order is made against him or (being a company) it shall pass a resolution or the Court shall make an Order that the Buyer shall be wound up (otherwise than for the purposes of amalgamation or reconstruction) or if a receiver shall be appointed of any of the assets or undertaking of the Buyer or if circumstances shall arise which entitle the Court or a creditor to appoint a receiver or manager or which entitle the Court to make a winding-up Order or if the Buyer takes or suffers any similar action in consequence of debt or if the financial responsibility of the Buyer shall in the opinion of the Seller become impaired, or if the Buyer shall commit any breach of any part of these terms the Company may without prejudice to its rights and remedies hereunder stop all Goods in transit and suspend further deliveries and by notice in writing to the Buyer may forthwith determine the Order.

11 Indemnity

- When the Goods are made or adopted by the Seller in accordance with the Buyer's specifications the Buyer shall indemnify the Seller against all costs, claims and expenses incurred by the Seller in respect of the infringement or alleged infringement by such Goods of any patents, registered designs, trade marks or other rights belonging to the third parties.

12 Limitation of Liability

- Buyer agrees that Seller shall not be liable for INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL OR OTHER SIMILAR DAMAGES including but not limited to loss of profit or revenues, damage for loss of use of the Products, damage to property, claims arising out of the presence of nonconforming hazardous substances, claims of third parties, including personal injury or death on account of use of the Products or failure of Seller to warn against or instruct on, or adequately warn against or instruct on, the dangers of the Products or the safe and proper use of the Products, whether or not Seller has been advised of the potential for such damages. Seller's total liability hereunder from any cause whatsoever (except liability from personal injury caused solely by Seller's negligence), will be limited to the lesser of Buyer's actual damages or the price paid to the Seller for the Products that are the subject of Buyer's claim. All claims against Seller must be brought within one year after the cause of action arises, and Buyer expressly waives any such claims after such one year term expires.

13 Jurisdiction and Arbitration

- This contract shall be governed by and construed in accordance with the Laws of Singapore and any difference or dispute arising between the Seller and the Buyer shall be subject to the sole and exclusive jurisdiction of the Courts in Singapore or at the option of the Seller of the courts of any other country where the Buyer carries on business or is incorporated provided always that the Seller may in its absolute discretion by notice in writing given to the Buyer at any time prior to the commencement of proceedings by either party elect to have any dispute arising out of or in connection with this contract arbitrated in Singapore in accordance with the rules and regulations for the time being of the Singapore International Arbitration Centre.

14 Severability Clause, If any provision of this Agreement is held to be illegal, invalid or unenforceable, that holding shall not affect the validity of the remainder of the Agreement, and the Parties shall in good faith attempt to substitute a legal, valid and enforceable provision which achieves to the nearest extent possible the same effect as would have been achieved by the illegal, invalid or unenforceable provision.