

ENGMAL STAINLESS LIMITED (the "Company") TERMS AND CONDITIONS

Definitions

In these conditions;

"Business Day" means any day (other than Saturday) on which clearing banks are open for normal banking business in sterling in the City of London;

"Confidential Information" means all secret or confidential commercial, financial and technical information, know how, trade secrets, inventions, computer software and other information whatsoever and in whatever form or medium and whether disclosed orally or in writing, together with all reproductions in whatsoever form or medium and any part or parts of it;

"Contract" means the contract made between the Company and the Customer for supply of the Goods and/or Services which is subject to these conditions;

"Customer" means the party with whom the Company contracts;

"Goods" means all or any of the goods works and materials to be supplied by the company;

"Insolvency Event" means and one or more of;

- a notice being issued to propose a resolution for winding-up or dissolution, or such a resolution being passed;
- a petition for a winding up or an administration or bankruptcy order being presented, or such an order being made;
- any steps being taken with a view to a voluntary arrangement or other assignment, composition or arrangement with all or any creditors or any moratorium, readjustment, rescheduling, forgiveness or deferral of all or any indebtedness;
- suspension of payments to all or any creditors and/or ceasing business;
- an encumbrancer taking possession of all or any assets of a party;
- an administrator or receiver being appointed over a party or all or any of its assets;
- any action anywhere similar or analogous to any of the foregoing;
- the other party having reasonable ground for believing that any of the foregoing is imminent;

For the avoidance of doubt, if any of the foregoing occur in relation to a partner in any of the parties hereto, it will be deemed to occur in relation to that party.

"Services" means any services to be performed by the Company

Basis of Contract

Any quotation will remain open for a maximum period of 30 days from its date. Quotations are not binding and will not be open for acceptance by the Customer. Where Goods are quoted for supply from stock they are quoted subject to being unsold when the Customer's order is accepted.

These Conditions will form the terms and conditions of the Contract and will apply to the exclusion of any terms and conditions whether put forward by or on behalf of the Customer in or on its order or otherwise or whether implied by law (insofar as the exclusion of the same is lawful).

The placing by the Customer of any order will constitute an offer by the Customer. No contract will come into existence unless the Company accepts the Customer's order in writing. Any order placed by the Customer with any of the Company's salesmen or other employees or representatives will be subject to written acceptance by the Company.

No alteration to these Conditions will be effective unless expressly agreed in writing by a director of the Company.

Information, Samples and Materials Supplied

The Customer will be responsible to the Company for ensuring the accuracy and sufficiency of its order (including any applicable specification and/or sample). The Company will be entitled to charge the Customer for all costs (and a reasonable element of profit) incurred by it where variations to Goods and/or Services are requested by the Customer and accepted by the Company. Where samples are to be supplied by the Company, the Customer will as soon as reasonably practicable and in any event within the samples are not satisfactory. In default of such notification, the Company will be entitled but not bound to proceed in the manufacture of the remainder of the Contract.

Delivery

Any time quoted by the Company for delivery of all or any of the Goods and/or performance of all or any of the Services is an estimate only and time will not be of the essence. The Company will not be liable for any failure to meet such estimate, nor for any loss, or whatsoever nature, resulting directly or indirectly therefrom.

The Company reserves the right to deliver all or any of the Goods and/or the Services in advance of the estimated date.

In the absence of agreement to the contrary delivery of the Goods will be made by the Customer collecting the Goods at the company's premises as soon as practicable following notification from the Company that the Goods are ready for collection or, if some other place for delivery is agreed by the Company, by the Company delivering Goods to that place.

The Company reserves the right to delivery by instalments and each delivery will constitute a separate contract to which these Conditions will apply. Failure by the Company to deliver any one or more of the instalments or any claim by the Customer in respect of any one or more instalments will not entitle the Customer to treat the Contract as a whole as repudiated.

Where delivery of the Goods is to be made by the Company in bulk, the Company reserves the right to delivery of up to 10% more or less than the quantity ordered, and the Company will charge for the Goods in accordance with the quantity actually delivered.

If the Customer fails to take delivery of or collect the Goods or fails to give the Company adequate delivery instructions after notification by the Company that the Goods are ready, the Company may (without prejudice to its other rights and remedies);

- store the Goods (on its own or any third party's premises) and charge the Customer for its reasonable costs (including without limitation VAT, costs of storage, carriage and insurance); and/or

- sell the Goods at any time and after deduction of all costs and expenses account to the Customer for any excess over the price already paid under the Contract or charge the Customer for any shortfall between the contract price and such costs and expenses.

Notification of short delivery (measured by weight or number) or damage in transit must be made in writing to the Company within 3 days of receipt of the Goods and the Customer must not in any way cut, process and/or otherwise alter or modify any of the Goods.

Notification of non-delivery must be made in writing to the Company within 7 days after the date of the Company's invoice.

The Company will at its option either make good the whole or part of the price (and where relevant, as a deduction from any part of the price remaining unpaid) or by repair or replacement any such non-delivery, short delivery, or damage notified as aforesaid and save as

provided in this Condition will not be liable for any such non-delivery, short delivery, or damage in transit, nor for any loss, financial or otherwise resulting indirectly therefrom. In no event will the Company be liable to the Customer in connection with any damage or loss in transit where delivery takes place at the Company's premises.

Unless otherwise expressly stated in writing, all prices are exclusive of packaging, carriage and insurance charges in respect of delivery of the Goods, which will be charged to the Customer where appropriate.

Description

All descriptive and technical specifications, drawings, catalogues, illustrations and particulars of weight and dimensions supplied by the Company, are approximate only. The Company reserves without notice to the Customer to make alterations thereto and to supply the Goods so altered in performance of the Contract provided that such alterations do not materially affect the characteristics of the Goods.

Cancellation

Following acceptance by the Company of the Customer's order, no cancellation and/or suspension, either in whole or in part, may be made by the Customer other than with the prior written consent of a director of the Company and upon terms that the Customer will indemnify the Company in full against all loss (including without limitation loss of profit), damages, cost expenses and other liabilities awarded against or incurred by the Company as a result of or in connection with the cancellation.

Price

Subject to prior written agreement to the contrary, the Company will be entitled to invoice the Customer for the price of the Goods on or at any time after the Company has notified the Customer that the Goods are ready for collection or the Company has tendered delivery of the Goods.

Any price quoted by the Company is based upon costs current as at the date of quotation. The price charged to the Customer under the Contract may be changed to take account of costs current at the date of invoice.

Unless otherwise expressly stated in writing, all prices are exclusive of VAT which will be charged where appropriate at the rate prevailing all the relevant tax point.

Unless otherwise agreed by the Company in writing, the Customer will make payment in full within 30 days following the date appearing on the Company's invoice notwithstanding that the delivery may not have taken place and the property in the Goods may not have passed to the Customer, interest at the annual rate of 8% over the base rate of Lloyds Bank PLC will be charged on a daily basis on all monies outstanding after the actual date until the actual date of payment (both before and after judgement), and any cash discount will not be allowed to the Customer.

Where payment is agreed to be made by instalments, any delay or default by the Customer in making payment in respect of any one instalment will render all the remaining instalments due forthwith, and interest will be charged in accordance with the above Condition with immediate effect until the date of actual payment.

The Company may appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Company and the Customer).

Warranty

The Company will make good, at its option, by reimbursement of the whole or part of the price (and, where relevant, as a deduction from any part of the price remaining unpaid) or by repair or by replacement;

- subject to the paragraph herein entitled "Description", any failure by the Goods to correspond with their specification at the time of delivery;

- any defect developing under normal use in the Good and due solely to faulty design (except where the design is supplied by or on behalf of the Customer) materials and/or workmanship; and

- by reimbursement of the price, or by performance of the Services, any defective workmanship in the performance of the Services;

Provided that:

- the Customer does not in any way cut, process and/or alter the Goods;

- any failure to meet specification is notified in writing to the Company within 7 days from the date of delivery or (where the failure was not apparent on reasonable inspection) within a reasonable time after discovery of the failure and in any event such failure must be notified within 21 days after delivery (in such instance);

- any such defect in design, material, or workmanship will have appeared within 12 months after delivery and will have thereupon been promptly notified to the Company in writing;

- the Company will be under no liability in respect of any defect in the Goods arising from any drawing, design, or specification supplied by the Customer;

- the Company will be under no liability in respect of any defect arising from fair wear and tear, or other acts of the Customer including without limitation, wilful damage, negligence, lack of proper maintenance or servicing, abnormal working conditions, failure to follow the Company's instructions (whether oral or in writing), misuse, alteration or repair of the Goods without the Company's approval;

- the Company will be under no liability until any and all monies due from the Customer under the Contract have been paid in full.

- any Goods alleged to be defective are promptly made available to the Company for inspection and, if so required by the Company, are promptly returned at the Customer's risk and expense to the Company for inspection; and

- the above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer will only be entitled to the benefit of any such warranty or guarantee as is given by the manufacture to the Company and can be transferred

Providing that nothing in this Condition will operate so as:

- to exclude the Company's non-excludable liability in respect of death or personal injury caused by the negligence of the Company its servants or agents;

- to affect the statutory rights of the Customer where Goods are sold or services are supplied to a Customer dealing as a consumer within the meaning of Unfair Contract Terms Act;

- to exclude the application of Section 12 of the sale of Goods Act 1971: or

- to exclude the liability for fraudulent misrepresentation.

All other warranties or conditions implied by statute or common law are excluded to the fullest extent permitted by law.

The Company will not be liable to the Customer in contract, tort (including without limitation negligence) and/or breach of statutory duty for any loss or damage which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company its servants or agents, in a sum which is greater than the Contract price.

The Company will not be liable to the Customer in contract, tort (including without limitation negligence) and/or breach of statutory duty for any economic loss, loss of profits and/or loss of production or any indirect or consequential loss of any kind which the Customer may suffer by reason of any act, omission, neglect or default (including negligence) in the performance of the Contract by the Company, its servants or agents.

Health and Safety

For the purposes of Section 6(8) of the Health and Safety at Work Act 1974, the Customer undertakes to comply with all instructions relation to the Goods received from the Company from time to time and to take such other steps sufficient to ensure, so far as is reasonably practicable, that the Goods will at all times be safe and without risk to health when being properly used, set, cleaned and maintained by a person at work.

Risk and Title

The risk in the Goods will pass to the Customer immediately on delivery to the Customer, to the carrier, or into custody on the Customer's behalf, whichever is sooner.

Notwithstanding delivery and the passing of risk, properly in and title to the Goods will remain in the Company until the Company has received payment in the full price of all Good and/or Services the subject of the Contract and all other Goods and/or Services supplied by the Company to the Customer under any other contract whatsoever.

Until property in and title to the Goods passes to the Customer;

- the Customer will keep the Goods properly stored, protected, insured and separate from all or any other goods whether belonging to the Company or any third party.

- the Company will be entitled at any time forthwith to revoke the Customer's power to deal with the Goods; and it will be automatically cease if an Insolvency Event occurs in respect of the Customer; and

- the Customer will not make any modification to the Goods or their packaging or alter, remove or tamper with any marks, numbers or any other means of identification used on or in relation to the Goods.

Upon termination of the Customer's power to deal with the Goods, the Customer will place the Goods at the disposal of the Company and the Company and its servants and agents are hereby irrevocably authorised without the need for consent of any third party but using only such force as may be necessary, to enter upon any premises of the Customer, or any third party, for the purpose of removing the Goods.

If any of the foregoing provisions of this Condition will be invalid or unenforceable such invalidity or unenforceability will not affect the remaining provisions.

Termination and Suspension

Without prejudice to any rights and remedies available to it, the Company will be entitled forthwith on written notice to the Customer either to terminate the Contract wholly or in part and/or any other contract with the Customer, or to withhold performance or all or any of its obligations under the Contract and/or any other contract with the Customer (and on the giving of such notice all monies outstanding from the Customer to the Company will become immediately due and payable) if;

- any sum owing to the Company from the Customer on any account whatsoever is unpaid after the due date for payment (in which event the Company will have a general lien for any such sum on all and any property of the Customer in its possession);

- an Insolvency Event occurs in respect of the Customer; or

- the Customer commits any breach of any contract (including without limitation the Contract) with the Company.

In the event of a suspension of performance the company will be entitled to require, as a condition of resuming performance, pre-payment or such security as it may require.

Intellectual Property Rights

In any claim is made against the Customer that the Goods infringe, or that their use or resale infringes the patent, copyright, database right, design right, registered design, trade mark or other industrial or intellectual property rights of any other person or any claim is made in respect of passing off or unauthorised use of Confidential Information in relation to the Goods and/or their use or resale, the Customer will forthwith notify the Company in writing and the Company will be given full control of any proceedings or negotiations in connection with any such claim. The Customer will give the Company all reasonable assistance for the purposes of any such proceedings or negotiations and, except pursuant to a final award, the Customer will not pay or accept any such claim/or compromise any such proceedings without consent of the Company (which will not be unreasonably withheld). The Customer will not do anything which would or might vitiate any policy of insurance or insurance cover which the Company may have in relation to such infringement.

If the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification submitted by the Customer, the Customer will (without prejudice to the other rights and remedies of the Company) indemnify the Company in full against all loss, costs, damages, charges, expenses and other liabilities awarded against or incurred by the Company as a result of or in conjunction with:

- any claim for infringement of any patent, copyright, database right, design right, registered design, trade mark or other industrial or intellectual property right of any other person and/or for passing off and/or unauthorised use of Confidential Information which results from the Company's use of the Customer's specifications; and

- any other liability of any kind to any third party including, without limitation, for defective Goods, personal injury or death to the extent that it arises from the specification.

Contract for Services

If the contract is for or to include Services, the following provisions will apply:

- The Company will only be obliged to carry out Services during normal working hours and will be entitled to charge for any overtime worked upon request by the Customer;

- Where Services are to be provided at the premises of the Customer, the Customer will provide (free of charge);

- proper and safe storage and protection of all Goods, tools, plant, equipment and materials on site;

- free and safe access to the site and place where the Services are to be performed;

- all facilities and services necessary to enable such Services to be performed safely and expeditiously;
- if such Services include the installation of Goods, all builders work, foundations and cutting away and making good where necessary; and
- the availability of all plant and equipment to permit the Goods to be tested upon completion of the Services.

The Customer will pay the Company any expenses incurred by the Company by reason of a breach by the Customer of any of its obligations in this Condition without prejudice to the Company's right to recover any loss thereby occasioned.

Goods and Services supplied on the site of the Customer are at all times at the sole risk of the Customer and if any part is lost or destroyed for any reason whatsoever, the Company will be entitled to charge as a variation to the Contract for the restoration of such Goods and/or Services. The Customer will, for the benefit of itself and the Company, insure and keep insured with reputable insurers the full value of Goods and Services against every kind of loss, damage or destruction. The Customer will produce the policy to the Company upon request together with the latest premium receipts and in default of effecting the same, the Company will be entitled to do so and add the cost of such insurance to the Contract price.

General

It will be the responsibility of the Customer to ensure that all requirements applicable to the Contract, whether statutory, regulatory, municipal and/or otherwise however, (including without limitation any relating to the importation or use of the Goods in the country of destination and for the payment of duties thereon) are duly complied with. It will be a condition precedent to the performance by the Company of its obligations under the Contract that all necessary licenses, permits and consents will have been obtained by the Customer. Neither party will have any liability for any failure to perform or for any delay in the performance (other than as to payment) of any of its obligations under the Contract caused by any factor beyond its reasonable control.

The rights and remedies of the Company in respect of the Contract will not be diminished, waived or extinguished by the granting of any indulgence, forbearance or extension of time by the Company to the Customer nor by any failure of or delay by the Company in ascertaining or exercising any such rights or remedies. Any release, waiver or compromise or any other arrangement of any kind (a release) by the Company will not affect its rights and remedies as regards any other party nor its rights and remedies against the Customer in whose favour it is granted or made, except to the extent of the express terms of the release and no such release will have effect unless granted or made in writing. The rights and remedies in the Contract are cumulative and not exclusive of any rights and/or remedies provided by law.

The Contract is personal to the Customer. The Customer will not assign, transfer or charge its rights and responsibilities under this Contract or any of them, without the prior written consent of the Company.

The provisions of these Conditions are severable and distinct from one another, and, if at any time any of the provisions is or becomes invalid, illegal or unenforceable, the validity, legality or enforceability of the other provisions will not in any way be affected or impaired. The headings in these Conditions are for convenience only and do not affect the interpretation of the Contract.

The Conditions and Contract will not constitute and will not be deemed to constitute a partnership between the Company and the Customer and the Customer will not act, nor purport to act as an agent for the Company, but solely as an independent contractor.

All notices under this Contract will be in writing and may be served by post or fax, addressed to the other party at the address given in this Contract, or at such other address as a party will from time to time by notice in writing give to the other party. Every such notice will be deemed to have been served by post at the expiration of 48 hours after despatch of the same, or if sent by fax, at ten hours local time on the next normal Business Day of the recipient following despatch. In proving service it will be sufficient to show, in the case of a letter, that the same was duly addressed, prepaid and posted in the manner provided and in the case of a fax, a transmission report that it was transmitted to the correct telephone number. Saturdays, Sundays and Bank Holidays will not in any event be treated as days on which service is effected, and service will be deemed to take place on the next normal Business Day of the recipient.

These Conditions and the Contract will be governed in accordance with the laws of England and Wales. Any dispute arising under this Contract will be subject to the exclusive jurisdiction of the English courts and the parties waive any objection to proceedings in such courts on the grounds of venue, or on the grounds that proceedings have been brought in an inappropriate forum.

For the avoidance of doubt, nothing in these Conditions will confer on any third party and benefit, or the right to enforce any of these Conditions.