

# **CEL Sheet Metal Ltd**

## **Terms & Conditions of Sale**

### **1. Definitions and Interpretation**

1.1 In these Conditions the following expressions shall have the meanings here ascribed to them unless the context requires otherwise:

“Customer” the person who accepts a quotation of the Company for the sale of the Goods or whose order for the Goods is accepted by the Company.

“Goods” the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these Conditions.

“CEL Sheet Metal Ltd Conditions” the standard terms and conditions of sale set out in this document and includes any special terms and conditions agreed in writing between the Company and the Buyer.

“Contract” the contract for the purchase and sale of Goods.

1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.

1.3 All headings in these Conditions are for convenience only and shall not affect their interpretation.

### **2. Basis of The Sale**

2.1 The Company shall sell and the Customer shall purchase the Goods in accordance with any written quotation of the Company which is accepted by the Customer, or any written order of the Customer which is accepted by the Company, subject in either case to these Conditions, which shall govern the Contract to the exclusion of any other items and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Customer.

2.2 No variation to the Conditions shall be binding unless previously agreed in writing between the authorised representatives of each of the Customer and the Company.

2.3 The Company’s employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company’s authorised representative in writing. In entering into the Contract the Customer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Any advice or recommendation given by the Company or its employees or agents to the Customer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted upon entirely at the Customer’s own risk, and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.5 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

### **3. Orders and Specifications**

3.1 No order submitted by the Customer shall be deemed to be accepted by the Company unless and until confirmed in writing by the Company’s authorised representative.

3.2 The Customer shall be solely responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Customer and for providing to the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the Contract in accordance with its terms.

- 3.3 The quantity, quality, and description of any specification for the Goods shall be those set out in the Company's quotation (if accepted by the Customer) or the Customer's order (if accepted by the Company) but in either case shall be subject always to these conditions. For the avoidance of doubt quotations given to the Customer by the Company shall be deemed to have lapsed insofar as no written order has been received by the Company from the Customer in connection with the subject matter of the quotation within 30 days of the date of quotation.
- 3.4 In the event that the Goods are to be manufactured or any process is to be applied to the Goods by the Company in accordance with a specification including, without limitation, any approved artwork submitted by the Customer, the Customer shall indemnify the Company against all loss, damages, costs and expenses awarded against or incurred by the Company in connection with or paid or design, trade mark or other industrial or intellectual property rights of any other person which results from the Company's use of the Customer's specification.
- 3.5 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all loss including loss of profit, costs including the cost of all labour and materials used, damages, charges and expenses incurred by the Company as a result of such cancellation.

#### **4. Price if The Goods**

- 4.1 The price of the Goods shall be the Company's quoted price. Unless otherwise agreed in writing by the Company, all prices quoted are valid for 30 days only or until earlier acceptance by the Customer.
- 4.2 The Company reserves the right, by giving notice to the Customer at any time after acceptance of an order and before delivery, to increase the price of the Goods to reflect any increase in the cost to the Company which is due to any factor beyond the control of the Company, including, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in costs of labour, materials or other costs of manufacture, any change in delivery dates, quantities or specifications for Goods which is requested by the Customer, or any delay caused by any specification or other instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.
- 4.3 Quoted prices shall include all standard delivery costs where applicable in respect of single delivery orders. Where the Customer requires delivery of Goods by means of a mode of transport other than the standard delivery mode offered by the Company, all extra costs involved therein will be added to the order.
- 4.4 The price is exclusive of any applicable value added or other sales tax, which the Customer shall be additionally liable to pay the Company.
- 4.5 The cost of pallets and returnable containers will, at the discretion of the Company, be charged to the Customer in addition to the price of the Goods, but full credit will be given to the Customer in addition to the price of the Goods, but full credit will be given to the Customer provided they are returned undamaged to the Company before the due payment date.

#### **5. Terms of Payment**

- 5.1 Subject to any special terms agreed previously between the Customer and the Company, the Company shall be entitled to invoice the Customer for the price of the Goods on or at any time after delivery of the Goods, unless the Goods are to be collected by the Customer or the Customer wrongfully fails to take delivery of the Goods, in which event the Company shall be entitled to invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are ready for collection or (as the case may be) the Company has tendered delivery of the Goods.

- 5.2 Unless otherwise agreed by the Company in writing the Customer shall not be entitled to any discount or rebate in respect of the Goods.
- 5.3 The Customer shall pay the price if the Goods (less any discount to which the Customer is entitled, But without any other deduction) unless agreed otherwise within 30 days of receipt by the Customer of the Company's invoice, and the Company shall be entitled to recover the price of the Goods, notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. The time of payment of the price shall be of the essence of the Contract.
- 5.4 If the Customer fails to make any payment on the due date, then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:
- 5.4.1 Cancel the Contract or suspend any further deliveries of the Goods to the Customer;
- 5.4.2 Appropriate any payment made by the Customer to such of the Goods (or the goods supplied under any other contract between the Customer and the Company) as the Company may think fit (notwithstanding any purported appropriation by the Customer);and
- 5.4.3 Charge the Customer interest (both before and after any judgement) on the amount unpaid, at the rate of 4% per annum above the base lending rate of Barclays Bank PLC from time to time, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

## **6.0 Delivery**

- 6.1 Where price includes delivery, then delivery of the Goods shall be made by the Company delivering or procuring the delivery of the Goods to the Customer's premises or such other address as is notified to the Company in advance of delivery.
- 6.2 Any dates quoted for delivery if the Goods are approximate only and the Company shall not be liable for any delay in delivery of the Goods however caused. Time for delivery shall not be of the essence of the Contract unless previously agreed by the Company in writing. The Goods may be delivered by the Company in advance of the quoted delivery date upon reasonable notice to the Customer.
- 6.3 Where delivery of the Goods is to be made by the Company in bulk, the Company reserves the right to deliver up to 10% more or 10% less than the quantity ordered and the price shall be adjusted accordingly.
- 6.4 Where Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.5 If the Company fails to deliver the Goods, or any instalment, for any reason other than any cause beyond the Company's reasonable control or the Customer's fault, and the Company is accordingly liable to the Customer, the Company's liability shall be limited to the excess, if any, of the cost to the Customer in the cheapest available market of similar goods to replace those not delivered over the price of the Goods.
- 6.6 If the Customer fails to take delivery of the Goods or fails to give the Company adequate delivery instructions at the time stated for delivery, otherwise than by reason of any cause beyond the Customer's reasonable control or by reason of the Company's fault, then, without prejudice to any other right or remedy available to the Company, the Company may:
- 6.6.1 Store the goods until actual delivery and charge the Customer for the reasonable costs, including insurance, of storage: or
- 6.6.2 Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

## **7. Risk and Property**

7.1 Risk of damage to loss of the Goods shall pass to the Customer:

7.1.1 In the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection; or

7.1.2 In the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods, or until these Conditions, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agree to be sold by the Company to the Customer for which payment is due.

7.3 Until such time as the property in the Goods passes to the Customer, the Customer, shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but shall be entitled to resell or use the Goods in the ordinary course of its business but shall, in its fiduciary capacity, account to the Company for the proceeds thereof.

7.4 Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Customer to deliver up the Goods to the company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.

7.5 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Company, but of the Customer does so all moneys owing by the Customer to the Company shall, without prejudice to any other right or remedy of the Company forthwith become due and payable.

## **8. Warranties and Liability**

8.1 Subject to the conditions set out below the Company warrants that the Goods will materially correspond with their specification at the time of delivery.

8.2 The above warranty is given by the Company subject to the following conditions.

8.2.1 The Company shall be under no liability in respect of any defect in the Goods arising from any design or specification supplied by the customer.

8.2.2 The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions, whether oral or in writing, misuse, or alteration of the Goods without the Company's approval.

8.2.3 The Company shall be under no liability under the above warranty (or any other warranty, condition, or guarantee) if the total price for the Goods has not been paid by the due date for payment.

8.3 Subject as expressly provided in these Conditions all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

8.4 Any claim by the Customer which is based on any defect in the quantity, quality or condition of the Goods or their failure to correspond with specification shall, whether delivery is refused by the Customer, be notified to the Company within five working days from the date of delivery. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price for the Goods as if the Goods had been delivered fully in accordance with the Contract. For the avoidance of doubt, where the Goods have been bought for resale the Company shall not accept any responsibility for such defects or failures once the Goods have left the Customer's premises or control, as the case may be.

8.5 Where any valid claim in respect of any of the Goods is based on any defect in the quality or condition of the Goods or their failure to meet specification is notified to the Company in accordance with these Conditions, the Company shall be entitled to replace the Goods, or such defective batch, free or charge or, at the Company's sole discretion, refund the to the Customer the price for the Goods, or a proportionate part of the price, but the Company shall have no further liability to the Customer.

8.6 Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation, unless fraudulent, or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage, whether for loss of profit or otherwise, costs, expenses or other claims for compensation what soever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of Goods or their use or resale by the Customer, and the entire liability of the Company under or in connection with the Contract shall not exceed the price of the Goods, except as expressly provided in these Conditions.

8.7 The Company shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control.

## **9. Indemnity**

9.1 If any claim is made against the Customer that the Goods infringe or that their use or resale infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design, artwork or specification supplied by the Customer, the Company shall indemnify the Customer against all loss, damages, costs and expenses awarded against or incurred by the Customer in connection with the claim, or paid or agreed to be paid by the Customer in settlement of the claim, provided that:

9.1.1 The Company is given full control of any proceedings or negotiations in connection with any such claim.

9.1.2 The customer shall give the Company all reasonable assistance for the purposes of any such proceedings or negotiations;

9.1.3 Except pursuant to a final award, the Customer shall not pay or accept any such claim, or compromise any such proceedings without the consent of the Company (which shall not be unreasonably withheld);

9.1.4 The Customer shall do nothing which would or might vitiate any policy of insurance or insurance cover which the Customer may have in relation to such infringement, and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy or cover (which the Customer shall use its best endeavours to do);

9.1.5 The Company shall be entitled to the benefit of, and the Customer shall accordingly account to the Company for, all damages and costs (if any) awarded in favour of the Customer which are payable by, or agreed with the consent of the Customer (which consent shall not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and

9.1.6 Without prejudice to any duty of the Customer at common law, the Company shall be entitled to require the Customer to take such steps as the Company may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Company is liable to indemnify the Customer under this clause.

9.2 The Customer shall indemnify the Company against all loss, damage, costs and expenses awarded against or incurred by the Company in connection with any claim that the Goods infringe or that their use or resale infringes the patent, copyright design, trade mark or other industrial or intellectual property rights of any other person, and in connection with any claim of defamation against the Company regarding any drawing, artwork, design, specification or copy supplied by the Customer to the Company.

## **11. General**

11.1 The Company shall be entitled to:

11.1.1 Subcontract any part of its obligations under this Contract; and

11.1.2 Assign the benefit of the Contract to any third party.

11.2 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.

11.3 No waiver by the Company of any breach of the Contract by the Customer shall be considered as a waiver of any subsequent breach of the same or any other provision.

11.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.

11.5 The Contract shall be governed by English law, and the Customer agrees to submit to the non-exclusive jurisdiction of the English courts.