

INDUSTRIAL ANCILLARIES LTD GENERAL CONDITIONS OF SALE

1 Definitions

1.1 In these conditions:

"the Company" means Industrial Ancillaries Limited.

"Conditions" means the Terms and Conditions of Sale set out in this document (unless the context otherwise requires) includes any Special Terms and Conditions agreed in writing between the Customer and the Company.

"the Customer" means the person who buys or agrees to buy the goods from the Company.

"the Contract" means the Contract for the purchase and sale of the goods.

"the Goods" means the goods (including any instalment of the goods or any part of them) which the Company is to supply in accordance with these conditions.

"the Price" means the price for the goods excluding VAT or any additional charge for such item as carriage or insurance.

2 Conditions applicable

2.1 The headings in these conditions are for convenience only and shall not affect their interpretation.

2.2 All contracts for sale made by the Company are subject to these conditions unless these conditions are excluded or varied by express written agreement between the Company and the Customer.

2.3 The Company accepts the Customers' order for goods upon these terms with the exception of any printed terms of conditions which shall not form part of the agreement.

2.4 Acceptance of the goods by the Customer shall be conclusive evidence before any Court or arbiter that these conditions apply thereto.

2.5 No variation to these conditions shall be binding unless agreed in writing between the authorised representatives of the Company and the Customer.

2.6 Any advice or recommendation given by the Company or its employees or agents as to the storage, application, performance or use of the goods which is not confirmed

in writing by the Company is followed or acted upon entirely at the Customer's risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.

2.7 Any drawings, specifications, weights and dimensions are approximate due to the applicable tolerance levels which are determined by each individual item and its associated standard unless otherwise stated, and the Company will not be liable for any losses sustained by the Customer caused by reliance upon the same.

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

3 Orders and Specifications

3.1 The Customer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification submitted by the Customer) and for giving 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.

3.2 Any amendments or additions to orders required by the Customer must be in writing or if given verbally (ie not in writing) must be immediately confirmed in writing otherwise the Company cannot accept liability or delay in proceeding with the order. When the Customer's urgency does not allow sufficient time for written confirmation to be received the Customer will be liable for any error arising. The Customer will be liable for any extra charges attributable to the amendment or additions to the order.

3.3 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 in full against all loss (including loss of profit), costs (including the cost of any labour and/or materials used), damages, charges and expenses incurred by the Company as a result of the cancellation. Alternatively, where the Company has received from the Customer a written cancellation of the order when the goods are in despatch the Company can at its sole discretion (but the Company is not bound to exercise such discretion), agree to such cancellation subject to handling charge to be set by the Company (providing always that such handling charge is less than the amount invoiced for the goods).

4 Future Contracts

4.1 Any future contracts made with the same customer shall be subject to the same conditions as the subsequent contract unless requested in writing by the Customer before the start of the contract.

5 The Price and Payment

5.1 All price lists, quotations, estimates and selling prices are subject to alteration without notice and the Company reserves the right to invoice at the prices ruling at the date of despatch.

5.2 The Customer will be charged for packing and delivery on some goods.

5.3 Payment of invoices shall be made within 30 days of the date of invoice if not agreed separately in writing or marked on the front of the invoice. The Customer agrees they will not be entitled to make deductions or withhold payment to the Company.

5.4 If the full price (including any VAT, delivery charges etc) of any goods supplied by the Company shall not be paid when due the Company may at its own discretion suspend future deliveries under the same or under any other contract existing between the Company and the Customer until such price is paid in full with accrued interest such interest to be calculated by reference to sub-clause 5.5 below. Such suspension shall not derogate the right of the Company to terminate the contract for non-payment of the price.

5.5 The Company may charge the Customer with interest on all overdue accounts at an annual rate equal to the published rate of the National Westminster Bank plc prevailing from time to time plus 3%.

6 Delivery

6.1 Goods will be despatched for arrival generally with 1 to 3 days of the order but any dates quoted for delivery of the goods are approximate only and unless otherwise stated and agreed by the Company in writing, time for delivery shall not be of the essence.

6.2 The Company arranges for next day delivery as standard on the majority of orders providing the Customer has placed the order before 4.15pm GMT. The Company does

not guarantee next day delivery - and in any event such deliveries are subject to the sub clauses of clause 6.

6.3 The Company will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver if the delay or failure is due to any cause whatsoever beyond the Company's control or of an unexpected or exceptional nature including but not limited to any act of god, fire, inclement or exceptional weather conditions, industrial action (whether at the Company's premises or elsewhere), hostilities, shortages of labour, materials, power or any other suppliers, governmental order or intervention (whether or not having force of law), any industrial dispute, Act of God, war, civil commotion legislation, break down of machinery, inability to obtain supplies, equipment, fuel power, components or transportation, accidents, government action.

6.4 The Customer expressly agrees the Company is not responsible for any delay in delivery or non-delivery caused by whatever means once the goods have left the Company's premises.

6.5 Where the 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 of the instalments shall not entitle the Customer to treat the contract as a whole as repudiated.

6.6 Notwithstanding the sub clauses of clause 6, if the Company fails to deliver the goods for any reason other than any cause beyond the Company's reasonable control or the Customer's fault and the Company is found by any competent authority to be 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.

6.7 The Customer does not have the right to repudiate or cancel any contract in the event of a delay.

6.8 Where the Company has agreed to arrange a delivery of the goods to a delivery point nominated by the Customer then: -

- a) unless the price is stated as being inclusive of the cost of carriage and/or insurance and/or freight such cost shall be for the account of the Customer and
- b) the Company reserves the right to make all shipping and insurance arrangements to such delivery point
- c) the Company will not be responsible for any delay in delivery due to any cause beyond the reasonable control of the Company.

6.9 If for any reason the Customer is unable to accept delivery of the goods when the goods are due and ready for delivery the Company may arrange storage of the goods. The Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other right which the Company may have in respect of the Customer's failure to take delivery of the goods or to pay for them in accordance with the contract.

6.10 Where goods are to be collected by the Customer or an agent acting on their behalf, no liability for damage or loss in transit will fall on the Company after the goods have transferred into the Customers or agents care as per sub clause 8.1.2 of this document. Any insurance arrangements are to be made by the Customer.

7 Force Majeure

7.1 Any contract may be cancelled or suspended in whole or in part by the Company without liability on its part for loss or damage arising directly or indirectly from such cancellation or suspension or consequence of the prospect happening as a result of any industrial dispute, Act of God, war, civil commotion legislation, break down of machinery, inability to obtain supplies, equipment, fuel power, components or transportation, accidents, government action, Force Majeure or any other cause over which the Company has no control.

7.2 No liability can be accepted by the Company for loss or damage to a Customer arising either directly or indirectly from a Force Majeure incident or any other cause over which the Company has no control. This includes but is not limited to all reasons as listed under clause 6.3 of this document.

8 Title and Risk

8.1 The risk in the goods shall pass to the Customer: -

8.1.1 When the goods are despatched from the Company's premises or;

8.1.2 Where the goods are to be collected by the Customer and/or their agents at the time when the Company notifies the Customer that the goods are available for collection. As stated under clause 6.10, the Customer shall insure them against loss or damage accordingly.

8.1.3 If the Customer wrongfully fails to take delivery of the goods at the time when the Company has tendered delivery of the goods.

8.2 Notwithstanding delivery and the passing of risk in the goods or any other provision of these conditions, the property in the goods shall remain the sole and absolute property of the Company as legal and equitable owner and shall only pass to the Customer when payment in full has been made to the Company in respect of both the goods, the subject of this contract and all other goods delivered and services rendered by the Company to the Customer.

8.3 Until such time as the property and the goods passes to the Customer: -

8.3.1 The Customer shall hold the goods as the Company's fiduciary agent/Bailee and shall store the goods on his/her premises separately from those of the Customer and third parties in a manner that makes them readily identifiable to the Company.

8.3.2 The Company shall be entitled at any time to require the Customer to deliver the goods back to the Company. If the Customer fails to do so, the Customer agrees that the Company or any agent appointed to act on its behalf may for the purpose of a recovery of its own goods enter the premises where they are stored or where they are reasonably thought to be stored and may repossess the same in the event of any breach of these conditions by the Customer.

8.5 The Company shall be entitled to direct the Customer not to resell the goods or remove them from where they are located without consent. Any goods in the Customer's possession shall be presumed not to have been paid for unless the Customer can prove otherwise and the Company shall have the right to appropriate any payment made by the Customer to any invoice or invoices (whether or not due at the time of payment) at the Company's absolute discretion.

8.6 If, pending payment of the goods the Customer shall sell or otherwise dispose of the goods or products or make any insurance claim in respect thereof, the Customer shall not give any warranties or incur any liabilities on behalf of the Company. The proceeds of any such sale or other disposition (or claim thereto) shall belong to the Company, and shall be held by the Customer in a separate account.

8.7 Any goods repossessed by the Company may be resold on such terms as the Company may determine and the Customer shall remain liable to the Company for the difference between the net proceeds of such resale and all outstanding sums due to the Company in respect of such goods. The Customer shall also remain liable for any other costs and expenses incurred by the Company in repossessing, storing and reselling the same.

8.8 Nothing in this clause shall give the Customer the right to return goods sold by the Company. In a situation where the Customer refuses to pay for the goods, the Company may sue the Customer for the price of goods plus any VAT, or other charges when due, (without prejudice to its other rights) whether or not the title of the property has passed to the Customer.

8.9 If the Company authorises the Customer to use the goods or to sell them prior to full payment then such right may be terminated immediately by written notice given by the Company to the Customer. The right shall automatically terminate with or without such notice: -

a) If a receiver is appointed over any of the assets or the undertaking of the Customer or a Winding up Order is made against the Customer

b) If the Customer goes into voluntary liquidation (otherwise known for the purpose of solvent reconstruction or amalgamation),

c) If the Customer calls a meeting or makes any arrangement or compositions with its creditors generally,

d) If the Customer commits any act of bankruptcy or allows execution or distress to be levied against its goods.

8.10 In the event of a Receiver or Liquidator of the Company being appointed, such Receiver or Liquidator shall pay into a separate bank account such sums received from third parties in respect of sales to them of the goods or products by the Customer up to the amount of indebtedness of the Customer to the Company. As per sub clause 8.3.2 the Customer agrees that the Company or any agent appointed to act on its behalf may for the purpose of a recovery of its own goods enter the premises where they are stored or where they are reasonably thought to be stored and may repossess the same.

8.10 The Company shall be entitled to a lien on all goods in the Customers possession whether paid for or not in satisfaction of the whole debt or part of the debt as the case may be (plus any VAT and other charged due). This covers the goods sold to the Customer under this or any other contract.

8.11 Each of the above clauses contained in clause 8 "Title and Risk" shall be construed as 'separate' and 'severable' obligations. The enforceability of any one or more of the clauses or any part thereof shall not in any way be affected by the unenforceability of any of the other sub-clauses.

9 Warranties and Liability

9.1 Subject to the conditions set out below the Company warrants that the goods will at the time of delivery correspond with the description given by the Company and will be of satisfactory quality. This warranty is given by the Company subject to the following conditions: -

9.1.1 The Company shall be under no liability in respect of any defect in the goods arising from any drawing, design or specification as supplied by the Customer.

9.1.2 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 orally or in writing), misuse or alteration or repair of any goods without the Company's approval.

9.1.3 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 (including any VAT, storage, carriage charges or other charges) has not been paid by the due date for payment.

9.1.4 The above warranty does not extend to parts, materials or equipment not manufactured by the Company, in respect of which the Customer shall be entitled to the benefit of such warranty or guarantee as given by the manufacturer to the Company.

9.1.5 The Company shall be under no liability under the above warranty if the Customer fails to inspect and examine the goods within 3 days of receipt and also to provide the Company with written notice of the alleged defects with 7 days from the date of the delivery of the goods or collection of the goods from the Company's premises, whichever date is the sooner.

9.2 In respect of a warranty claim by the Customer, the Company shall be entitled to require the Customer to return the goods or a sample of the goods if the Company agrees to this in writing, to the Company for examination within 7 days of receipt. The Company will replace any defective goods provided that in the opinion of the Company the goods have not been tampered with or subjected to improper treatment or such defects do not arise from matters referred to in clause 9.1.2 above.

9.3 Subject as expressly provided in these conditions and except where goods are sold to a person dealing as a consumer, (within the meaning of the Unfair Contract Term Act 1977) all warranties, representations, guarantees and other term implied by statute or common law are excluded to the fullest extent permitted by the law.

9.4 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, any implied warranty or other term, any duty at common law or under the express terms of the contract for any consequential loss or damage whether for loss of profit or otherwise, costs, expenses or other claims for consequential compensation whatsoever 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 the goods, their use or resale by the Customer except as expressly provided in these conditions.

9.5 In no event shall the Company be liable for the following loss or damage, caused even if foreseeable in the contemplation of the Company:

- a) Economic loss which shall include the loss of profit, business revenue, goodwill and anticipated savings,
- b) Damages in respect of special, indirect or consequential loss or damage of any kind,
- c) Any claim made against the Customer by any other party or person,
- d) Any liability for any additional or consequential loss of any kind whatsoever is hereby excluded. The Customer is accordingly advised to take out appropriate insurance.

10 Claims for Non Delivery

10.1 The Customer agrees upon receipt of the goods to check the number of parcels they are signing for and that all items advised on the Despatch Note are contained therein.

10.2 The goods shall be deemed to have been delivered complete in accordance with the advice note undamaged and in good order, repair and condition and to the Customer's satisfaction unless the Company receives written notice to the contrary within 7 days after delivery to the Customer. If the Company is satisfied that the goods or any part thereof were delivered incomplete or were damaged or defective, the Company's liability shall be limited to making good the delivery in such good order as the case may be when the incomplete or damaged goods have been returned at the Customer's expense. Replacement shall be as nearly as possible identical with the goods being replaced and if not shall be at least of equal quality.

10.3 If the goods are not delivered then the Customer must notify the Company by within 7 days of the Customer's receipt of the Company's Advice Note otherwise the liability referred to in 10.2 is excluded.

11 Returned Goods

11.1 The Company may at its own discretion (but is under no obligation to exercise such discretion) allow the Customer to return goods for credit which have been ordered and delivered without defect at their own cost, but subject to the following:

Industrial Ancillaries Ltd
Harper Way
Markham Vale
Chesterfield
S44 5JX

Sales Department
☎ 01246 242 050
☎ 0800 1971 888
✉ sales@indanc.com

Credit Control
☎ 01246 242 070
☎ 01246 242 079
✉ credit@indanc.com

Purchasing Department
☎ 01246 242 080
☎ 01246 242 085
✉ purchasing@indanc.com

11.1.1 A handling charge will be applied to some goods; such charge may be calculated by reference to the price of the goods. Where the goods are standard stock, this will generally be no more than 20%. Where goods are special order, there is no guarantee that the manufacturer will accept a return and as such, the Company may not be able to facilitate this service.

11.1.2 A Credit Note will only be issued by the Company upon receipt of goods and upon satisfactory inspection and acceptance by the Company's Quality Control.

11.1.3 No goods shall be sent back by the Customer without prior notification and agreement of the Company. All returns should be notified by the Customer to the Company within 7 days of receipt and returned within 14 days.

11.1.4 All returned goods should include necessary documentation, including a copy of the Returns Form which is issued by the Company's Quality Control Department.

11.1.5 It is the Customer's responsibility to arrange for packing and return of the goods. The risk is that of the Customer and they are accordingly advised to take out insurance in such circumstances.

11.1.6 Notification must be made by the Customer to the Company within 20 days of all invoices held for non-payment for goods returned.

12 Termination

12.1 If the Customer:

- a) defaults or commits any breach of its obligations,
- b) commits any act of bankruptcy,
- c) has any execution or distress levied upon any of its goods or property,
- d) or being a Limited Company if any resolution or Petition to wind up its business shall be passed or presented,
- e) or if a receiver of the whole or any part its undertaking, property or assets or any part thereof shall be appointed,

Then the Company shall have the right to determine or terminate any subsisting contract without prejudice to any claim or right the Company might otherwise exercise.

12.2 If the Customer defaults in payment of any sum due hereunder or is overdue with any payment the Company shall have the right to determine or terminate any contract

then subsisting without prejudice to any claim or right the Company might otherwise exercise.

13 Patents

13.1 If the Customer shall supply the Company with a design to which the goods are to manufactured then the Customer shall indemnify the Company against all claims, damages, cash and expenses arising out of the infringement of any copyright, patent, trademark, registered design, or similar rights of any third party.

14 Catalogue and Advertising Literature

14.1 The Company makes no representations or warranty as to the accuracy of any catalogues, leaflets or other form of advertising literature which are intended merely to present a general picture of the Company's products.

15 Waivers

15.1 The Company's rights and remedies shall not be prejudiced by any indulgence or forbearance to the Customer and no waiver by the Company of any breach by the Customer shall operate as a waiver of any subsequent breach.

16 Notices

16.1 Any notice required to be given hereunder in writing shall be deemed to have been duly given by the Company if sent by paid first class post, facsimile, email or telegraph addressed to the party concerned as its principal place of business or last known address.

17 Severance

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

18 English Law and Jurisdiction

18.1 This contract will be construed according to the laws of England and any dispute arising between the parties shall be subject to English laws. The parties submit to the exclusive jurisdiction of the English Courts in respect of any dispute arising under or connected with this contract.