



**The following are the general terms and conditions of sale and delivery ("Terms") of ELG Haniel Metals Ltd (UK company number 01517971) ("we" "our" or "us") on which we have agreed to supply goods ("Goods") to you ("Purchaser").**

These Terms apply exclusively to all contracts concluded between ourselves and the Purchaser concerning the delivery of Goods ("Contract"). Differing terms and conditions of purchase or other differing terms and conditions of the Purchaser shall not apply unless we have expressly acknowledged them in writing. Our silence regarding such differing terms and conditions shall not be deemed to be consent, and this shall also apply to future contracts.

### **1. Quotation, conclusion of contracts and cancellation**

1.1 Our quotations are without engagement and not binding. Unless otherwise stated, the prices in our quotations are valid for five [5] days.

1.2 Subject to clause 1.3 if the Purchaser places a delivery order based on our quotation no Contract shall be concluded unless we issue a written order confirmation ("Order Confirmation"). Verbal agreements prior to or upon conclusion of the Contract shall only be valid when confirmed by an Order Confirmation.

1.3 If the Purchaser does not wish to proceed with the Order Confirmation it must inform us within five (5) calendar days of receipt of the Order Confirmation, otherwise the Contract shall be irrevocably binding. The Purchaser shall not be required to countersign/return the Order Confirmation.

1.4 The Order Confirmation shall confirm the details of the Goods to be supplied and the date of delivery.

1.5 Prices and performance data and other declarations or assurances shall be binding for us only if we have made or confirmed them in writing.

1.6 Any documents, drawings, details of weight, samples etc. enclosed with our quotation are approximate only and we give no guarantee unless this is expressly indicated in writing. Any reference to standards and similar technical regulations shall also not indicate a property of our products unless this is expressly indicated as a "property of the product".

1.7 We shall only be obliged to deliver from our own stock.

1.8 Estimates of cost, drawings and other documents provided by us shall remain our property. They may not be made accessible to third parties without our prior consent.

1.9 Orders accepted by us are not subject to changes or cancellation by the Purchaser, except with our written consent. In such cases where we authorise changes or cancellation, we reserve the right to charge the Purchaser for our reasonable costs based upon expenses we have already incurred and commitments we have made including, without limitation, any labour done, material purchases and as well as a contribution to our overheads and reasonable profit plus cancellation charges claimed by our suppliers. Despatched orders are explicitly excluded from cancellation.

### **2. Goods**

2.1 Quality and dimensions are determined by the relevant DIN standards respective material numbers unless otherwise agreed. If no DIN standards or material data sheets exist, the corresponding European standards shall apply in the absence of standards customary in the trade.

2.2 Weights shall be determined by the weighing performed by us or our supplier. The weight shall be proved by presenting the weighting certificate. If admissible by law, weights can be determined without weighing according to DIN standards.

2.3 The number of units or bundles stated in the advice of dispatch shall not be binding for goods calculated by weight. If it is not customary to weigh goods individually, the total weight of the consignment shall accordingly apply. Differences in relation to calculated individual weights shall be proportionately allocated to them.

### **3. Prices**

3.1 The price of the Goods:

- a) are GBP prices unless otherwise stated in the written Order Confirmation.
- b) excludes amounts in respect of any applicable value added tax (VAT) or other sales taxes which the Purchaser shall additionally be liable to pay to us at the prevailing rate, subject to the receipt of a valid VAT invoice.
- c) unless otherwise agreed in writing, are ex works (EXW Incoterms 2010) and do not in particular include packaging and shipping costs and freight.

3.2 We may, by giving notice to the Purchaser up to seven (7) Business Days (a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business) before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:

- a) any factor beyond our control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
- b) any request by the Purchaser to change the delivery date(s), quantities or types of Goods ordered; or
- c) any delay caused by any instructions of the Purchaser or failure of the Purchaser to give us adequate or accurate information of instructions.

### **4. Terms of payment, retention, set-off**

4.1 Unless otherwise agreed in writing, all payments shall be made in cleared funds within 30 days of the date of the invoice date without deduction to the bank account nominated in writing by us. Terms of payment shall be deemed met if the amount is at our disposal within the payment deadline.

4.2 In the event of default in payment, default interest of 8 percentage points above the respective base interest rate of the European Central Bank when the claim for payment becomes due shall be charged. The right to assert damage in excess of this is reserved.

4.3 The Purchaser shall have no right of retention or set-off unless it relates to the same contract and has been recognised by a court order.

4.4 We shall have the right to request the Purchaser to provide securities or advance payments to an appropriate extent for our delivery.

4.5 We shall have the right to set off claims, which the Purchaser or its affiliated companies are entitled to against us, Franz Haniel & Cie. GmbH or companies affiliated with Franz Haniel & Cie. GmbH, against our own claims, claims of Franz Haniel & Cie. GmbH or claims of companies affiliated with ourselves or Franz Haniel & Cie GmbH. Companies affiliated with ourselves or Franz Haniel & Cie GmbH within the meaning of this provision are such companies in which we or Franz Haniel & Cie GmbH hold a majority interest either directly or indirectly or such companies which hold an interest in ourselves. If required, we shall advise the Purchaser at first request the companies which are affiliated with ourselves and Franz Haniel & Cie GmbH.

### **5. Retention of title**

5.1 Title to the Goods shall not pass from us until we have received payment in full in cleared funds for the Goods plus VAT and no other sums whatsoever shall be due from the Purchaser to us.

5.2 Until title to the Goods passes the Purchaser shall hold the Goods on our behalf. The Purchaser shall store the Goods (at no cost to us) separately from all other goods in its possession and marked in such a way that they are clearly identified as our property and shall maintain the Goods in satisfactory condition.

5.3 We shall be entitled to recover the full price for any Goods sold under these Terms including VAT, notwithstanding that the title in such Goods has not passed from us.

5.4 If (before title to the Goods passes to the Purchaser) the Purchaser becomes subject to any of the events listed in clauses 12.1(b) to 12.1(d) or we reasonably believe that any such event is about to happen and notify the Purchaser accordingly, then, provided the Goods have not been sold, or irrevocably incorporated into another product, and without limiting any other right or remedy we may have, we may at any time require the Purchaser to deliver up the Goods, failing which we may enter any vehicle



or premises where the Goods are stored in order to recover them.

5.5 The Purchaser shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are our property. The Purchaser shall insure and keep insured the Goods to their full price against "all risks" to our reasonable satisfaction until the title in them passes from us.

5.6 Without prejudice to our other rights and remedies, if the Purchaser fails to comply with its obligations under this clause 5 all sums whatsoever owing by the Purchaser to us shall immediately become due and payable.

#### **6. Delivery, force majeure, delivery subject to own receipt of delivery, storage**

6.1 Specified delivery times are not binding unless otherwise agreed in writing. If delivery dates and periods are not binding or approximate, we shall use our reasonable endeavours to comply with them. Delivery periods agreed as binding in writing shall commence upon receipt of the order confirmation by the Purchaser but not before all details about the execution of the order have been clarified and all other requirements to be fulfilled by the Purchaser are met. This shall accordingly apply to delivery dates. Deliveries can be made before the delivery period ends.

6.2 If we do not receive deliveries or services from our sub-contractors, for reasons for which we are not responsible, to enable us to provide deliveries or services which are due from us under the Contract, despite due and sufficient stocking in terms of quantity and quality under our delivery or service agreement with the Purchaser, for reasons for which we are not responsible, or they are incorrect or not in due time, or events of force majeure occur of significant duration (i.e. of longer than 14 calendar days), we shall notify the Purchaser in writing or text form in due time. In such case, we shall have the right to postpone the delivery for the duration of the obstruction, or to rescind the Contract in whole or in part for that part not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk. Events of force majeure are strikes, lock-outs, official intervention, energy shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions through no fault of our own, e.g. due to fire and water damage, and damage to machinery, and any other obstructions which, when considered objectively, were not caused by our negligence.

6.3 If a delivery and/or service date or delivery and/or service period is agreed with binding force and the agreed delivery or service date or the agreed delivery or service period is exceeded due to events according to paragraph 6.2 above, the Purchaser shall have the right, after a reasonable extension of time has elapsed without success, to rescind the Contract for that part of the Contract not yet fulfilled. The Purchaser shall have no further claims, in particular claims for damages, in this case, if we have met our foregoing duty to provide information. The above provisions pursuant to paragraph 6.2, sentence 1 and 2, shall apply accordingly if the Purchaser cannot be objectively expected to adhere further to a fixed delivery and/or service date for the reasons stated in paragraph 6.3.

6.4 If shipment is delayed at the Purchaser's request or for reasons, for which the Purchaser is responsible, we shall have the right to store the Goods, beginning upon expiry of the reasonable period set in writing or text form in the notice that the Goods are ready for shipment, at the Purchaser's risk of loss and deterioration of the Goods, and to invoice the costs incurred for this at 0.5% of the net invoice amount of the stored Goods for each full week or part thereof (up to a maximum amount of 10% of the net invoice amount for the stored Goods). The stored Goods shall only be insured at the Purchaser's specific request. This shall not affect the assertion of further rights. The Purchaser shall have the right to prove that no costs or considerably lower costs were incurred.

#### **7. Radioactivity**

7.1 The Purchaser shall be obliged to monitor incoming Goods with state-of-the-art radioactivity measuring devices before the material is mixed with material from other suppliers.

7.2 If the Purchaser determines that any agreed limit values are exceeded, the Purchaser shall notify us immediately in writing and give us the opportunity to carry out our own measurements. If our measuring confirms that relevant limit values are exceeded, we shall assume the costs of this measuring and take back the Goods in question at our expense. The requirements of clauses 9 and 10 below shall furthermore apply.

#### **8. Passing of risk**

8.1 Risk in the Goods (including the risk of accidental loss or accidental deterioration) shall pass to the Purchaser upon the delivery item being handed over by us to the forwarding agent, carrier or third parties otherwise appointed to handle the shipment. This shall also apply if partial deliveries are made or we have taken over other services (e.g. shipment or installation).

8.2 If shipment is delayed due to circumstances for which the Purchaser is responsible or the shipment is sent at the Purchaser's request at a date which is later than the agreed delivery date, the risk shall pass to the Purchaser from the date on which the notice is sent stating that the delivery is ready for shipment for the period of the delay. We shall be obliged at the Purchaser's request and expense to take out the insurances requested by the Purchaser.

8.3 Deliveries shall not be insured against theft, breakage, transport and fire damage without specific request by the Purchaser. If the Purchaser requests the conclusion of an insurance policy, this shall be concluded at the Purchaser's expense. The Purchaser shall provide any cooperation required.

#### **9. Warranty and claims for defects**

9.1 We warrant that on delivery the Goods

- a) conform with their description and
- b) be free from material defects in design, material and workmanship.

9.2 Save in the case of latent/hidden defects the Purchaser shall inspect the Goods and, if a defect is found, shall notify us in writing that the Goods do not comply with the warranty set out in clause 9.1 within 7 days of receipt.

9.3 Subject to clause 9.4, if the Purchaser gives notice in writing to us pursuant to clause 9.2:

- a) we shall be given a reasonable opportunity of examining such Goods; and
- b) the Purchaser (if asked to do so by us) shall return such Goods to our place of business at the Purchaser's cost; and
- c) where an undisputed claim is made under this clause 9, we shall be entitled to replace the defective Goods free of charge or, at our sole discretion, refund to you the price of the Goods, but we shall have no further liability to you.

9.4 We shall not be liable for the Goods' failure to comply with the warranty set out in clause 9.1 in any of the following events:

- a) the Purchaser makes any further use of such Goods after giving notice in accordance with clause 9.2;
- b) the defect arises because the Purchaser failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
- c) the Purchaser alters or repairs such Goods without our written consent;
- d) the defect arises as a result of fair wear and tear, wilful damage, negligence or abnormal storage or working conditions; or
- f) the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

9.2 Negotiations on any notices of defects shall not constitute our waiver of the objection that the notice was not in due time, unfounded in fact or otherwise insufficient.

9.3 If the Purchaser fails to provide this notice, the Goods shall be deemed approved unless it is a defect which could not be detected in the course of a normal inspection.

9.4 Obvious damages sustained during transport or other defects recognisable already at the time of delivery must also be confirmed by the



deliverer's signature on the respective transport document when delivery is accepted. The Purchaser shall ensure that a corresponding confirmation is provided.

9.5 Claims for defects must be made within one year after the risk passes pursuant to clause 8 of these Terms. This shall not apply to claims of the type listed in clause 10.1.

9.6 Except as provided in this clause 9, we shall have no liability to the Purchaser in respect of the Goods' failure to comply with the warranty set out in clause 9.1.

9.7 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are to the fullest extent permitted by law, excluded from the Contract.

9.8 These Terms shall apply to any repaired or replacement Goods supplied by us.

## **10. Liability**

10.1 Nothing in these Terms shall limit or exclude our liability for:

- a) death or personal injury caused by our negligence, or the negligence of our employees, agents or subcontractors (as applicable);
- b) fraud or fraudulent misrepresentation;
- c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 (as to title in the Goods);
- d) any matter in respect of which it would be unlawful for us to exclude or restrict liability.

10.2. Subject to clause 10.1:

- a) we shall under no circumstances whatsoever be liable to the Purchaser, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
- b) our total liability to the Purchaser in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

## **11. Export control / Product approval / Import regulations**

11.1 In the absence of any contractual agreements to the contrary with the Purchaser, the delivered Goods are intended for placement on the market for the first time within the United Kingdom ("first country of delivery").

11.2 The export of certain goods by the Purchaser from the first country of delivery may be subject to authorisation e.g. because of their nature or intended purpose or final destination. The Purchaser itself shall be obliged to check this and to comply strictly with the relevant export regulations and embargos for these Goods.

11.3 The Purchaser shall in particular check and ensure, and, on request, provide evidence to us that

- the Goods provided are not intended for use in armaments, nuclear facilities or weapon technology;
- no companies and persons specified on the US Denied Persons List (DPL) are supplied with original US goods, US software and US technology;
- no companies and persons specified on the US Warning List, US Entity List or US Specially Designated Nationals List are supplied with original US products without relevant authorisation;
- no companies and persons are supplied who are specified on the List of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU Terrorist List or other relevant negative lists for export controls;
- no recipients are supplied that violate other export control regulations, especially of the EU or the ASEAN countries;
- all early-warning indications of the competent German or national authorities of the respective country of origin of the delivery are complied with.

11.4 Goods supplied by us may only be accessed and used if the above-mentioned checks and assurances have been carried out by the Purchaser; otherwise the Purchaser must refrain from carrying out the intended export and we shall not be obliged to perform.

11.5 Where Goods supplied by us are passed on to third parties, the Purchaser undertakes to oblige such third parties in the same way as specified in this clause 11, and to notify them of the need to comply with these legal provisions.

11.6 The Purchaser shall at its own expense ensure that the Goods comply with all national import regulations of the first country of delivery unless we have expressly assumed this obligation.

11.7 The Purchaser shall indemnify us against all damages and expenses resulting from the negligent breach of this clause 11.

## **12. Termination**

12.1 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to the Purchaser if:

- a) the Purchaser commits a material breach of any term of the Contract and (if such breach is remediable) fails to remedy that breach within 14 days of being notified by us in writing to do so;
- b) the Purchaser takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring) being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring) having a receiver appointed to any of its assets or ceasing to carry on business;
- c) the Purchaser suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- d) the Purchaser's financial position deteriorates to such an extent that in our opinion the Purchaser's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

12.2 Without limiting our other rights or remedies, we may suspend provision of the Goods under the Contract or any other contract between the Purchaser and us if the Purchaser becomes subject to any of the events listed in clause 12.1, or we reasonably believe that the Purchaser is about to become subject to any of them, or if the Purchaser fails to pay any amount due under this Contract on the due date for payment.

12.3 Without limiting our other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to the Purchaser if the Purchaser fails to pay any amount due under the Contract on the due date for payment.

12.4 On termination of the Contract for any reason the Purchaser shall immediately pay to us all of our outstanding unpaid invoices and interest.

12.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract that existed or at before the date of termination.

12.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## **13. General**

13.1 Contracts concluded with us may only be transferred to third parties with our written consent. This shall also apply to claims arising from the Contracts concluded with us.

13.2 Amendments to and modifications of these Terms shall only be valid when given in writing and signed by the parties (or their authorised representatives).

13.3 If any provision of these Terms is declared by any judicial or any other competent authority to be void, voidable, illegal or otherwise unenforceable or indications to that effect are received by us from any competent authority then that provision shall be limited or eliminated to the minimum extent necessary so these Terms shall otherwise remain in full force and effect and enforceable.



13.4 Each party acknowledges that these Terms contain the entire agreement between them and that the Purchaser has not relied on any verbal or written representations made by us or our employees or agents.

13.5 These Terms supersede any prior agreement whether written or oral.

13.6 Any notice or other information required or permitted to be given under these Terms shall be deemed to have been validly given if served personally on that party or if sent by first class pre-paid post or email to the last known address of that party. If sent by first class pre-paid post, it shall be deemed to have been received 2 days after the date of posting. If sent by email (and provided the email is supported by a valid server delivery receipt), it shall be deemed to have been received on the same day if sent during normal working hours or on the next working day where sent outside such hours.

13.7 No waiver by us of any breach of these Terms by the Purchaser shall be considered as a waiver of any subsequent breach of the same or any other provisions.

13.8 These Terms shall not be enforceable by a person who is not a party to them under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

13.9 Place of performance for deliveries and payments is England and Wales.

13.10 These Terms shall be governed by English law and the English Courts shall have exclusive jurisdiction to decide any dispute concerning these Terms. We shall also have the right at our option to bring an action against the Purchaser at its place of general jurisdiction.

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