

## East Coast Fittings Limited (ECF) – Conditions of Sale



### GENERAL DEFINITIONS

'Contract' means the Contract for the sale and purchase of the Goods

'Company' means East Coast Fittings Limited, Company Number 1548834

'Conditions' means the standard terms of sale set out in this document and (unless the context otherwise requires) includes any special terms agreed in writing between the Company and the Customer

'Customer' means the person who accepts the Company's written quotation for the sale of Goods or whose written order for the Goods is accepted by the Company

'Goods' means the goods (including any instalment of the Goods or any parts of them) which the Company is to supply in accordance with these Conditions

'Writing' includes facsimile transmission and comparable means of communication

1.1 All quotations are made and all orders are accepted subject to the following conditions. All other terms conditions or warranties whatsoever are excluded from the contract or any variation thereof unless expressly accepted by the Company in writing,

1.2 Acceptance of delivery of Goods shall constitute acceptance of these conditions where acceptance has not previously been communicated by the Customer to the Company.

1.3 Orders are accepted (save where the contrary is expressed in writing in the acceptance) subject to availability of stocks of the Goods ordered at the time specified for delivery.

1.4 The Company's employees or agents are not authorised to make any representations concerning the Goods unless confirmed by the Company in writing in accordance with this clause. If any statement or representation has been made to the Customer by the Company its servants or agents upon which the Customer wishes to rely other than in the documents enclosed with the Company's quotation or acknowledgement of order then the Customer must set out that statement or representation in a document to be attached to or endorsed on the order prior to the Contract and in any such case the Company may confirm reject or clarify the point and submit a new quotation.

1.5 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 on 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.

### DELIVERY

2.1 Time for delivery is not of the essence of the Contract. The Customer shall have no right to damages or to cancel the order for failure for any cause to meet any delivery time stated. Goods may be delivered in advance of the quoted delivery date upon giving reasonable notice to the Customer.

2.2 The date of delivery shall in every case be dependent upon prompt receipt of all necessary information final instructions or approvals from the Customer. Alterations by the Customer in design specifications or quantities required may result in delay in delivery. The Company shall not be liable for any delay in delivery of or failure to deliver the Goods where such delay or failure was due to the act, omission or fault of the Customer.

2.3 Failure by the Customer to take delivery of or to make payment in respect of any one or more instalments of Goods delivered hereunder shall entitle the Company to treat the whole contract as repudiated by the Customer.

2.4 The Company will endeavour to comply with reasonable requests by the Customer for postponement of delivery but shall be under no obligation to do so. If the Customer fails to take delivery of the Goods when tendered for delivery, or fails to give the company adequate delivery instructions at the time stated for delivery (otherwise than due to any cause beyond the Customer's reasonable control or by reason of the Company's fault) then without limiting any other right or remedy available to the Company the Company may:

2.4.1 store the Goods until actual delivery and charge the Customer for reasonable costs (including insurance) of storage; or

2.4.2 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 of the Contract.

2.5 Where delivery is postponed with the agreement of the Company the Customer shall pay all costs and expenses including a reasonable charge for storage and transportation occasioned thereby and notwithstanding any such delay in delivery payment for the Goods shall be due and payable in accordance with these Conditions on the original date for delivery given by the Company.

2.6 Any packaging supplied by the Company unless otherwise expressly agreed is intended to provide adequate protection throughout normal conditions of transit of usual duration.

2.7 A delivery note or notes for the Company must be signed on receipt of the Goods.

2.8 Where delivery of the Goods is to be made by the Company in bulk the Company reserves the right to deliver up to 5 percent more or 5 percent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.

2.9 Where Goods are to be delivered in instalments each such instalment 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.

2.10 If the Company fails to deliver the Goods (or any instalment) for any reason other than any cause beyond the reasonable control of the Company 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.

### RISK AND TITLE

3.1 Risk shall pass to the Customer so that the Customer is responsible for all loss damage or deterioration to the Goods:-

3.1.1 if the Company delivers the Goods by its own transport or in accordance with a specific contractual obligation arranges transport for the Goods at the time when the Goods or a relevant part thereof arrive at the place of delivery, or

3.1.2 in all other circumstances at the time when the Goods or a consignment or other part thereof are made available by the Company for collection by the Customer.

3.2 Title to the Goods or any relevant part thereof shall only pass to the Customer when the Customer has paid to the Company in cash or cleared funds all sums due and payable by it to the Company under the Contract and all other Contracts between the Company and the Customer.

3.3 The Company may recover Goods in respect of which title has not passed to the Customer (provided the Goods are still in existence and have not been resold) at any time and the Customer hereby authorises the Company its officers, employees and agents to enter upon any premises of the Customer or any premises of a third party where Goods are stored (as agent for the purchaser) for the purpose either of satisfying itself that condition 3.4 below is being complied with by the Customer or of recovering any Goods in respect of which property has not passed to the Customer.

3.4 Until title to the Goods has passed to the Customer pursuant to the terms hereof it shall possess the Goods as a bailee and fiduciary agent of the Company on the terms of the contract and shall store the Goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Company and shall keep them appropriately stored, protected and insured.

3.5 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 if the Customer does so all moneys owing to the Company by the Customer shall forthwith become due and payable.

### CANCELLATION

4. The Customer shall not be entitled to cancel any Contract without the written consent of the Company and then only upon condition that all costs and expenses incurred by the Company up to the time of cancellation and all loss of profits and other loss or damage resulting to the Company by reason of such cancellation are paid by the Customer to the Company immediately upon cancellation.

### PRICES

5.1 All prices are unless otherwise stated quoted net ex works exclusive of VAT (which shall be payable in addition) and are subject to fluctuation (at any time before delivery) in the event of any increase in costs to the Company due to any factor beyond the control of the Company, including but not limited to costs of labour due to local or national awards or increases in the cost of materials and overheads, currency exchange fluctuations, alterations of duties, changes in delivery dates quantities or specifications or delay caused by the instructions or lack of instructions from the Customer. Any increase in such costs during the period of the contract will be added to the quoted price.

5.2 In the event of any alteration being requested by the Customer and agreed by the Company in design or specification the Company shall be entitled to make an adjustment of the contract price corresponding to such alteration.

5.3 Prices quoted are for the total quantities shown and the Company may not offer the rates or prices quoted for smaller quantities..

5.4 All deliveries are free other than orders or part orders below the minimum carriage paid order value currently applicable, as specified in a current special quotation or, in the absence thereof, the Company's prevailing pricelist.

### TERMS OF PAYMENT

6.1 Unless otherwise agreed by the Company in writing the terms of payment shall be net cash monthly account due and payable on the last day of the month following the month in which the Goods were despatched or would have been despatched save for postponement otherwise than due to default on the part of the Company. The Company shall be entitled to submit its invoice on delivery or at any time thereafter unless the Goods are to be collected by the Customer in which case the Company may invoice the Customer for the price at any time after the Company has notified the Customer that the Goods are available for collection. Where delivery has been postponed at the request of or by the default of the Customer then the Company may submit its invoice at any time after the Goods are ready for delivery or would have been ready in the ordinary course but for the request or default as aforesaid. The Company shall be entitled to recover the price notwithstanding that delivery may not have taken place and the property in the Goods has not passed to the Customer. Time of payment of the Price shall be of the essence of the Contract.

6.2 Where Goods are delivered by instalments the Company may invoice each instalment separately and the Customer shall pay such invoices in accordance with these Conditions,

6.3 No disputes arising under the contract nor delays beyond the reasonable control of the Company shall interfere with prompt payment in full by the Customer.

6.4 In the event of default in any payment by the Customer the Company shall be entitled without prejudice to any other right or remedy to cancel the Contract or suspend any further deliveries on any contract or contracts between the Company and the Customer without notice.

## **SAMPLES**

7.1 The company may at its discretion submit a sample to the Customer for approval before executing the bulk of the order which will only be commenced on receipt of such approval in writing. All Goods in respect of which a sample is so approved shall be deemed to have been satisfactorily tested by the Customer and to be suitable for the purposes for which the Customer requires them.

7.2 Notwithstanding that samples may be or have been submitted by the Company the sale to the Customer is not and shall not be deemed to be a sale by sample for the purposes of Section 15 of the Sale of Goods Act 1979. Any samples submitted to the Customer are intended to indicate only the substance and the general character of the materials and the Customer shall have no claim if the colour or composition of the bulk supplied fails to correspond with the sample in such respect unless the particular requirement is specified by the Customer and accepted by the Company in writing.

## **DIMENSIONS**

8. The Company reserves the right to alter or change dimensions of the Goods supplied within reasonable limits having regard to the nature of the Goods. Dimensions specified by the Company are to be treated as approximate unless the Customer specifically states in writing that exact measurements are required.

## **SHORTAGES AND DEFECTS APPARENT ON INSPECTION**

9.1 The Customer shall have no claim for shortages or defects apparent on visual inspection unless:-

9.1.1 the Customer inspects the Goods within seven days of arrival at its premises or other agreed destination and

9.1.2 a written complaint is made to the Company and the carrier within seven days of receipt of the Goods or such shorter period as the carriers conditions (if applicable) require specifying the shortage or defect and

9.1.3 the Company is given an opportunity to inspect the Goods and investigate any complaint before any use of or alteration to or interference with the Goods; and

9.1.4 it is reported on a Carrier's proof of delivery on receipt of goods

9.2 If a complaint is not made to the Company as herein provided then the Goods shall be deemed to be in all respects in accordance with the contract and the Customer shall be bound to pay for the same accordingly and shall not be entitled to reject the Goods.

## **DEFECTS NOT APPARENT ON INSPECTION**

10.1 The Customer shall have no claim in respect of defects not apparent on the visual inspection at the time of delivery envisaged by these Conditions unless:-

10.1.1 a written complaint is sent to the Company as soon as reasonably practicable after the defect is discovered and no use is made of the Goods thereafter and no alteration made thereto or interference made therewith before the Company is given an opportunity to inspect the Goods; and

10.1.2 the complaint is sent within 3 months of the date of delivery of the Goods.

10.2 The Customer shall not be entitled to any claim in respect of any default in the Goods arising from any repairs or alterations undertaken by the Customer without the prior specific written consent of the Company nor in respect of any defect arising by reason of fair wear and tear or damage due to misuse of the Goods, or arising from abnormal working conditions or a failure to follow the Company's instructions.

10.3 The Company shall not be liable for loss or damage suffered by reason of use of the Goods after the Customer becomes aware of a defect or after circumstances which should reasonably have indicated to the Customer the existence of a defect.

10.4 The Company may within 28 days of receiving a written complaint in clause 10.1 inspect the Goods and the Customer if so required by the Company shall take all steps necessary to enable the Company to do so. Please also refer to our returns policy.

## **GUARANTEE CONDITION**

11.1 Save as otherwise provided herein Sections 12 to 15 of the Sale of Goods Act 1979 are to be implied into this contract.

11.2 In the event of the condition of the Goods being such as might or would (subject to these Conditions) entitle the Customer to claim damages or to repudiate the contract the Customer shall not then do so but shall first ask the Company to refund the price of the Goods (or an appropriate part) or repair or supply satisfactory substitute Goods and the Company shall thereupon be entitled at its option to make such refund or repair or take back the defective Goods and to supply satisfactory substitute Goods free of cost and within a reasonable time. If the Company does so repair the Goods or supply satisfactory substitute Goods or refund the price (or appropriate part thereof) then the Customer shall be bound to accept such refund or repaired or substituted Goods and the Company shall be under no further liability to the Customer in respect of any loss or damage whatsoever arising from the supply of the defective Goods.

11.3 The Company shall not be liable to the Customer for any defect in the Goods arising from any specification supplied by the Customer.

## **LIABILITY**

12. Except in respect of death or personal injury caused by the Company's negligence, or liability for defective products under the Consumer Protection Act 1987, 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 loss of profit or for any indirect, special or consequential loss or damage, costs, expenses or other claims for 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 (including any delay in supplying or any failure to supply the Goods in accordance with the Contract or at all) 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 Terms.

## **CONFIDENTIAL INFORMATION**

13. All drawings documents confidential records computer software and other information supplied by the Company are supplied on the express understanding that copyright is reserved to the Company and that the Customer will not without the written consent of the Company either give away loan exhibit or sell any such drawings documents records software or other information or extracts therefrom or copies thereof or use them in any way except in connection with the Goods in respect of which they are issued

## **CUSTOMER'S DRAWINGS & SPECIFICATIONS**

14.1 The Customer shall be solely responsible for ensuring that all drawings information, advice and recommendations given to the Company either directly or indirectly by the Customer or by the Customer's agents or servants consultants or advisers in respect of the Goods are accurate correct and suitable. Examination or consideration by the Company of such drawing information advice, or recommendations shall in no way limit the Customer's responsibility hereunder unless the Company specifically agrees, in writing to accept responsibility.

14.2 The Customer shall indemnify the Company from and against all actions claims costs proceedings and damages suffered or incurred by the Company which arise due to the manufacture of Goods to the drawings or specifications of the Customer where such drawings or specifications are at fault or where it is alleged that they involve an infringement of a third party Patent, copyright, Registered Design or Design Copyright or other intellectual property right.

## **DATA AND TECHNICAL INFORMATION**

15. The information contained in the advertising sales and technical literature issued by the Company may be relied upon to be accurate in the exact circumstances in which it is expressed otherwise any illustrations performance details examples of installations and methods of assembly and all other technical data in such literature are based on experience and upon trials under test conditions and are provided for general guidance only. No such information or data shall form part of the contract unless the Customer shall have complied with Condition 1.3 hereof relating to statements and representations.

## **INSOLVENCY**

16. If the Customer shall become bankrupt or under the provisions of Section 123 of the Insolvency Act 1986 is deemed to be unable to pay its debts or compounds with creditors or in the event of a resolution being passed or proceedings commenced for the administration or liquidation of the Customer (other than for a voluntary winding up for the purpose of reconstruction or amalgamation or if a receiver or Manager is appointed over all or any part of its assets or undertaking the Company shall be entitled to cancel the contract in whole or in part by notice in writing without prejudice to any right or remedy

accrued or accruing to the Company and where Goods have been delivered to the Customer but not paid for the price of such Goods shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## **FORCE MAJEURE**

17. Neither party shall be under any liability for any delay loss or damage caused wholly or in part by act of God governmental restriction condition or control or by reason of any act done or not done pursuant to a trade dispute whether such dispute involves its employees or not or by reason of any other act matter or thing beyond its reasonable control including but not limited to failure by the other party to carry out the provisions of these Conditions.

## **LEGAL**

18. The contract shall be governed and interpreted exclusively according to the Law of England and shall be subject to the jurisdiction of the English Courts only.

19. In respect of the Data Protection Act, we may transfer information about our customers to our bankers/financiers for the following purposes; obtaining credit insurance, making credit reference searches, assessment and analysis, securitization and protecting our interests. We will provide details of our bankers/financiers and that of any credit reference agencies used, on request.

20. The Company reserves the right to vary the terms and conditions above without notice and consultation. Any changes made will be published on the Company website [www.ecf.co](http://www.ecf.co).