

SURECAST ALLOYS LTD

CONDITIONS OF SALE

1. DEFINITIONS

- 1.1 In these conditions "the Company" means Surecast Alloys Ltd or such other trading style as shall be responsible for the supply of Goods and/or Services.
- "the Contract" or "the Customer" means the individual, firm, company or other party with whom the Company contracts.
- "Goods" means Tooling and other goods which the Company supplies or is to supply, castings such as a contract as is described in section 2(3) of the Unfair Contract Terms Act 1977.
- "International Supply Services" means tooling for the Contract made or acquired by the Company which includes but is not limited to tools, dies, jigs, patterns and gauges.
- "supply" means tooling for the Contract made or acquired by the Company which includes but is not limited to tools, dies, jigs, patterns and gauges.
- "Tooling" means tooling for the Contract made or acquired by the Company which includes but is not limited to tools, dies, jigs, patterns and gauges.

2. CONTRACT FORMATION

- 2.1 No order in pursuance of any quotation or otherwise shall be binding on the Company unless and until such order is accepted by the Company. All Contracts shall be subject to these conditions and save as aforementioned no representative or agent of the Company has authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them; any such term representation or contract will bind the Company only if in writing and signed by a director.
- 2.2 A schedule of the Customer's further requirements may supplement any Contract but such schedule:
- 2.2.1 shall be deemed to show firm requirements for the one month following the date of submission of the schedule and estimated requirements for each of the two months thereafter to allow for the purchase of materials;
- 2.2.2 shall constitute an irrevocable order under these terms and conditions for the said one month following the date of submission of the schedule BUT THE COMPANY SHALL BE ENTITLED TO ORDER MATERIALS IN RELIANCE UPON THE ESTIMATED REQUIREMENTS FOR THE TWO MONTHS THEREAFTER AND IN THE EVENT THAT THE CUSTOMER DOES NOT SUBSEQUENTLY SUBMIT A FIRM ORDER IN RESPECT THEREOF THE CUSTOMER WILL PAY TO THE COMPANY WITHIN 30 DAYS OF THE INVOICE DATE RELATING THERETO THE COSTS OF ANY MATERIALS SO PURCHASED BY THE COMPANY.
- 2.2.3 must be replaced each month by a new and updated schedule in respect of future requirements.
- 2.3 Unless otherwise agreed in writing by the Company these conditions shall override any terms and conditions stipulated or referred to or implied by the Customer in his order or pre-contract negotiations or any inconsistent terms implied by law or trade customs, practice or course of dealing.
- 2.4 Any illustrations, weights, measures, capacities, descriptions or specifications contained in the Company's catalogues, samples, price lists or other advertising material are intended merely to present a general picture of the Goods and/or Services and will not form a representation or be part of the Contract.
- 2.5 In the event that the Company has not given a written acknowledgement of the Customer's order these conditions, provided the Customer shall have had prior notice of them, shall nonetheless apply to the Contract.
- 2.6 The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.
- 2.7 SAMPLES SUBMITTED WILL BE PAID FOR BY THE CUSTOMER UNLESS RETURNED TO THE COMPANY'S WORKS CARRIAGE PAID, WITHIN ONE CALENDAR MONTH FROM THE DATE OF DESPATCH.
- 2.8 Where the Company is working from a new or altered pattern or a pattern fresh to the Company's foundry, the Company may submit castings for approval before executing the bulk of the order which will only be commenced on receipt of such approval in writing.
- 2.9 Where small quantities of Goods are required submission of samples will be made only if such is requested by the Customer at the time the order is placed.
- 2.10 Where figures or particulars relating to physical or chemical properties of the Goods are indicated, they are to be regarded as a general guide only, and constitute no guarantee from the Company unless specifications have been agreed in writing at the time of placing the order.

3. CUSTOMER'S SPECIFICATIONS

- 3.1 Where Goods are made or Services carried out to a specification, instruction, drawing or design supplied by the Customer or any third party on behalf of a Customer then:
- 3.1.1 the Customer undertakes full responsibility for the suitability and accuracy of the specification, instruction or design; and
- 3.1.2 the Customer will indemnify the Company against any infringement of any third party's intellectual property rights including but not limited to patent, registered design, design right, trade mark, trade name, copyright and any loss, damage or expense which the Company may incur by reason of such infringement in any country; and
- 3.1.3 the Customer will indemnify the Company for any loss, damage or expense in respect of any liability arising under or by reason of the provisions of the Consumer Protection Act 1987 or the provisions of any similar legislation in any country in relation to the specification or design of such Goods or Services.
- 3.2 The Company reserves the right to request a change in the specification of the Goods or Services and the Company shall obtain the Customer's approval in writing to such a change (such approval not to be unreasonably refused).
- 3.3 Unless otherwise agreed in writing by the Company the Goods shall be deemed to correspond with their description if they correspond to the sample which has been produced to and examined by the Customer notwithstanding that they do not correspond to drawings and/or specification originally submitted by the Customer.

4. PRICES

- 4.1 Unless otherwise agreed in writing by the Company quotations are provisional and may be altered to take account of any changes taking place between the date of quotation and the Company's acceptance of the Customer's order in the price of raw materials, rates of wages and other costs of production or in the Customer's specification, instructions or design or in the event that the Customer orders part only of the quantity referred to in any quotation.
- 4.2 The Company shall be entitled to increase its price at any time to take account of any increase in the cost to the Company of purchasing any goods or materials (including, but not limited to metals) or manufacturing working on or supplying any Goods or Services (including any such increase arising from any delay or error or inadequacy in any specification, instructions or design provided by the Customer or any modification carried out by the Company at the Customer's request) and such increased prices taking effect at the date of despatch by the Company shall be substitutable for the previous Contract price.
- 4.3 All prices quoted are exclusive of VAT and the Customer shall pay any and all taxes duties and other government charges payable in respect of the Goods and/or Services.
- 4.4 All prices quoted are exclusive of any machinery or process work and are for unmachined self coloured castings unless otherwise agreed in writing by the Company.
- 4.5 Unless otherwise agreed in writing by the Company the cost of supplying machinery or testing all test pieces required by the Customer will be charged to the Customer.

5. DELIVERY

- 5.1 Unless otherwise agreed in writing by the Company prices quoted include delivery to destination in Great Britain and at the option of the Company may be either:
- 5.1.1 by Goods Rail transport to the address stated on the Customer's order (or any equivalent address within the British Rail Board's free carriage area) subject to British Rail Board's conditions unless otherwise agreed in writing;
- 5.1.2 by Road Transport on suitable roads only, to the address stated on the Customer's order and subject to the relevant Haulage Contractor's conditions.
- The Customer will be responsible for any additional charges for any other methods of delivery.
- 5.2 Where the Company agrees that the Customer may collect the Goods or instalments thereof from the Company's premises the Customer will collect such Goods within seven days after receiving notification that such Goods are ready.
- 5.3 If the Contract is an International Supply Contract it shall be deemed to incorporate the latest edition of Incoterms current at the date of the Contract save that in the event of any inconsistency between Incoterms and any express term of the Contract the latter shall prevail. The Company shall be under no obligation to give the Customer the notice specified in Section 32 (3) of the Sale of Goods Act 1979. Unless otherwise agreed in writing by the Company, prices quoted for International Supply Contracts are "ex-works".
- 5.4 Should the Company be delayed or prevented from making delivery of the Goods or carrying out the Services due to war, governmental or parliamentary restrictions, strike, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of the goods, breakdown of machinery, shortage of labour or of raw materials or Act of God or due to any other cause whatsoever beyond the reasonable control of the Company, the Company shall be at liberty to cancel or suspend the order placed by the Customer without incurring any liability for any loss or damage arising therefrom.
- 5.5 While the Company will try to deliver the Goods or complete the Services by any date or within any period agreed upon, such dates and periods are estimates only given in good faith and the Company will not be liable for any failure to deliver or complete by such a date or within such a period. Time for delivery will not be of the essence of the Contract. Moreover, the Company shall be entitled to defer delivery until any monies due from the Customer have been received.
- 5.6 Whilst the Company will endeavour to deliver the exact quantity of Goods ordered the Company reserves the right to deliver up to plus or minus 5% of the quantity ordered. In such a case the Customer will be invoiced for the actual quantity of Goods delivered and any agreed total Contract price will be adjusted proportionally.

6. RISK

- 6.1 Save in the case of International Supply Contracts and subject to any agreement in writing by the Company, the risk in Goods will pass to the Customer on the Relevant Date as defined in sub-clause 7.1 hereof or the date (if earlier) on which, the Goods being ready for delivery, delivery is postponed at the Customer's request.
- 6.2 The Company shall not be liable for any loss of or damage sustained by any goods, patterns, tools, fixtures or equipment or Tooling (the property in which has passed to the Customer and/or materials or willful default on the part of any servant or agent of the Company) the Customer will therefore insure such goods accordingly.

7. PAYMENT

- 7.1 For the purposes of this clause 7 "the Goods" shall mean the whole or any instalment of the Goods which the Company has agreed to supply or to which the Company has agreed to carry out work and the Relevant Date shall be the date on which (i) the Customer takes delivery of the Goods at the Company's premises or (ii) the Company despatches the Goods or (iii) the Customer defaults in his obligations under sub-clause 5.2 hereof, whichever shall first occur, or (iv) (in the case of Services) the Services or any part thereof are carried out.
- 7.2 Subject to sub-clause 7.3, and unless otherwise agreed in writing by the Company the first payment shall be made by the Customer net cash not later than the last day of the month after the month in which the Relevant Date falls.
- 7.3 In the case of International Supply Contracts and unless otherwise agreed in writing by the Company payment shall be made by the Customer on the Relevant Date by United Kingdom confirmed, irrevocable documentary letter of credit drawn in favour of the Company payable on production of the Carrier's receipt for the Goods.
- 7.4 Time for payment shall be of the essence of the Contract notwithstanding that property in the Goods has not passed to the Customer.
- 7.5 Without prejudice to any other rights it may have the Company reserves the right to charge interest on all overdue accounts at Lloyd's TSB Pic base rate plus 4% and for the purpose of paragraphs 8 and 10 hereof the full purchase price of the Goods and/or Services shall include any interest payable hereunder.
- 7.6 Non payment on a due date will entitle the Company to demand payment of all outstanding balances under the Contract, or any other contract between the Company and the Customer, whether due or not and/or cancel any outstanding orders without prejudice to any other rights it may have.
- 7.7 Without prejudice to any other rights it may have the Company will have the right to suspend performance of its obligations if it reasonably believes that the Customer is not making payments in accordance with clause 7.
- 7.8 The Company may, without prejudice to any other rights it may have, set off any liability of the Customer to the Company against any liability of the Company to the Customer.

8. DEFERMENT AND CANCELLATION

- 8.1 If the Customer shall fail to make any payment when it becomes due or shall enter into any composition or any arrangement with his creditors or if being an incorporated company shall have an administrative receiver or administrator appointed or shall pass a resolution for winding up or a Court shall make an order to that effect or if there shall be any breach by the customer of any of the terms and conditions hereof the Company may defer or cancel any further deliveries and treat the Contract as determined but without prejudice to its right to the full purchase price for Goods delivered and Services provided and damages for any loss suffered in consequence of such determination.
- 8.2 Cancellation by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss or damage resulting to the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the Company if in writing.
- 8.3 A charge will be made for any costs incurred by the Company due to suspension or deferment of any order by the Customer or in the event that the Customer defaults in collecting, or giving instructions for delivery of, any Goods.

9. LIMITATION OF LIABILITY

- 9.1 The Customer will carefully examine the Goods on receipt. No claim for damage in transit, shortage of delivery or loss of Goods will be entertained unless the Customer shall have given to the Company and the Carriers written notice of such damage, shortage or loss with reasonable particulars thereof within three days of receipt of the Goods or (in the case of total loss) of receipt of the Invoice or other notification of despatch. The Company's liability, if any, shall be limited to replacing or (in its discretion) repairing such Goods and it shall be a condition precedent to any such liability that the Customer shall so be requested have provided authorily within 14 days of such request for the Company's servants or agents to inspect any damaged Goods. The Company will have no liability for consequential loss arising out of such damage shortage or loss as aforesaid.
- 9.2 Save as otherwise provided in these conditions the Company's liability in respect of any defect in or failure of Goods supplied or default in work done (which expression shall, without prejudice to the generality, include all work done in or in connection with the design, manufacture, treatment, testing, erection, installation, repair or servicing of any Goods) is limited to replacing or (at its option) repairing or paying for the repair or replacement of Goods which are found to be defective by reason of faulty or incorrect design, workmanship, parts or materials or default in work done and carrying out again the services which it has failed to perform properly in accordance with the Contract.
- 9.3 The Company's liability for any direct loss or damage sustained by the Customer as a result of any error in any weight, dimension, capacity, performance or other description or information which has formed a representation or is part of the contract will not exceed the price of the Goods and/or Services in respect of which the description or information is incorrect.
- 9.4 The Company will only be liable to the Customer in respect of the matters set out in Clauses 9.2 and 9.3 provided that 9.4.1. The Customer informs the Company of the defect or default as soon as is reasonable practical and in any event the defect or default is notified to the Company within three months of the delivery of the Goods or completion of the services (as the case may be); and
- 9.4.2 Authority is provided for the Company's servants or agents to inspect the same.
- 9.5 Save as provided in these Conditions the Company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the Customer arising from or in connection with any such defect default or error as aforesaid.
- 9.6 Where the Company agrees to repair or replace Goods or carry out any Services in accordance with the foregoing provisions of this clause any time specified for delivery or completion under the contract shall be extended for such period as the Company may reasonably require.
- 9.7 Save for such terms as may be implied in the Contract by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1992, all Conditions, Warranties and other terms express or implied, statutory or otherwise, are expressly excluded, save insofar as contained herein or as otherwise expressly agreed by the Customer in writing provided that if and insofar as any legislation or any order made thereunder shall make or have made it unlawful to exclude or purport to exclude from the contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this paragraph will not apply to any such term.
- 9.8 Except in respect of death or personal injury the Company shall not be liable to the Customer for any damage or for any direct or consequential loss incurred by the Customer in consequence of any negligence on the part of the Company or negligence or willful default on the part of its servants or agents or in connection with the supply of any goods or the design or manufacture thereof or in the carrying out of any work or in the preparation or provision of any information or advice.
- 9.9 The Company shall have no liability for goods found to be defective through faults in the design or construction of patterns, tools or equipment supplied by the Customer.

10. RETENTION OF TITLE

- 10.1 Subject to the provisions of Clause 11.4 the following provisions shall apply to all Goods which under the Contract the Company agrees to supply to the Customer. No failure by the Company to enforce strict compliance by the Customer with such provisions shall constitute a waiver thereof and no termination of the Contract shall prejudice title or extinguish the Customer's rights under this clause.
- 10.1.1 Upon delivery of the Goods the Customer shall hold the Goods solely as bailee for the Company and the Goods shall remain the property of the Company until such time as the Customer shall have paid to the Company the full purchase price of the Goods and Services supplied under the Contract or any other contract between the Company and the Customer. The Customer grants the Company, its agents and employees an irrevocable licence as a condition to enter any premises or carry out any Services in connection with the supply of any goods or the design or manufacture thereof or in the carrying out of any work or in the preparation or provision of any information or advice, where the Customer's right to possession has terminated, to recover them. Where the Company is unable to determine whether any Goods are the goods in respect of which the Customer's right to possession has terminated, the Customer shall be deemed to have sold all goods of the kind sold by the Company to the Customer in the order in which they were invoiced to the Customer.
- 10.1.2 The Customer is hereby granted a licence by the Company to incorporate the goods in any other products.
- 10.1.3 The Customer is hereby licensed to sell on the Goods and any products incorporating any of them. The Customer shall immediately upon receipt of the proceeds of sale, and whether or not payment has become due under Clause 7 hereof remit to the Company the full purchase price of the Goods sold on less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.
- 10.1.4 The Customer shall maintain all appropriate insurance in respect of the Goods from the date or dates on which the risk therein passes to it. In the event of any loss or damage occurring while the Goods remain the property of the Company the Customer shall immediately on receipt of the insurance monies, remit to the Company the full purchase price of the Goods lost or damaged less any part thereof which has already been paid and until such amount has been so remitted shall hold such amount as trustee and agent for the Company.
- 10.1.5 The licences granted under sub-clauses 10.1.2 and 10.1.3 above shall be terminable forthwith at any time upon notice by the Company to the Customer.
- 10.1.6 The Customer's right to possession of the Goods shall terminate immediately if:
- (i) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory), or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency of the Customer; or
 - (ii) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade; or
 - (iii) the Customer encumbers or in any way charges any of the Goods.

11. PATTERNS, TOOLS AND FIXTURES SUPPLIED BY THE CUSTOMER/TOOLING

- 11.1 Where the Customer supplies patterns, tools or fixtures, the quotations of the Company are issued on the assumption that such are in the good condition, true to drawing and entirely suitable for the Company's methods of production and for the production of the castings or components in the quantities required.
- 11.2 For the benefit of both the Company and the Customer when new patterns, tools or equipment are to be made the Customer will consult the Company prior to the making thereof.
- 11.3 Carriage on patterns, tools or fixtures and equipment supplied by the Customer will be paid for by the Company in one direction only.
- 11.4 Property in any Tooling will pass to the Customer only when the Customer has paid the full price thereof (as specified by the Company) to the Company. Where the Company has agreed in writing to pay part of the cost of any Tooling such Tooling shall remain the property of the Company and in the Company's possession unless the Customer pays to the Company the full original cost of such Tooling together with all costs and expenses the Company has incurred in refurbishing adapting and maintaining the same.
- 11.5 Replacement and alterations or repairs to the Customer's patterns, tools, fixtures or equipment or to Tooling (the property in which has passed to the Customer) due to normal wear and tear shall be paid for by the Customer in addition to the Company's quoted price. The Company will give written notice to the Customer of such replacement alterations repairs or refurbishment and of the cost thereof. In the event that the Customer does not either authorise such replacement alterations repairs or refurbishment 3 months of the date of the Company's written notice or collect the same during that period (subject to payment to the Company of any sums expended by the Company in pursuance of this clause) the Company shall be entitled to dispose of the Customer's patterns tools fixtures equipment or Tooling without further reference to the Customer and without any liability to the Customer. Where patterns, tools, fixtures or other equipment supplied by the Customer or Tooling (the property in which has passed to the Customer) have been unused for a period of two years the Company will send written notice to the Customer of the Company's intention to dispose of the same unless the Customer collects the same (subject to payment therefore to the Company of any sums expended by the Company in pursuance of this clause) within 21 days of the date of such notice and if the Customer fails to collect the same then the Company shall be at liberty to dispose of them.
- 11.6

12. INTELLECTUAL PROPERTY

- 12.1 Where the Customer supplies patterns, tools or fixtures, the quotations of the Company are issued on the assumption that such are in the good condition, true to drawing and entirely suitable for the Company's methods of production and for the production of the castings or components in the quantities required.
- 12.2 For the benefit of both the Company and the Customer when new patterns, tools or equipment are to be made the Customer will consult the Company prior to the making thereof.
- 12.3 Carriage on patterns, tools or fixtures and equipment supplied by the Customer will be paid for by the Company in one direction only.
- 12.4 Property in any Tooling will pass to the Customer only when the Customer has paid the full price thereof (as specified by the Company) to the Company. Where the Company has agreed in writing to pay part of the cost of any Tooling such Tooling shall remain the property of the Company and in the Company's possession unless the Customer pays to the Company the full original cost of such Tooling together with all costs and expenses the Company has incurred in refurbishing adapting and maintaining the same.
- 12.5 Replacement and alterations or repairs to the Customer's patterns, tools, fixtures or equipment or to Tooling (the property in which has passed to the Customer) due to normal wear and tear shall be paid for by the Customer in addition to the Company's quoted price. The Company will give written notice to the Customer of such replacement alterations repairs or refurbishment and of the cost thereof. In the event that the Customer does not either authorise such replacement alterations repairs or refurbishment 3 months of the date of the Company's written notice or collect the same during that period (subject to payment to the Company of any sums expended by the Company in pursuance of this clause) the Company shall be entitled to dispose of the Customer's patterns tools fixtures equipment or Tooling without further reference to the Customer and without any liability to the Customer. Where patterns, tools, fixtures or other equipment supplied by the Customer or Tooling (the property in which has passed to the Customer) have been unused for a period of two years the Company will send written notice to the Customer of the Company's intention to dispose of the same unless the Customer collects the same (subject to payment therefore to the Company of any sums expended by the Company in pursuance of this clause) within 21 days of the date of such notice and if the Customer fails to collect the same then the Company shall be at liberty to dispose of them.
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13. GENERAL

- 13.1 The headings to the clauses of these Conditions are for ease of reference only and shall not effect the interpretation or construction of the Contract.
- 13.2 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- 13.3 If any provision of the Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 13.4 The Customer shall not, without the prior written consent of the Company, assign, transfer, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 13.5 A person who is not a party to the Contract shall not have any rights under or in connection with it.