

# Standard Terms and Conditions of Sale: European Steel Profiles Ltd (hereinafter called the Seller)

Date: 15<sup>th</sup> Nov 2018

Version: 3

## 1 General

Orders and contracts are accepted only subject to our General Conditions of Sale as set out herein and our special Conditions of Sale endorsed on the reverse hereof and the buyer shall be bound by such Conditions. No modification of these Conditions of the particulars contained in our acceptance will be recognised by us unless expressly accepted by us in writing. Unless so agreed any qualification thereof or difference contained in the Buyer's own order forms shall be inapplicable. All orders, whether based upon this quotation or otherwise shall be subject to our written acceptance.

## 2 Prices

Prices quoted refer to the stipulated quantities only and will not necessarily hold good for other quantities. Unless stated all prices quoted are collected prices. VAT not included in the quotation or invoice will be added where and at the rate applicable. Unless otherwise stated, all products are sold in full pallet or pack quantities only.

## 3 Variation of Prices

We reserve the right to alter the quoted prices of all or any of the goods at any time without notice in the event of any variation of costs incurred by us after acceptance of the Buyer's order. Orders are accepted at the prices current at the time of acceptance and on the understanding that they may be invoiced at prices ruling on the date of dispatch irrespective of prices previously quoted. The quoted price is also subject to adjustment if any changes are made by the Buyer in the specification or quantities of the goods or delivery requirements.

- a) All prices are exclusive of VAT where applicable and inclusive of packaging in a manner suitable for usual methods of carriage to inland destinations within Great Britain. Any other packaging charges shall be for the Buyer's account.
- b) All prices shown in our price lists include delivery within our scheduled delivery area, namely the mainland of England, and Wales. For Scotland these are full loads up to a line between Edinburgh and Glasgow, unless otherwise agreed in writing.
- c) The Seller reserves the right to vary the specification of the goods without notice provided that such variation shall not alter their commercial description.

## 4 Payment

Unless otherwise specified the goods or each instalment of the goods in cases where they are to be delivered in instalments shall be paid for in pounds sterling within 30 days of the relevant invoice. Failure to make payment at the due date shall cause us to suspend deliveries until payment is made or to terminate the contract in writing or to the contract as repudiated by the Buyer, without prejudice to our rights to damages for breach of contract. If there is any delay in making payment we shall be entitled to charge interest on the outstanding amount at 3 per cent above the base rate charged by our Banker's from the date until the actual date of payment. If the Buyer does or suffers to be done anything which might prejudice his ability to pay the full price he shall be deemed to have repudiated this contract and the Seller may without prejudice to his other rights accept such repudiation without notice as termination thereof. The Buyer shall take delivery or collect the goods within the time limit provided for under this contract, in the event that he fails to do so within such limit, the Seller shall be entitled to treat such failure as a repudiation of the contract and may without prejudice to his other rights accept such given as termination thereof. Furthermore the Seller may without prejudice to any other rights hereunder cancel any order where either the goods are not collected or delivery instruction are not given within 21 days from the date of the Seller's acceptance of the Buyer's order.

## 5 Packing

Unless otherwise agreed the goods shall be delivered in our or the manufacture's standard packaging. Special packaging specifications to meet the Buyer's requirements must be referred to us for review and acceptance. We shall make a charge for this and the cost will be shown as a separate item on the invoice.

# Standard Terms and Conditions of Sale: European Steel Profiles Ltd (hereinafter called the Seller)

Date: 15<sup>th</sup> Nov 2018

Version: 3

## 6 Delivery

- a) Every effort will be made to maintain delivery dates but we accept no liability for delay however occasioned or for the consequences of any delay.
- b) Delivery shall be when the goods are ready and at the Buyer's nominated instruction which shall be;
  - i. Our premises if either the Buyer or the Buyer's carrier or agent collects, or if written nomination has been received by the time the goods are ready, or
  - ii. At the Buyer's own premises if carriage is affected by carriers, our agents or ourselves. Thereafter the goods shall be at the sole risk of the Buyer. We reserve the right to deliver by instalments in which case each delivery shall constitute a separate contract without prejudice to subsequent deliveries and shall be invoiced accordingly. We shall use our best endeavours to deliver on the date stated but guarantee or warranty as to the date or rate of delivery is given or implied and we accept no liability for late delivery or any consequential damage arising therefrom. No delivery shall be considered as overdue until the Buyer has made a written request for delivery and given us reasonable time to comply with such request. The Buyer shall not be entitled to refuse a delivery made after the date specified in the Contract or to repudiate the contract or to claim damages for late delivery.
- c) Any quoted time for delivery shall run from the date of the Seller's written acceptance of the Buyer's offer, but has no contractual force.
- d) Without prejudice to any other rights hereunder, if for any reason the Buyer shall fail to give on or before the agreed date of delivery all instructions reasonably required by the Seller for forwarding the goods or shall otherwise fail to accept delivery or cause or request delay in delivery the goods shall be at the Buyer's risk and the purchase price shall become due immediately and the Buyer shall pay all storage costs and handling costs arising from such failure or delay, such being calculated where the goods are stored by the Seller at the rate charged at that time by members of the Road Haulage Association.
- e) Delays in off-loading and subsequent release of vehicles will incur a demurrage charge of £ 35.00 per hour, applicable after first two hours.
- f) ) Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

## 7 Retention of Title and Insurance

- a) Property in the goods shall remain vested in us until payment shall have been made by the Buyer in full. The Buyer shall be in possession of the goods solely as bailee for us until the full price is paid. The Buyer shall store the goods separately from his own goods and/or those of any other person and at all times the goods shall be stored in such a manner that they are readily identifiable as our goods until the full price is paid. Any delay caused by the unreasonable act or default of either party to rail or road transport or craft furnished by the other to be for the account of the party causing the delay. Notwithstanding the preceding provisions of this clause, the Seller may at his sole option and at any time by notice in writing to the Buyer, transfer the property in the goods to him.
- b) The Buyer's rights to possession shall cease forthwith if the Buyer
  - i. Not being a company commits an act of bankruptcy, or
  - ii. Being a company does anything or omits to do anything which would entitle a receiver or administrator to take possession of any of its assets or which would entitle any other person to present a winding up petition or a receiver is appointed to take possession of any of the Buyer's assets or a petition is presented to wind up the Buyer.
- c) Whenever and as soon as the Buyer does or omits to do anything whereby his rights to possession ceases under the provision of conditions 7 (b) then:
  - i. The Buyer shall immediately notify us that his right to possession has ceased and of the circumstances in which this has occurred: and
  - ii. The Buyer shall on written or oral request furnish us, our representatives or agents with sufficient information so as to retake possession of the goods and such information shall include full information of the place where the goods are kept; and
  - iii. We shall have an irrevocable licence without prior notice to enter upon the Buyer's premises by ourselves our representatives or agents during normal working hours in order to retake possession of the goods.
- d) The Buyer may sell the goods to a third party to the date on which full payment of the price is received by or made to us if and only if;
  - i. None of the circumstances specified in condition 7 (b) have occurred or are reasonably expected to occur, and

## Standard Terms and Conditions of Sale: European Steel Profiles Ltd (hereinafter called the Seller)

Date: 15<sup>th</sup> Nov 2018

Version: 3

- ii. The proceeds of sale if less than the full price of the goods or such part of the proceeds of sale as equals the full price of the goods when received by the Buyer and or his agents are placed forthwith in an interest bearing deposit account and the funds therein or the appropriate part thereof are held on trust for us and are payable to us; and
  - iii. Notice is given as soon as reasonably practicable to us of the sub-sale including the name and address of the 3<sup>rd</sup> party and the name and address of the bank with whom the deposit account has been opened and the number of the account; and
  - iv. Notice is given as soon as reasonably practicable to us once the proceeds of the sale have been received by the Buyer.
- e) If the Buyer shall sell the goods without complying with the provisions of 7 (d) the Buyer shall be in breach of bailment and liable to account to us for the proceeds of the sale.
  - f) In exercising the right to sale under condition 7 (d) the Buyer shall as regards the third party act solely on his own behalf and shall not have or hold himself out in anyway whatsoever as having the right to make representations to or contracts with the third party on behalf of us.
  - g) The Buyer shall inform us immediately of any seizure, whether threatened or actual of the goods.
  - h) The Buyer shall from the time when under clause (f) hereof they become sole risk of the Buyer fully insure the goods against all risks with a reputable insurance company at its own expense. The insurance shall cover our interest in the goods and the Buyer shall hold in a separate bank account all monies paid under such insurance in trust for us and shall pay the same to us on demand. If the Buyer shall not effect such insurance we shall be entitled ourselves to insure the goods and demand reimbursement for the cost of the same from the Buyer.

### 8 Retention of Title – Scotland

In the case of goods supplied to the Buyer in Scotland or located in Scotland at the time of the receivership or liquidation of the Buyer, notwithstanding the terms and condition 14 this condition shall apply and its terms shall be governed construed according to, And the rights and claims in and to the goods shall be governed and determined according to the law of Scotland. In such a case; -

- a) Property in the goods shall not pass to the Buyer until the price thereof has been paid in full. The Buyer shall store the goods in such a manner that they are readily identifiable until the full price is paid.
- b) In the event of failure by the Buyer to pay any part of the price by the due date for payment, in addition to any other remedies available to us under these conditions or otherwise, we shall be entitled to repossess the goods. The Buyer will for his purpose admit or procure the admission of our representatives or agents to the premises in which the goods are situated; and
- c) If the Buyer is unable to pay his debts in terms of the Insolvency Act 1986 becomes apparently insolvent or compounds with his creditors or has a liquidation receiver or administrator appointed over all or any of its assets, or carries out or makes any analogous act or proceeding under common law prior to the property in any goods passing, the Buyer's right to re-sell or otherwise deal in the goods shall automatically terminate and we shall be entitled to repossess any of the goods in respect of which title has not passed as aforesaid.

### 9 Strikes

Should we be prevented from delivering at the agreed date by strikes, lock-outs act of God, war, fire, tempest, flood, accident or damage to goods, or delay in obtaining or inability to obtain through scarcity materials or for any other cause beyond our control we may suspend our delivery until a reasonable time after the end of the happening and during such time as is reasonably incidental to the resumption of normal production or sale or cancel or vary the contract without compensation.

### 10 Warranty

We warrant the goods to be free from defects in material and workmanship. Our liability under this warranty shall be limited to repairing or furnishing parts to replace any parts which within six months from the date of receipt thereof by the Buyer because of defective workmanship or material. As a condition hereof, such defects must be brought to our attention for verification when first discovered and the material or parts alleged to be defective shall be returned to us if requested. We shall not be liable for transportation or installation charges, for expenses of the Buyer for the repairs or replacements for damages for delay or loss of use or other indirect, incidental or consequential damage of any kind. If inspection by ourselves does not disclose any defects in material or workmanship, our regular published rates will be charged as they apply. We may use improved designs of the parts replaced. This warranty does not apply to any material which has been repaired or altered outside our premises in any way so as in our judgement to affect its performance or reliability or to any defect in any parts or misuse, negligence, accident or any cause other than normal and reasonable use nor shall it apply beyond their normal span of life or to any materials whose normal span of life is shorter than the applicable period stated herein. Save as aforesaid all other conditions, guarantees or warranties whether express or implied by statute, common law or otherwise are hereby expressly excluded.

## Standard Terms and Conditions of Sale: European Steel Profiles Ltd (hereinafter called the Seller)

Date: 15<sup>th</sup> Nov 2018

Version: 3

### 11 Lien

In addition to any right of Lien to which we may by law be entitled we shall have a general lien on all goods of the Buyer in our possession (although such goods or some of them may have been paid for) for the unpaid price of any other goods sold and delivered to the Buyer by us under the same or other contracts.

### 12 Claims

The Buyer shall inspect the goods immediately on delivery thereof. If the Buyer fails to give notice or report in accordance with these provisions the Buyer shall be bound to accept and pay for the same at the time of times specified in these conditions unless a written claim is received: -

- i) By both of us and the carrier within three days of delivery in respect of damage, delay or partial loss in transit.
- ii) By both of us and the carrier within 28 days of despatch in respect of non-delivery.
- iii) By us within 28 days of delivery in respect of any other matter.

Any liability for such a claim will be limited to the cost of replacement and transportation of the products in question. No consequential loss will be accepted. Goods subject to any claim must be stored free of charge for our inspection.

### 13 Returns

- a) Goods returned at the Buyer's request not on the Seller's own vehicle shall be the Buyer's risk regarding insurance for a value not less than the full invoice price.
- b) Specifically ordered or non-stock items are not returnable.
- c) Costs of collection and re-delivery of replacement will be met by the Buyer unless attributable to the negligence of the Seller.
- d) Only goods returned in saleable condition can be accepted for credit.
- e) The seller reserves the right to levy a restocking and handling charge.
- f) All returns must be sanctioned by the Seller, prior to goods being brought back.

### 14 Waiver

Our rights shall not be affected or restricted by any indulgence or forbearance granted to the Buyer. No waiver by us of any breach shall operate as a waiver of any later breach.

### 15 Construction

The risk and obligations of the parties and all the terms and conditions hereof and any disputes arising out thereof shall be continued in accordance with English law to the jurisdiction of the courts of which the Buyer shall submit.

### 16 Data Protection and Data Policy

The ways in which ESP deal with the personal information belonging to customers and contacts are governed by the Private Policy available by request to [sales@espdrywall.co.uk](mailto:sales@espdrywall.co.uk) and are also available to view on our web site [www.espdrywall.co.uk](http://www.espdrywall.co.uk)



Andrew Day, Director

15<sup>th</sup> Nov 2018.