

SES Multi Metal Stock Ltd – Conditions of Sale

1.1

- "Company: SES Multi Metal Stock Ltd.
- 1.2 "Customer" the Customer of the Company.
- 1.3 "Contract" any Contract entered into for the supply of Goods by the Company to the Customer.
- 1.4 "Goods" any goods forming the subject matter of any Contract including (where the context so admits) services and any goods belonging to the Customer on which the Company performs services.
- Quotations, Contracts and Variations**
- 2.1 Unless otherwise agreed in writing by the Company, quotations may be withdrawn at any time.
- 2.2 These conditions shall be incorporated in all Contracts to the exclusion of any terms or conditions referred to by the Customer and supersede any previous conditions of sale of the Company. Acceptance by or on behalf of the Customer of any delivery or performance tendered by the Company shall in any event be conclusive evidence of the Customer's acceptance of these conditions.
- 2.3 No amendment of any Contract or these conditions shall bind the Company unless in writing and signed by a Director of the Company or the Company Secretary.
- Prices**
- 3.1 The Company's prices exclude VAT where applicable and all other imposts of whatsoever kind and unless otherwise agreed in writing by the Company are those ruling at the date of despatch of the Goods. The Company reserves the right to make a charge for carriage, pallets, cases, packing and the like. No allowance will be given if the Goods are collected by the Customer.
- 3.2 The Company's prices may be varied at any time by the Company without notice.
- Payment**
- 4.1 All amounts due to the Company, unless otherwise agreed in writing, shall be payable in pounds sterling not later than the end of the second month following the month in which the Goods were delivered without any discount, set-off or other deduction whatsoever.
- 4.2 Without prejudice to any other rights of the Company, interest shall be payable on any overdue amount from the date on which payment was due to that on which it is made (whether before or after judgement) on a daily basis at the rate of three per cent (3%) over the base rate from time to time quoted by HSBC Bank PLC and compounded monthly. The Customer shall also pay all legal and other costs incurred by the Company in recovering any amounts owing from the Customer and any Goods in which title has been retained by the Company. Such costs shall be due for payment immediately on invoice.
- 4.3 The Company reserves the right to apply amounts received first in settlement of interest on overdue debts and then of debts due beginning with the oldest.
- 4.4 Without prejudice to any other of its rights and notwithstanding any other agreement or arrangement with the Customer, the Company shall be entitled by giving written notice to the Customer at any time to require the Customer to tender the price of the Goods in a manner satisfactory to the Company and to refrain from delivering the Goods until the price has been so tendered.
- 4.5 If the Customer fails to make any payment when and as due or other circumstances entitling the Company to terminate the Contract arise or if the Customer exceeds any financial limit on the Company's account (if any) from time to time applied by the Company then the price of all such goods as have been delivered or prepared for any order or orders of the Customer shall forthwith thereupon become immediately due and payable.
- Delivery and Risk**
- 5.1 The Company reserves the right to supply the Goods from any of its sites or those of any of its associated companies or from any other location. If the Company so agrees the Goods may be collected by the Customer in which event the Customer shall collect them without delay at the time at which the Company notifies the Customer they are ready for collection.
- 5.2 Goods are delivered and risk in them shall pass to the Customer when they are placed at the Customer's disposal at the delivery point stated in the Company's advice note or (if the Company has agreed that they are to be collected by the Customer) at the point from which they are to be collected. Unless otherwise agreed in writing, the Company shall not be responsible for any unloading or placing in position of any Goods and reserves the right to deliver at the nearest point of suitable access.
- 5.3 The Company's acceptance of any order from the Customer is subject to its having or being able to obtain sufficient stocks of material to perform the Contract and it reserves the right if it considers that this condition is not or may not be met for whatever reason, by giving notice to the Customer at any time, to terminate or at its option suspend its performance of this Contract, without liability to the Customer.
- 5.4 The Company will endeavour subject to these conditions to comply with any date given by it but shall not be liable for any loss, damage or expense arising from any delay or failure in delivery or performance from any cause whatsoever nor shall any such delay or failure entitle the Customer to refuse to accept any delivery or performance or repudiate any Contract.
- 5.5 If the Customer fails to take delivery of any Goods when tendered or to provide adequate delivery instructions or to collect them when notified they are ready for collection the Company at its discretion may exercise any or all of the following rights, namely, to store the Goods at the risk of the Customer, to require the Customer pay all storage, transportation, handling or other charges (including expenses in connection with the delay or detention of vehicles) incurred by the Company as a result of such failure or to require the Customer to pay for the Goods as though delivery had taken place.
- 5.6 The Company may pack or wrap the Goods for transport or packing of any Goods and charge extra for any special arrangements requested by the Customer.
- 5.7 Where any Goods are to be tested or inspected before delivery by or on behalf of the Customer at the Company's premises or elsewhere then upon the Company notifying the Customer of the availability of the Goods for testing or inspection, the Customer shall ensure such testing or inspection takes place within seven (7) days of such notification being given. If testing or inspection is not carried out within such period or within fourteen (14) days of such testing or inspection the Customer does not notify the Company in writing that the Goods are not in accordance with the Contract, giving reasons, then the Customer shall be conclusively presumed to have accepted the Goods as being in accordance with the Contract and shall not thereafter be entitled to reject them on the grounds of anything which such inspection or testing has or might have revealed.
- 5.8 The Company may deliver the Goods by instalments each of which shall be deemed to be the subject of a separate Contract and, unless otherwise agreed in writing, no failure by the Company in any one or more instalments shall entitle the Customer to repudiate any Contract for Goods previously delivered or to refuse to accept any undelivered Goods.
- Title**
- 6.1 Notwithstanding the earlier passing of risk, title in the Goods shall remain with the Company and not pass to the Customer (who shall nevertheless, subject to the conditions stated below, be entitled to resell them as principal only and to use them in the manufacture of products in the ordinary course of business) until the Company has received in cash or cleared funds payment in full of the price of the Goods and of all other debts for any other goods or services owed to it by the Customer on any account. Until such payment has been made the Customer shall not be entitled to transfer any title in the Goods (by sale or otherwise) to any holding company or subsidiary company of the Customer or other subsidiary company of such holding company.
- 6.2 For the purpose of this condition, decolling, cutting, shearing, slitting, painting or rebundling of the Goods shall not constitute the manufacture of a product or products.
- 6.3 Until title passes:
- 6.3.1 The Customer shall hold the Goods as bailee for the Company and ensure that they are at all times clearly identified as the property of the Company.
- 6.3.2 The Company shall be entitled at any time on demand to:-
- 6.3.2.1 Repossess, remove from any equipment or structure (without being liable for any damage thereby occasioned) and sell all or any of the Goods and thereby terminate (without any liability to the Customer) the Customer's right to use or sell them, and;
- 6.3.2.2 Enter any premises where the Goods are located for the purpose of inspecting or repossessing them.
- 6.4 The Company shall, without prejudice to any other remedy, be entitled to maintain an action for the price of the Goods although title in them has not passed to the Customer.
- 6.5 The Company transfers to the Customer only such title and rights of use as the Company has in any Goods and in the case of material provided by any third party shall transfer only such title and rights as that party had and has transferred to the Company.
- Discrepancies**
- 7.1 If at the time of delivery any Goods are missing, lost, damaged, of short weight defective or otherwise not in accordance with the Contract the Company will, at its expense, subject to these conditions, in its discretion, within a reasonable period, replace the Goods affected at the original point of delivery or otherwise make good the discrepancy or allow credit for their invoice value.
- 7.2 The Company shall have no liability in respect of any such discrepancy unless;
- 7.2.1 (In case of any discrepancy which is reasonably apparent on inspection) the Customer has given the Company written notice with particulars of the discrepancy complained of within seven (7) days of receipt of the Goods and prior to their use or resale and the signature of the advice note was appropriately qualified e.g. "Goods received damaged (signed)" or "Goods received incomplete (signed)".
- 7.2.2 (In case of loss of a whole consignment) the Customer has given the Company written notice within fourteen (14) days from the date of invoice, or;
- 7.2.3 (In case of discrepancy which is not reasonably apparent on inspection or testing) the Customer has given the Company written notice immediately upon the discrepancy becoming apparent and in any event not later than three (3) months after receipt of the Goods with particulars of the discrepancy complained of.
- Claims**
- 8.1 The Company shall have no liability in respect of any claim by the Customer in respect of any discrepancy affecting the Goods unless;
- 8.1.1 The Customer has afforded the Company reasonable opportunity and facilities for the investigation of any claim (including the carrying out of any metallurgical or other tests and in the case of any consignment alleged to be of short weight to attend and verify any weighing operations undertaken by the Customer) and the making good of any discrepancy and complied with any request by the Company for a written report of the alleged defect and any photographic or other evidence and, if the Company so requests, the return, properly packed and carriage paid, of any Goods for examination or making good by the Company, and;
- 8.1.2 The opportunity for the Company to investigate any claim is given (in the case of any discrepancy which is reasonably apparent on inspection) within a period of not less than three (3) days from the date on which notice of the claim is given and before the Goods are used or re-sold and (in the case of any other discrepancy) the Customer shall not be excused from providing a reasonable opportunity for inspection by reason only of the incorporation of the Goods in the property of a third party.
- 8.1.3 (In the case of any loss of or damage to any Goods which might have occurred in transit and where the Goods are transported by an independent carrier) the Customer has complied in all respects with the carrier's conditions of carriage for notifying claims for loss or damage in transit, and;
- 8.1.4 The Customer has paid the full amount of all invoices due prior to the date of the claim.
- 8.2 In the case of any Goods not of the Company's manufacture which are alleged to be defective, the Company reserves the right to limit its liability to assigning to the Customer (so far as it is able to do so) any warranty given by the manufacturer of those Goods.
- 8.3 The Company shall have no liability for any Goods which after delivery have been subjected to any incorrect handling or storage or suffered any misuse, neglect or accident.
- 8.4 Any items replaced by the Company following its acceptance of any claim shall become the Company's property and shall not be used or disposed of except in accordance with the Company's written instructions.
- 8.5 Goods in respect of which no claim is made in accordance with these conditions shall be deemed to have been accepted by the Customer in accordance with the Contract.
- "Non-Prime Goods"**
- 9 Goods sold as "non prime" or as "untested" are sold in their actual state, as seen, without warranty and with all faults, whether or not the Goods have been inspected by the Customer prior to delivery. The Company accepts no responsibility for the accuracy of any statement, specification, description or other information provided in respect of such Goods and under no circumstances will the Company be under any obligation to replace or make good such Goods or entertain any claim whatsoever in respect thereof.
- Extent of Liability**
- 10.1 Except to the extent stated in these conditions or otherwise agreed in writing by it, the Company shall have no obligation, duty or liability in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever under or in connection with the Contract other than for death or personal injury resulting from its negligence.
- 10.2 The Company accepts no liability for quality of any Goods or their suitability for any particular purpose (whether or not known to the Company) or for any indirect or consequential loss or damage suffered by the Customer under or in connection with the Contract, including but not limited to wasted time or expenditure, loss of profits, production, business revenue, expected savings or goodwill or any claim against the Customer by any person and the Customer shall be solely responsible for any such claim.
- 10.3 Without prejudice to the foregoing no statement in any British Standard, Euro norm, ISO Recommendation or other standard or specification shall give rise to any liability on the part of the Company.
- 10.4 The Customer may not use the Goods as suitable for the product or application for which they are intended before using them in such product or application.
- 10.5 The Company shall be discharged of all liability to which these conditions apply unless proceedings are begun within twelve (12) months after the Customer became aware (or should reasonably have become aware) of the facts giving rise to such liability.
- 10.6 The Company's liability in connection with the Goods shall in no circumstances exceed their invoice price.
- 10.7 Any claim by the Customer or acceptance of liability by the Company in respect of any particular Goods shall not entitle the Customer to reject or refuse to pay for any other Goods comprised in the same or any other Contract.
- Termination or Suspension**
- 11.1 If the Customer fails to make any payment when and as due or otherwise defaults in any of its obligations under the Contract or any other agreement with the Company, is unable to pay its debts in the ordinary course of its business, has a receiver, manager, administrator, administrative receiver or trustee in bankruptcy (as the case may be) appointed for all or any part of its undertaking, assets or income, is the subject of any bankruptcy order, has a resolution passed for its winding up, has a petition presented to any court for an administration order or for its winding up, enters into any composition or arrangement with its creditors (whether formal or informal), has any restraint or execution levied on any of its assets, suffers any action similar to any of the foregoing in any jurisdiction or ceases to trade or the Company bona fide believes that any of the foregoing matters may occur, then in any such event, the Company shall, without prejudice to any other remedy, be entitled, at its discretion, by giving the Customer written notice at any time, to forthwith suspend its performance of or terminate such Contract without liability to the Customer.
- 11.2 The rights of the Company shall not be prejudiced or restricted by any indulgence or forbearance extended to the Customer and no waiver by the Company in respect of any breach shall operate as a waiver in respect of the same or any subsequent breach.
- Force Majeure**
- 12 The Company shall not be liable for any delay or other failure to perform the whole or any part of the Contract resulting from any cause whatsoever beyond the Company's control existing at the date of the Contract or arising thereafter including but not limited to fire, explosion, breakdown or failure of plant or machinery, lack or failure of transportation facilities, supply of labour, materials, power or supplies, Strike, lockout or labour dispute (whether or not at the Company's works), illness, epidemic, flood drought, war, civil commotion, or restriction of any authority or governmental agency and the time for performance shall be extended by the period of any such delay.
- Tolerances**
- 13.1 The Company reserves the right subject to these conditions to deliver and charge for Goods within the manufacturer's tolerances as to weight, dimensions and quality.
- 13.2 Goods are sold on the basis of weighed weight, calculated weight or reassured meters according to the Company's practice at the time of sale.
- 13.3 Where weighed weight is chargeable the count is not guaranteed. Any claims based solely on count cannot be accepted. Re-sheared materials are charged on the basis of gross weight before re-shearing and charged accordingly unless otherwise specified in writing at the time of inquiry or order.
- Test Certificates**
- 14 The Company shall not be required to supply test certificates unless it has agreed in writing to do so at the time of accepting the Customer's order and reserves the right to charge for any certificate so supplied.
- General**
- 15.1 The acceptance of any cancellation for the Contract requested by the Customer or return of any Goods shall be at the Company's discretion and take effect only when written confirmation of such acceptance or return has been given by the Company.
- 15.2 The Customer, unless otherwise agreed in writing, will be deemed to be acting as a principal and not as an agent for any other person.
- 15.3 Any specifications, drawings, particulars of weights and dimensions and other technical information contained in the Company's quotations, catalogues, price lists, advertisements or elsewhere are approximate only and intended merely to present a general idea of the Goods and (unless otherwise agreed in writing by the Company) are not to form part of the Contract. The Company reserves the right to discontinue the sale of particular products or alter their designs and specifications without notice at any time and to deliver Goods conforming to the altered design or specification in fulfilment of any Contract. No contract shall constitute a sale by sample notwithstanding that any Goods or products may have been exhibited to or inspected by the Customer.
- 15.4 The Company shall have no liability for any advice, opinion or information furnished by the Company, its servants or agents unless given in writing in response to a written request by the Customer referring to the Contract.
- 15.5 The Customer shall indemnify and hold harmless the Company against any and all claims, proceedings, costs, damages, liabilities and expenses incurred or suffered by the Company arising from any instructions, data, drawings, specifications, tooling, equipment, goods, services or other items supplied by or on behalf of the Customer to the Company or from any failure to supply the same or from any infringement or alleged infringement of the rights of any third party claimed under or in relation to any patent, registered design, trademark, copyright, design right, breach of confidence or otherwise howsoever resulting from the Company's use of any of the foregoing items. The Company shall have no liability for any inaccuracy or inadequacy of such items and shall be entitled to charge extra for any costs resulting therefrom.
- 15.6 The Company may at its discretion sub-contract all or any of its obligations under the Contract but the Contract shall not be assigned by the Customer without the Company's prior written consent.
- 15.7 The Company shall have a lien on any Goods in the Company's possession for all sums due at any time from the Customer on any account and shall be entitled to keep possession of or at its option sell or dispose of the same as agent for and at the expense of the Customer and apply any proceeds in and towards the payment of such sums on twenty eight (28) days written notice to the Customer.
- Law, Jurisdiction and Construction**
- 16.1 The Contract shall be governed by English law and the parties consent to the exclusive jurisdiction of the English courts in all matters relating to the Contract except to the extent the Company involves the jurisdiction of the courts of any other country.
- 16.2 The headings of conditions are for convenience of reference only and shall not affect their interpretation.
- Notices**
- 17 Any notice to be given under the Contract shall be in writing and if sent by prepaid registered mail to the receiving party at its business address as last notified in writing to the other party shall be deemed to have been given 2 working days following the date of posting Registered Office: Sterling Works, Ings Lane, Rochdale, OL12 7LQ