

Apex Stainless Fasteners Limited

Conditions of Sale

Applicable to Apex Stainless Fasteners Limited sales transactions only (including export). Not applicable to Apex Stainless Fasteners Limited purchase transactions

- 1.1 All quotations are made, and all contracts and orders are accepted, solely upon and subject to the Conditions set out below. These conditions may not be varied or added to in any way by the person, firm or company to whom the quotation is addressed ("the Buyer"), or whose order is accepted by the Seller, unless such variations or conditions are expressly agreed by Apex Stainless Fasteners Limited ("the Seller") in writing. The quotation, contract or order shall not be binding upon the Seller until the Buyer's order has been confirmed in writing by the seller.
- 1.2 Acceptance of delivery shall be conclusive evidence of acceptance by the Buyer of these conditions.
- 2.1 Any time or date of delivery is an estimate only and the Seller shall not be liable for the consequence of any delay, nor shall the Buyer be entitled to damages, or to cancel the order, or to refuse delivery solely on the grounds of such delay. In the case of Goods, quoted as "Delivery Ex-stock", such delivery shall be subject to the Goods remaining unsold at the time of receipt of the order.
- 2.2 Delivery shall be effected when the Goods arrive at the place specified on the order, or if no place is specified, when the Goods arrive at the premises of the Buyer.
- 2.3 The expression "Goods" means all materials and products supplied by the Seller to the Buyer.
- 2.4 Where a delivery is postponed after the due date for delivery, due to the default of the Buyer, the Buyer shall pay all costs and expenses, including a reasonable charge for storage, transportation and insurance occasioned thereby and the Seller shall be entitled to invoice the Goods in accordance with these conditions.
- 2.5 Unless otherwise expressly agreed, the Buyer is responsible for unloading the delivery vehicle and for loss or damage to the Goods during the course of unloading.
- 3.1 The Buyer does not rely on any statement or representation other than those contained in the Seller's quotation or order confirmation.
- 3.2 If any statement or representation has been made to the Buyer, other than in documents enclosed with the Seller's quotation or order upon which the Buyer relies, the Buyer must set out that statement or representation in a document to be attached or endorsed on its order, in which case the Seller may clarify the point and submit a new quotation and/or order.
- 4.1 Save as otherwise provided by the other conditions of these Conditions, sections 12 to 15 of the Sale of Goods Act 1979, as amended or consolidated by statute from time to time, are to be implied into this contract.
- 4.2 The Goods delivered under the contract shall, where the contract includes a specification, comply with the specification or, if there is no such specification, shall be of normal industrial/commercial quality.
- 5.1 The Buyer must give the Seller immediate notice of any shortages or defects in the Goods. The Buyer shall have no claim for shortages or defects apparent on visual inspection unless:
 - (i) a written complaint is received by the Seller within five working days of receipt of the Goods specifying the shortage or defect and
 - (ii) the defective Goods are returned to the Seller.

In the case of defects not apparent on visual inspection such complaints shall be made in writing specifying the defect and the Goods returned to the Seller immediately. If proved to be defective as a result of faulty materials or workmanship, then the Seller, at its opinion, shall replace or repair such Goods as soon as practicable.
- 5.2 If a complaint is not made by the Buyer to the Seller, as provided in this condition, or if the Goods are resold after the complaint is made without written clearance by the Seller, then in such event the Buyer acknowledges that all rights of complaint shall have been waived and the Goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be bound to pay the same accordingly.
- 5.3 Defects in quality or dimension in any delivery shall not be a ground for cancellation of the remainder of the order.
- 5.4 The provisions of 5.1 and 5.2 of this condition shall not apply to Goods sold or taken outside the United Kingdom, unless returned and collected without cost to the Seller to and from its premises in the United Kingdom within the specified periods.
- 5.5 It is a condition of the guarantee contained in this condition, that the Goods are properly treated and used in the usual accepted manner considering the quality and quantity of the Goods involved.
- 5.6 The Buyer must ensure, either directly or indirectly, in the event of a resale that any subsequent buyers are aware of the extent to which the Seller is prepared to consider claims under these Conditions.
- 6.1 Save for any liability of death or personal injury resulting from negligence on the part of the Seller, the Seller's liability for defective Goods shall in no case extend beyond the repair or replacement of the defective item and the Seller shall not be liable for any other loss or damage, indirect or economic, including but not limited to loss of profit, damage to property, wasted expenditure or costs of mitigation and litigation.
- 6.2 No claim by the Buyer for damage in transit, storage or delivery or loss of goods will be entertained, unless the appropriate conditions, set out on the advice note for the Goods, have been observed.
- 6.3 Since the Seller acts as stockholder in relation to the Goods, no representation or warranty is given as to the suitability or fitness of the Goods supplied by the Seller for any particular purpose, and the Buyer shall satisfy itself regarding this and shall be totally responsible therefore. All Goods must be used strictly in accordance with the instructions and recommendations and specification (if any) of the manufacturer or supplier of the Goods to the Seller. The Seller's liability in respect of the goods shall in any event be limited to the liability of the supplier thereof to the Seller in respect of such Goods. Further, the Seller relies upon the testing, examination and research carried out by the manufacturer or supplier of the Goods to the Seller for the purpose of the Health and Safety at Work Act 1974.
- 6.4 Insofar as the Buyer shall have liability to any subsequent buyers in excess of the responsibility accepted by the Seller contained herein, such excess shall be borne by the Buyer and the Buyer undertakes to insure against such liability.
- 6.5 No liability is accepted in respect of fair wear and tear or damage due to misuse, neglect or accident, and no liability is accepted in the case of any damage or defect in the Goods resulting from the unsuitable application or use of the Goods.
- 7.1 The Buyer shall indemnify, reimburse and compensate the Seller for any losses and damages, including costs, expenses and charges for the legal actions in which the Seller may be involved (that the Seller may incur in the event that any claim or claims made against the Seller pursuant to the Consumer Protection Act 1987) ("the Act") relating to the Goods in circumstances in which:
 - (i) the Goods were not defective, or
 - (ii) the Goods were only rendered defective or became defective by reason of the actions or omissions of the Buyer or sub-contractor or any subsequent buyers, or
 - (iii) the Goods were only rendered defective or became defective by reason of a breach on the part of the Buyer or sub-contractor or any subsequent buyers of conditions 5.5 and 6.3, or
 - (iv) the Goods were only rendered defective due to the specifications furnished by, or on behalf of, the Buyer.
- 7.2 For The purpose of this condition the word "defective" shall be interpreted in accordance with the definition contained in the Act.

8. Deliveries may be totally or partially suspended by the Seller during any period in which it may be prevented or hindered from supplying or delivering by normal route or means of delivery the Goods covered by this contract through any circumstances falling within the ordinary meaning of the term "force majeure", including strikes, lockouts and breakdowns or destruction of plant and machinery. The Seller shall not be under any liability arising out of its failure to deliver nor shall the period of the contract be extended except at the option of the Seller.
9. The Buyer shall indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done in accordance with the Buyer's specification which involves the infringement of any letters, patent, registered design or copyright.
- 10.1 All prices, unless otherwise stated, are quoted exclusive of VAT. In addition, unless otherwise specified in writing by the Seller, quotations issued in a currency other than sterling may be subject to amendment in the event of fluctuation in the applicable exchange rate prior to the date of invoice.
- 10.2 The cost of delivery shall not, unless otherwise specified in writing by the Seller, be included in the quoted price.
11. No cancellation of any order can be accepted without prior written agreement of the Seller and compliance of the Buyer with the following conditions:
 - (i) any and all costs and expenses up to the time of cancellation and loss of profits and any other loss or damage incurred by the Seller in disposing of the Goods in the contract including any such costs resulting from movement in metal prices be paid forthwith by the Buyer; and
 - (ii) any material which the Seller agrees to accept back must be returned in the same condition and boxes as supplied. Any such returns will be subject to a handling charge to be specified by the Seller.
12. Risk shall pass to the Buyer so that the Buyer is responsible for all loss, damage or deterioration to the Goods:
 - (i) if the Seller delivers the goods by its own transport at the time when the Goods, or a relevant part thereof, arrive at the place of delivery, or
 - (ii) in all other circumstances at the time when the Goods or a consignment or a relevant part thereof leave the premises of the Seller whether or not the Seller arranges transport. Where the Goods are delivered by carrier any claims for loss or damage in transit must be made by the Buyer against the carrier in accordance with the carrier's conditions.
- 13.1 Title in the Goods or any part thereof (whether separate and identifiable or incorporated in or mixed with other goods) shall only pass to the Buyer when payment in full of all monies, whether due under this contract or all other contracts made at any time between the Seller and the Buyer therefore, have been made by the Buyer, or when the Seller serves written notice upon the Buyer specifying that title in the Goods or such part thereof has passed, whichever shall be the earlier in time.
- 13.2 The Seller may recover Goods in respect of which title has not passed to the Buyer at any time and the Buyer hereby licences the Seller, its officers, employees, servants and agents to enter into any of the Buyer's premises (and will arrange for Goods not on the Buyer's premises to be returned to the Buyer's premises) for the purpose of satisfying itself that the condition 14 below is being complied with by the Buyer or of recovering any Goods in respect of which proper title has not passed to the Buyer.
- 13.3 The Buyer shall be at liberty to sell the goods purchased from the Seller prior to the passing of title on the understanding that, if the Buyer does sell the goods then the Buyer will hold on trust for the Seller so much of the proceeds of sale received by the Buyer under contracts which include any of the Goods hereby sold either in their original or altered state as are necessary to discharge payment in full to the Seller. The Buyer will still be liable to pay to the seller any balance between the proceeds of sale so received and the cost of the Goods supplied by the Seller.
14. Until passing of title, goods or products in or with which the Goods have been used or combined, shall be possessed by the Buyer as bailee of the Seller on the terms of this contract and they shall be stored separately from other products of the Buyer and suitably identified so that the Seller's ownership can readily be ascertained.
- 15.1 Unless otherwise agreed by the Seller, in writing, payment of all invoices for Goods supplied shall be made by the last day of the month following that in which the invoice is dated. Payment, in respect of the sale of Goods by way of export sale, is due on the specified date by the Seller at the date of formation of the contract in the currency stated by the Seller and in accordance with the method of payment stipulated by the Seller.
- 15.2 In the case where delivery has been postponed at the request of or at the default of the Buyer, then the Seller 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.
- 15.3 Where goods are delivered by instalments the Seller may invoice each instalment separately and the Buyer shall pay such invoices in accordance with these conditions.
- 15.4 No disputes arising under the contract, nor delays beyond the reasonable control of the Seller, shall interfere with the prompt payment in full by the Buyer.
- 15.5 In the event of default in payment by the Buyer, the Seller shall be entitled, without prejudice to any other right or remedy, to withhold all further deliveries on, or to cancel any unexecuted part of any contract or contracts between the Seller and the Buyer without notice and add one month's interest at 4% above Bank of England Base Lending Rate to every invoice for each month or part of a month by which the invoice remains outstanding beyond the aforesaid last day of the month after which the invoice is dated. The interest so calculated will be added to any interest charged for a previous month or months in which the invoice remained unpaid.
- 15.6 The Buyer or any subsequent buyer shall notify the Seller promptly in writing at the originating branch of sale of the Seller of any complaint by the subsequent buyers received by it relating to the Goods. It shall be the responsibility of the Buyer to bring the provisions of these Conditions to the notice of any subsequent buyer on any resale of the Goods by the Buyer.
- 16.1 The information contained in the advertising and sales literature issued by the Seller, may be relied upon to be accurate in the exact circumstances in which it is expressed, otherwise any illustrations, performance details and all other technical data in such literature are based on experience and are provided for general guidance only. No such information or data shall form part of the contract unless the Buyer shall have complied with condition 3.2 above.
- 16.2 In accordance with its policy of continuous development, the Seller reserves the right to discontinue the availability of, or change the specifications of, Goods at any time without prior notice to the Buyer.
17. If the Buyer become bankrupt, or under the provision 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 of liquidation of the Buyer (other than for a voluntary winding-up for the purposes of reconstruction or amalgamation) or if a Receiver or Manager is appointed of all or any part of its assets or undertakings, (or in the case of a Buyer residing or operating overseas, if the events similar to those specified above arise in pursuance to the laws to which the Buyer is subject) the Seller 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 occurring to the Seller.
18. All disputes arising out of or in connection with this contract shall be governed by the English Law, and the parties hereto thereby submit to the jurisdiction of the English Courts save in respect of any injunctive relief which the Seller may claim in the Courts of the Country where the Buyer is resident or operates, In the case of any contract for the export of Goods overseas, the schedule to the Uniform Law on International Sales Act 1967 shall not in any circumstance apply to the Contract and neither shall the provisions of the Unfair Contract Terms Act 1977 apply to the extent permitted by law.
19. The Buyer shall, in the case of Orders for the shipment overseas, be solely responsible for obtaining all necessary import authorisations, the payment of any applicable import taxes and duties, and the Seller shall be under no obligation to give the Buyer the notice specified in section 32(3) of the Sale of Goods Act 1979 or any amendment or consolidation thereof.
20. Each clause and, where applicable, each sub-clause is distinct and severable from all other clauses and sub-clauses and accordingly the invalidity or unenforceability of any such clause or sub-clause shall not affect or impair the validity and enforceability of all other clauses and sub-clauses.