

RASE STEELS CONSTRUCTION AND CIVILS LTD

Terms of Business

1. Definitions

"The Company" means Rase Steels Construction and Civils Ltd T/A Rase Steels, their sub-contractors and agents. "The Buyer" means the person(s) or party (parties) who buy or agree to buy Goods from the Company

"The Conditions" means the standard terms and conditions of trading set out in this document plus any additional terms and conditions specifically referred to herein or agreed in writing by the Company.

"The Goods" means structural steelwork and any other goods services or articles which the Buyer agrees to purchase from the Company which may be detailed in an Order.

"The Order" means any order from the Buyer to the Company for the purchase of Goods whether based upon a quotation or estimate issued by the Company to the Buyer or an agreed price for Goods.

2. Conditions

2.1 The Conditions shall apply to all contracts for the sale hire or provision of Goods by the Company to the Buyer to the exclusion of all other terms and conditions that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, except where expressly agreed in writing by the Company.

2.2 All Orders shall be deemed to be an offer by the Buyer to buy Goods on the basis that the Buyer accepts the Conditions in full and without any deviations.

2.3 The Company shall not be bound by any variation in, waiver of or addition to the Conditions (including any special terms and conditions agreed between the parties) unless expressly agreed in writing.

2.4 The Conditions shall include the Practical Conditions attached hereto.

2.5 We may, at our option and as your agent, ask another contractor ("Third Party Contractor") to carry out some or all of the Order work. We shall pay the reasonable charges of the Third Party Contractor on your behalf and recharge them to you with our own fees. We will ensure that the Third Party Contractor fees which are recharged to you are in line with the fees we will have quoted to you, had we done the work ourselves. We will take all reasonable care in selecting and instructing a Third Party Contractor.

3. Quotations/Specifications

3.1 A quotation addressed to the Buyer by the Company does not constitute an offer to supply and no contract exists unless and until there has been acceptance by the Company of the Order. The Company may revise or withdraw any quotation or estimate prior to acceptance by the Company of an Order received from the Buyer

3.2 The specification for the Goods shall if, ordered by reference to a standard item, be the design and specification for that item applicable at the date of Order, provided that the Company reserves the right to incorporate into the Goods any design or specification modifications implemented or introduced into the Company production process or required by law between the date of Order and the date of fabrication of Goods.

3.3 The price for the Goods and our payments terms are set out in our quotation or estimate to you prior to your Order. We shall invoice you as each payment falls due. Invoiced amounts shall be due and payable once an invoice is issued. Value Added Tax shall be charged at the rate prevailing at the relevant tax point.

4. Cancellation or Suspension of Orders

4.1. The Buyer may cancel an Order only with the Company's written consent. In the event of such cancellation the Buyer shall (at the discretion of the Company) pay to the Company a cancellation charge equivalent to any costs and expenses incurred or to be incurred by the Company in connection with the cancellation date plus a sum equivalent to the Company's loss of profit on that part of the Order which had been processed prior to agreed cancellation.

4.2. In the event of non-compliance by the Buyer of any contractual obligation (including non-payment or delayed payment in respect of the Order or any other sum whatsoever due from the Buyer to the Company) the Company shall be entitled in its discretion to suspend any outstanding Order and/or to cancel any or all outstanding orders without prejudice to any other rights or remedies available to the Company.

4.3. The Company may, by notice in writing, cancel the Order at any time before commencement of the delivery of the Order without liability for any loss or damage arising from such cancellation.

4.4 If in the opinion of the Company it is not reasonably practicable for any reason to carry out all or any part of the Order work, we shall be entitled to refrain from carrying out or completing such work and will consult with you as to what if any work is to be undertaken. We will, if requested by you, provide a written explanation as to why any work is not considered to be reasonably practicable.

4.5 In the event of cancellation of an Order the Company shall cease to be bound to deliver and the Buyer shall cease to be bound to receive delivery or pay for Goods which have not been delivered and the Company shall repay to the Buyer any sums paid in respect of the price of the Order which relate to undelivered goods or services (less any sums to which the Company is entitled pursuant to 4.1 above or which are owing in respect of other orders)

5. Risk/Delivery

5.1 The risk in Goods shall pass to the Buyer upon delivery of the Goods to the Buyer or to a carrier on the Buyer's behalf or to the Buyer's chosen delivery location or contractor and the Buyer is recommended to insure the Goods accordingly provided, however, that if the title to the Goods passes to the Buyer prior to the time of delivery, the risk in the Goods shall pass to the Buyer with the passing of the title. If delivery is undertaken by the Company for the Buyer the risk during transportation shall be borne by the Company and shall cease upon delivery to the Buyer's chosen delivery location or contractor.

5.2 Any delivery dates and delivery times proposed by the Company are estimates only and although the Company will use its best endeavours to meet any estimated delivery date and effect delivery within a reasonable time, it shall not be liable for the consequences of any delay.

5.3 The Company shall advise the Buyer of the estimated delivery date upon which the Company expects to be able to complete delivery and/or commence installation or erection of Goods. If for any reason the Buyer is unable or unwilling to accept the estimated delivery date, the Company shall be entitled to arrange storage of the Goods and

levy storage charges which charges may commence seven days after that date and, despite 5.1, the risk in Goods shall be deemed to have passed to the Buyer.

5.4 Notwithstanding that the Company may have failed to deliver or complete the Goods (or any part of them) by the estimated delivery date the Buyer shall be bound to accept delivery/completion and to pay for the Goods in full provided that delivery/completion shall be tendered at any time within 6 months of the estimated delivery date

5.5 If the Buyer has not taken delivery of the Goods within 3 months of the estimated delivery date the Company shall, unless the Buyer has paid for the Goods in full, have the right to rescind the Order and shall be at liberty to re-use or alter the Goods or any part of them for use on other projects or to sell the Goods elsewhere.

5.6 The Buyer or the Buyer's representative at the delivery/collection location shall sign the Company delivery/collection note which accompanies the Goods to confirm that delivery/collection has taken place.

5.7 The Buyer shall if the goods are delivered to a location for subsequent installation or erection by the Company take all reasonable steps to ensure that the location or site is secure and that the Goods and any Company equipment necessarily on site for the purpose of installation or erection are adequately protected from theft and/or vandal or other damage.

6. Acceptance/Inspection/Claims

6.1 The Buyer shall inspect the Goods immediately upon delivery. Any defects apparent upon such inspection shall be noted on the delivery note signed under 5.6 above. Any defects alleged by the Buyer to have been present at the time of delivery shall in any event be communicated in writing to the Company within 72 hours of delivery failing which the Goods shall be deemed to be in accordance with the Order and the Buyer shall be bound to accept and pay for them accordingly.

6.2 In the event that it is alleged that there is any defect in the Goods:

6.3 A claim shall be notified to the Company promptly and in any event within 72 hours of delivery. If the Buyer fails to do so, the Company shall be relieved of all liability under 6.1 in respect of such delivery.

6.3.1 The Buyer shall permit the Company and any third party assessor or expert all necessary access to inspect the alleged defect

6.3.2 No repair of the alleged defect shall be attempted before inspection by the Company.

6.3.3 In the case of a defect claim in respect of an item included in the Goods but manufactured other than by the Company the Buyer shall exhaust all rights under any guarantee or warranty given by the manufacturer of that item.

6.4 The Company shall after completion of inspection under 6.1 above and all necessary investigation and testing advise the Buyer of its findings and in the event that the Company agrees to undertake any remedial action it may do so in such manner and by such means as it shall deem appropriate and the Buyer shall grant it all necessary access and facilities to do so.

6.5 The Company shall not be liable, to the maximum extent permitted by applicable law, for any of the following losses or damage (whether arising in contract, tort [including negligence], strict liability or otherwise and whether such losses or damage were foreseen, foreseeable, known or otherwise): -

loss of revenue; loss of actual or anticipated profits (including for loss of profits on contracts); loss of anticipated savings; loss of business; loss of opportunity; loss of goodwill; loss of reputation; wasted expenditure; or any indirect or consequential loss or damage (including, for the avoidance of doubt, where such loss or damage is of a type previously listed in this sub-clause).

6.6 The Company shall reimburse to the Buyer the agreed cost of any reasonable repairs carried out by the Buyer with the prior written approval of the Company.

6.7 If as a consequence of a claim notified to the Company by the Buyer under 6.2 above the Company inspects the alleged defect but finds the claim to be groundless or the defect to be due to third party fault or other independent cause the Buyer shall reimburse the Company the costs and expenses incurred by it in making such inspection.

7. Payment/Interest

7.1 Payment of the price for the Goods and any VAT chargeable shall (unless otherwise agreed or specified by the Company in writing prior to acceptance of the Order) be due as stated on the Company's quotation or estimate (which may require payment in advance of delivery of Goods) but otherwise shall be due within 7 days of date of invoice (unless a different due date has been agreed by the Company in writing after acceptance of the Order).

7.2 The Company may in its discretion specify that a deposit shall be payable.

7.3 Without prejudice to any other rights of the Company, in the event of payment of the price after the due date the Company may at its discretion charge the Buyer interest at a rate up to the maximum rate specified in the Late Payment of Commercial Debts (Interest) Act 1998 and related Regulations. The Company will exercise its right to compensation and administrative charges under the Late Payment legislation. In the event that any debt collection process is commenced, the Company shall be entitled to receive an administration charge of £500.00 in addition to any Late Payment compensation interest or charges or any legal costs recoverable

7.4 The Buyer shall not be entitled to make any deduction from the price for the Goods in respect of any set-off or counterclaim unless both the validity and the amount thereof have been expressly previously agreed in writing

7.5 Without prejudice to any other rights of the Company, failure to pay the price or any part thereof on the due date will also entitle the Company to refuse to make delivery under the Order relating to the payment or any other Order without incurring any liability whatsoever to the Purchaser for any delay.

7.6 The Company shall be entitled to recover the price of the Goods plus VAT notwithstanding that the property in the Goods has not yet passed from the Company pursuant to 5 above.

8. Retention of Title

8.1 In spite of delivery having been made, property in the Goods shall not pass from the Company until the Buyer has paid the price for the Goods in full and no other sums whatever are due from the Buyer to the Company in respect of the Order or any previous Order.

8.2 Until property passes to the Buyer in accordance with 8.1 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Company. The Buyer shall store the Goods at no cost to the Company and separately from all other goods in its possession and marked in such a way that they are clearly identified as the Company's property

8.3 Where the Buyer resells the Goods before full payment of all sums payable to the Company have been made, the Purchaser shall sell the Goods as an agent for the Company pending payment of all sums due to the Company hereunder, and shall keep the proceeds of sale in a separate account not using the same and holding the same on trust for the Company, Notwithstanding this 8.3, in relation to a third party, the Buyer shall sell only as a principal.

8.4 Until such time as the property in the Goods passes from the Company the Buyer shall upon request deliver up such of the Goods to the Company. If the Buyer fails to do so the Company may enter upon any premises owned occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. The Company shall be entitled to charge the cost of recollection to the Buyer.

8.5 The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Company. Without prejudice to the other rights of the Company, if the Buyer does so all sums whatsoever owing by the Buyer to the Company shall forthwith become due and payable.

8.6 The Buyer shall from the time that risk passes to the Buyer insure and keep insured the Goods to their full price against 'all risks' to the reasonable satisfaction of the Company until the date that property in the Goods passes from the Company, and shall whenever requested by the Company produce a copy of the policy of insurance.

9. Loss/Liability

Save as expressly provided under clause 6 hereof and save where the absolute prohibition against exclusion and restriction of liability contained in Section 2 (1) and Section 6 (1) of the Unfair Contract Terms Act 1977 or in Section 7 of the Consumer Protection Act 1987 applies,:

9.1 The Company shall be under no liability whatsoever to the Buyer for or arising out of any defect in the design, workmanship or materials or due to any other cause whatsoever, and all warranties, conditions or terms relating to the fitness for purpose and/or condition or quality of goods and/or the reasonableness of care and skill in performing services, whether implied by Statute or common law or otherwise inconsistent with the provision of this clause are hereby excluded.

9.2 The Company shall not be liable for the following:-

9.2.1 In contract and/or tort for any injury loss or damage to persons or property sustained by reason of any defect in the Goods or use of the Goods provided that this paragraph does not restrict any liability of the Company for personal injury caused by the Goods the Company its servants or agents.

9.2.2 Consequential loss or damage of any kind

9.2.3 Any claim not notified to the Company in accordance with 9.3 below

9.2.4 Any claim where the Buyer does not comply with 6.2 above

9.3 Any claim including any claims under 6.2, whether on behalf of the Buyer or any third party, must be notified to the Company in writing within 72 hours of the occurrence which gives rise to the claim, so as to enable the Company to promptly and fully investigate the same, failing which the Company shall be relieved from any potential liability.

9.4 Without prejudice to the forgoing, the maximum liability of the Company to the Buyer or any third party arising out of the Order shall be limited to the Order price.

9.5 The Buyer shall indemnify the Company in respect of any claim against the Company by any third party who has

purchased the Goods from the Buyer save for any claim accepted by the Company pursuant to 6 above provided that the Buyer shall indemnify the Company to the extent that such claim exceeds the Company's liability under 6.

9.6 Without prejudice to the foregoing the Buyer shall indemnify and keep indemnified the Company against all or any claims, costs, expenses, penalties or damages arising out of any breach of Planning Control, Buildings Regulations or other regulatory or statutory provision or infringement or alleged infringement of a patent, registered design or other right in industrial property where such breach or infringement arises from the Company following instructions and/or specifications stipulated by the Buyer its contractor or advisers in respect of the Goods.

10. General

10.1 The Company may, at its discretion, cancel the Order if, in its reasonable opinion that, the Buyer has become or is likely to become bankrupt or insolvent or if execution or other legal process is levied, attempted to be levied or threatened in respect of its assets.

10.2 Neither party shall be liable for any default due to any act of God, war, strike, lockout, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party which was not reasonably foreseeable at the time of the Order and is not attributable to the affected party provided that the Buyer shall indemnify the Company for any additional costs incurred as a result of material price increase, material shortage, or labour shortage occurring as a result of such events.

10.3 Unless otherwise specifically agreed in writing by the Company, time shall not be of the essence in relation to any estimated delivery installation or erection date.

10.4 Any Company rights provided by these terms shall be deemed cumulative and the exercise of any one right by the Company shall not preclude the exercise of any other right available nor exclude any other available rights or remedies at law or in equity.

10.5 Any waiver by the Company of compliance by the Buyer of any of the Terms shall not prevent the subsequent enforcement of that or any other term and shall not be deemed to be a waiver of any subsequent breach. If any paragraph of these terms is invalid or unenforceable by law then the Company and the Buyer will negotiate a new substitute clause expressing the intention of the invalid or unenforceable paragraph as closely as permitted by law, and all other paragraphs of these terms shall continue to remain operative.

10.6 The Order shall not confer upon or operate so as to create any third party rights or rights enforceable other than by the Buyer. The terms of the Contracts (Rights of Third Parties) Act 1998 are hereby excluded.

10.7 Any dispute concerning and arising out of the Order shall:

10.7.1 in the first instance be resolved by discussion between the parties, both acting reasonably and in good faith.

10.7.2 If the dispute is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate' it shall be referred to mediation by a mediator agreed between the parties or in default of agreement appointed by UK Mediation Limited of 9 Green Lane, Belper, Derbyshire.

10.7.3 If the matter has not been resolved by mediation within 30 days of the initiation of that procedure (or any extended time reasonably agreed to accommodate the mediation arrangements), or if any party refuses to participate in mediation, any party ("the Referring Party") may at any time give notice ("the Notice") in writing to the other party of its intention to refer a dispute arising under the contract to construction

industry adjudication. The parties may agree the identity of the adjudicator. Where an adjudicator is not agreed within 2 days of the Notice being given, the Referring Party may immediately apply to the Chartered Institute of Arbitrators for the nomination of an adjudicator, which nomination shall be communicated to the parties within 5 days of receipt of the application. Within 7 days of the Notice the Referring Party shall refer the dispute to the adjudicator. The adjudicator shall reach a decision within 28 days of referral or such longer period as is agreed by the parties or determined by the adjudicator.

- 10.7.4 If and only if the dispute cannot be resolved by adjudication, the dispute may be referred to arbitration by any party. The seat of the arbitration shall be London, England and Wales. The arbitration shall be governed by the Arbitration Act 1996 as amended and any related Rules as may be agreed between the parties. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Deputy President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an arbitrator or arbitrators and for any decision on rules that may be necessary. The arbitral award shall be final and binding upon the parties and may be enforced in any court having jurisdiction
- 10.7.5 Nothing in this clause shall be construed as prohibiting a party from applying to a court for interim injunctive relief at any time.
- 10.8 The Order is subject to the laws of England and Wales.