

# Terms and Conditions

## 1 DEFINITIONS

- 1.1 "Buyer" means the person whose Order is accepted by the Seller;  
"Conditions" means the terms and conditions of sale set out below including the Incoterms each except in so far as they are not varied by any special terms and conditions agreed by the parties;  
"Contract" means the contract for the supply of the Goods in accordance with the Order Confirmation and these Conditions;  
"Expenses" means the costs incurred by the Seller for carriage (including loading and unloading), packaging, insurance and/or VAT which is payable in respect of the Goods;  
"An event of Force Majeure" means any circumstances beyond the reasonable control of the Seller (including, without limitation, any strike, lock-out or other industrial action, natural disaster or terrorist attack);  
"Goods" means the Goods (including any instalment of the Goods or any parts of them) which the Seller is to supply in accordance with the Contract;  
"Incoterms" means the Incoterms® 2010 published by the international chamber of commerce as amended from time to time;  
"International Supply Contract" has the meaning in section 26(3) of the Unfair Contract Terms Act 1977;  
"Invoice" means the invoice for the Price plus any Expenses payable;  
"In writing" includes telex, cable, facsimile transmission and comparable means of communications;  
"Order" means the Buyer's purchase order;  
"Order Confirmation" means the confirmation of an Order produced by the Seller containing the description, Price (plus any applicable Expenses), quantity, quality and Any specification of the Goods together with any special terms agreed by the parties;  
"Payment Due Date" means the last working day of the month following the end of the month in which Delivery of the Goods is made or such other date as the Seller agrees in writing;  
"Price" means the price for the Goods in the Order Confirmation or where no price is stated, the price listed in the Seller's price list at the date of Delivery (excluding Expenses);  
"Quotation" means a written quotation by the Seller for the Goods;  
"Seller" means Lincoln Electric (UK) Limited of Mansfield Road, Aston, Sheffield S26 2BS;  
"VAT" means value added tax which shall be payable at the prevailing rate on the date of the Invoice.

## 2 BASIS OF SALE

- 2.1 These Conditions shall apply to the Contract to the exclusion of all other terms and conditions including any terms and conditions which the Buyer may purport to apply or which may be implied by trade, custom or a course of dealing.
- 2.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase the Goods in accordance with these Conditions.
- 2.3 The Contract becomes binding on the Buyer and the Seller when the Seller issues an Order Confirmation.
- 2.4 The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.
- 2.5 Any typographical, clerical or other error or omission in any sales literature, Quotation, price list, Order Confirmation, Invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.
- 2.6 Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods is followed or acted upon entirely at the Buyer's own risk, and Accordingly the Seller shall not be liable for any such advice or recommendation.
- 2.7 All drawings, photographs, illustrations, dimensions, weights and other technical information and particulars of the Goods and Any sample books are given by the Seller as an approximate idea of the Goods and do not form part of the Contract.

## 3 THE GOODS

- 3.1 The Buyer shall ensure that the terms of the Order Confirmation are complete and Accurate.
- 3.2 The Seller reserves the right to make any changes in the specification of the Goods which are required in order for the Seller to conform with any safety or other statutory requirements or, where the Goods are to be supplied to the Seller's specification, which do not materially affect their quality or performance.
- 3.3 Once an Order Confirmation has been produced the Buyer may not cancel the Order without the written agreement of the Seller and provided that the Buyer indemnifies the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of any cancellation.
- 3.4 Orders are accepted by the Seller subject to availability of Goods for delivery.

## 4 PRICE AND PAYMENT

- 4.1 Quotations must be accepted within 30 days (or such other date specified in the Quotation) of issue, after which time they may be altered by the Seller without notice to the Buyer.
- 4.2 Unless there is a binding Quotation, the Seller may, by giving notice to the Buyer at any time before Delivery, increase the Price to reflect any increase in the cost of the Goods which is due to:
- (a) factors beyond the reasonable control of the Seller (including, without limitation, foreign exchange fluctuations, increases in taxes and duties and increases in the cost of labour, materials and other manufacturing costs);
  - (b) any request by the Buyer to change the detail of the Order including but not limited to the date for Delivery, specifications for the Goods, and/or quantities of the Goods;
  - (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.

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- 4.3 Invoices are issued at the date of Delivery and are payable on the Payment Due Date.
- 4.4 Payment of the Invoice shall be by direct bank transfer to the account number notified to the Buyer by the Seller.
- 4.5 Full credit will be given to the Buyer for the cost of pallets and returnable packaging, provided they are returned undamaged to the Seller before the Payment Due Date.
- 4.6 If the Buyer fails to make any payment on or before the Payment Due Date then, without prejudice to any other right or remedy available to the Seller, the Seller may:
- (a) cancel the Contract or suspend any further deliveries to the Buyer;
  - (b) appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
  - (c) charge the Buyer interest (both before and After any judgment) on the amount unpaid, at the rate of four per cent per annum above the prevailing Bank of England base lending rate from time to time from the Payment Due Date until payment is made in full. Interest shall accrue at a daily rate and shall be payable with the overdue amount.

## 5 DELIVERY AND ACCEPTANCE

- 5.1 Delivery is deemed to take place in accordance with the Incoterm that applies to this Contract which will be CIP unless otherwise stated in the Order Confirmation ("Delivery").
- 5.2 The Seller may Deliver the Goods by separate instalments. Each separate instalment shall be invoiced separately and paid for in accordance with these Conditions. If the Buyer fails to pay the Invoice for any one or more of the instalments of the Goods on the Payment Due Date without prejudice to any other right or remedy available to the Seller, the Seller may (at its sole option):
- (a) suspend further Deliveries of the Goods without notice pending payment by the Buyer; and/or
  - (b) treat the Contract as repudiated by the Buyer.
- 5.3 Any dates quoted for Delivery are approximate only and the Seller shall not be liable to the Buyer for any loss or damage, whether direct, indirect or consequential if Delivery is delayed or prevented, in respect of the Goods. The time of Delivery is not of the essence. The Buyer shall be bound to accept Delivery and to pay for the Goods in full provided that Delivery shall be tendered at any time within two months of the Delivery Date.
- 5.4 If the Buyer fails to take Delivery of the Goods or fails to give adequate Delivery instructions to the Seller at the time stated for Delivery (otherwise than by reason of the Seller's fault) then without prejudice to any other right or remedy available to the Seller, the Seller may:
- (a) store the Goods at the risk of the Buyer until Delivery and charge the Buyer for the reasonable costs of storage; or
  - (b) sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the Price or charge the Buyer for any shortfall below the Price.
- 5.5 All Goods must be inspected by the Buyer immediately on Delivery. If there has been a short delivery the Buyer may by notice to the Seller within 10 days of Delivery, reject any Goods which are not in accordance with the Contract.
- 5.6 If no such notice is received by the Seller within the period stated in clause 5.5, the Buyer shall be deemed to have accepted the Goods and shall not then be entitled to reject them.
- 5.7 If the Buyer properly rejects the Goods in accordance with clause 5.5, the Buyer shall nonetheless pay the full Invoice for such Goods unless such Goods are returned (at the Buyer's cost) to the Seller before the Payment Due Date.

## 6 PROPERTY AND RISK

- 6.1 The Goods shall be at the Buyer's risk as from Delivery.
- 6.2 Title to the Goods shall not pass from the Seller until:
- (a) the Buyer pays the Invoice in full; and
  - (b) no other sums whatever are due from the Buyer to the Seller.
- 6.3 Until title to the Goods passes to the Buyer in accordance with clause 6.2 the Buyer shall:
- (a) hold the Goods as bailee for the Seller;
  - (b) store the Goods (at its own expense) separately from all other goods in its possession and marked in such a way that they are clearly identified as the Seller's property;
  - (c) be permitted to dispose of the Goods in the course of its business and pass good title to the Goods to its customer being a bona fide purchaser for value provided that such permission may be revoked at any time by notice by the Seller and shall automatically and without notice be revoked upon the Buyer committing an act of bankruptcy or upon the commencement of liquidation proceedings compulsory or voluntary of the Buyer or the appointment of a receiver, administrator, administrative receiver or judicial administrator over any part of the Buyers assets;
  - (d) upon request deliver up to the Seller such of the Goods as have not ceased to be in existence or re-sold;
  - (e) not pledge or in any way charge by way of security for any indebtedness any of the Goods, which are the property of the Seller or which have been incorporated into another product but are capable of disassembly from that product. If the Buyer does so then, without prejudice to other rights of the Seller, all sums whatever owing by the Buyer to the Seller shall immediately become due and payable; and
  - (f) maintain the Goods in a satisfactory condition and shall insure and keep insured the Goods to the full Price against all risks to the reasonable satisfaction of the Seller from Delivery until the date that title to the Goods passes to the Buyer.
- 6.4 If the Buyer fails to deliver the Goods in accordance with clause 6.3(d), the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods, provided that the Seller may, where the Goods have become fixed and Attached to or incorporated within any other products, detach the Goods from the other products to or in which Goods have been fixed, attached or incorporated.
- 6.5 The Buyer shall, whenever requested by the Seller, produce a copy of the policy of insurance it is required to keep pursuant to clause 6.3(f). If the Buyer fails to do so then, without prejudice to the other rights of the Seller, all sums whatever owing by the Buyer to the Seller shall immediately become due and payable.

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## 7 WARRANTY AND LIABILITY

- 7.1 Except as provided for in these Conditions, there are no warranties, express or implied, of merchantability or of fitness for a particular purpose, or of any other kind except as to title. In particular, all conditions and warranties which would otherwise be implied by statute or under the common law are hereby excluded to the fullest extent permitted by law.
- 7.2 Subject to clause 7.3 the Seller shall under no circumstances be liable for any indirect, special or consequential loss (including loss of anticipated profit or third party claims), costs, expenses or other claims for consequential compensation whatsoever howsoever arising either from breach or non performance of its obligations under the Contract or from the supply of or intended use of the Goods, even if the Seller has been advised of the possibility of such potential loss.
- 7.3 In the case of contracts other than International Supply Contracts the Seller shall be liable for loss arising from death or personal injury resulting from the proven negligence of the Seller and nothing in these Conditions shall have the effect of excluding or limiting liability under the Consumer Protection Act 1987 to a person who has suffered damage caused by a defective product, or to a dependant or relative of such person.
- 7.4 The Seller shall not be liable to the Buyer or be deemed to be in breach of the contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to an event of Force Majeure.
- 7.5 The Seller makes no representation or warranty that use of the Goods does not infringe the rights of any third party and the Seller accepts no liability in this respect.

## 8 INDEMNITY

- 8.1 The Buyer shall indemnify the Seller:
- (a) against all loss, damages, costs and expenses awarded against or incurred by the Seller in connection with or paid or agreed to be paid by the Seller in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person as a result of the manufacture or use of any process applied to the Goods by the Seller in accordance with any specification of the Buyer; and
- (b) in respect of all actions, suits, claims, demands, costs, charges or expenses arising from damage to or destruction of property, personal injury or death whether caused by the negligence of the Seller its servants, agents or subcontractors in executing the Contract or howsoever caused, provided that for contracts other than International Supply Contracts the Buyer shall not be liable to indemnify the Seller in respect of any action, suit, claim, demand, cost, charge or expense arising from personal injury or death caused by the proven negligence of the Seller.

## 9 INSOLVENCY OF BUYER

- 9.1 If:
- (a) the Buyer makes any voluntary arrangement with its creditors or becomes subject to an administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- (b) an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- (c) the Buyer ceases, or threatens to cease, to carry on business; or
- (d) the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Buyer. If the Goods have been delivered but not paid for the Invoice shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

## 10. EXPORT TERMS

Where the Goods are supplied for export from the United Kingdom, the provisions of this clause shall (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon. Unless otherwise agreed in writing between the Buyer and Seller, the Goods shall be delivered to the air or sea port of shipment and the Seller shall be under no obligation to give notice under section 32(3) of the Sale of Goods Act 1979. The Buyer shall be responsible for arranging for, testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit. Payment of all amounts due to the Seller shall be made by irrevocable letter of credit opened by the Buyer in favour of the Seller and confirmed by a bank in the United Kingdom acceptable to the Seller.

## 11 GENERAL

- 11.1 Any notice required or permitted to be given by either party to the other under the Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
- 11.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.3 If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision in question shall not be affected thereby.
- 11.4 Any dispute arising under or in connection with the Contract shall be referred to arbitration by a single arbitrator appointed by agreement or (in

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default) nominated on the application of either party by the President for the time being of Welding Institute.

- 11.5 The Buyer may not withhold payment of any Invoice or other amount due to the Seller by reason of any right of set-off or counter claim which the Buyer may have or allege to have or for any reason whatsoever.
- 11.6 The Contract shall be governed by the laws of England and the parties hereby submit to the exclusive jurisdiction of the English courts.

## 12 COMPLIANCE WITH LAWS

- 12.1 The Buyer shall comply with all applicable laws and regulations with respect to the business conducted by Buyer with or on behalf of the Seller, and in connection with the resale or marketing of the Goods, including (without limitation) all applicable "Anti-bribery Laws," which prohibit the payment or transfer directly or indirectly of anything of value to governments, government officials, state-owned enterprises, political parties, political party officials, or to relatives or associates of such officials, in connection with obtaining or maintaining business or an improper business advantage.
- 12.2 The Buyer agrees that it will not participate in the sale of the Goods:
- (a) to any entity in or for export to any country that is deemed to be a "prohibited country" under U.S. export control laws (currently, Cuba, Iran, North Korea, Sudan or Syria); or
  - (b) for use in:
    - (i) nuclear weapons;
    - (ii) chemical weapons;
    - (iii) biological weapons; or
  - (c) for use in rocket or missile applications.
- 12.3 The Buyer shall be committed to fair, honest and ethical business practices. The Buyer acknowledges that the Seller has adopted a Code of Corporate Conduct ("Code") and Ethics (a copy of which is available at [www.lincolnelectric.com](http://www.lincolnelectric.com)) and the Buyer agrees to conduct itself in its dealings with or on behalf of the Seller, or in connection with the resale or marketing of the Goods, in a manner that is consistent with and facilitates compliance with the Code.

## 13 RETURNS POLICY

- 13.1 Goods are returnable with 30 days from shipment date at the following conditions :
- 13.2 Material must be new, unused, undamaged and in its original packaging.
- 13.3 Equipment and parts must be in the original and unbroken package and include all documents as factory packed (IM, etc.).
- 13.4 Consumables packages must not have been opened at all and properly stored.
- 13.5 Prior to any return, a "Return Material Authorization" must be requested and approved by Lincoln Electric's Customer Service Center. Any goods arriving to our warehouses without an RMA reference will be refused and sent back to the customer.
- 13.6 Freight back to Lincoln is always paid by the customer, even if the original order was excluding it.
- 13.7 Goods will be credited only after positive inspection by Lincoln Electric's authorized personnel.
- 13.8 In case Lincoln accepts a return despite the goods are not new, unused, undamaged and in its original packaging, a restocking fee of 18% will be applied to the credit note.
- 13.9 Returns over 30 days are always subject to our Commercial Management's approval.
- 13.10 A restocking fee of 18 % or £50 (fifty) minimum, whichever is greater, will be applied.
- 13.11 High value returns (over £10.000) are always subject to our European Management's evaluation for approval.

## 14 NON-RETURNABLE ITEMS

- 14.1 The following items are not returnable :
- Made to Order and Special materials
  - "For sale" items
  - "To be discontinued" and "superseded" items
  - Software
- 4.2 No returns are accepted after 1 year from the date of purchase.

## 15 NON CANCELLATION POLICY

- 15.1 Lincoln classifies some material as "made to order" or "specials"  
Materials falling into this category are clearly specified in Lincoln's quotations and order confirmations.  
These are items that Lincoln doesn't keep in stock, and manufactures especially for a specific order.  
Also, items for which a specific chemical analysis or mechanical testing has been requested, or a non standard packaging, are in this category.  
Once the order confirmation has been sent, no amendments will be accepted, more specifically :
- Cancelling the order
  - Modifying the quantity
  - Modifying the product