

**STANDARD TERMS AND CONDITIONS OF PURCHASE FOR ACENTA STEEL LIMITED (and Associated Companies) trading as ACENTA**

**1. Definitions**

1.1 In these Conditions:

**"Associated Companies"** means any subsidiary or holding company (each as defined in section 1159 of the Companies Act 2006) from time to time of the Buyer, and any subsidiary from time to time of a holding company of the Buyer.

**"Buyer"** means Acenta Steel Limited, registered in England and Wales with company number 03725308 and whose registered office is at Planetary Road, Willenhall, West Midlands, WV13 3SW

**"Buyer's Materials"** has the meaning given in Condition 5.3.8.

**"Conditions"** means the terms and conditions set out in this document as amended from time to time in accordance with Condition 19.6.

**"Contract"** means a contract between the Seller and the Buyer for the sale and purchase of Goods and/or Services pursuant to an Order, subject to these Conditions.

**"Deliverables"** means all documents, products and materials developed by the Seller or its agents, contractors and employees as part of or in relation to the Services (in any form or media), including drawings, designs, specifications and reports (including drafts);

**"Delivery Location"** has the meaning given in Condition 4.2.2.

**"Force Majeure Event"** has the meaning given in Condition 16.

**"Goods"** means goods which are the subject of an Order.

**"Intellectual Property Rights"** means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**"Order"** shall mean the Buyer's order for the supply of Goods and/or Services, as set out in the Buyer's written acceptance of the Seller's quotation or in the Buyer's purchase order form (as the case may be).

**"Seller"** the person from whom the Buyer purchases the Goods and/or Services.

**"Services"** means the services, including without limitation any Deliverables, which are the subject of an Order;

**"Specification"** means any written specification agreed by the Buyer and the Seller and referenced on the Order for Goods or Services (as applicable), including but limited to any related plans and drawings.

**"Working Day"** means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

1.2 In these Conditions, the following rules apply:

- 1.2.1 Condition headings shall not affect the interpretation of these Conditions;
- 1.2.2 a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.3 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.4 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.5 any phrase introduced by the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

**2. Formation of Contract**

- 2.1 These Conditions shall form the terms and conditions of the Contract and shall apply to the exclusion of any terms and conditions that the Seller seeks to impose or incorporate, or which are implied by trade, custom, practice, course of dealing, or by law (insofar as the exclusion of the same is lawful).
- 2.2 The placing of an Order by the Buyer shall constitute an offer by the Buyer to purchase the Goods and/or Services (as applicable) in accordance with these Conditions.
- 2.3 A Contract shall come into existence on the earlier of an Order being accepted in writing by the Seller or, any act by the Seller that is consistent with the fulfilment of the Order.
- 2.4 The Contract constitutes the entire agreement between the parties in relation to the Order. The Seller acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Buyer which is not set out in the Contract.

**3. Supply of Goods**

- 3.1 The Seller shall ensure that the Goods shall:
  - 3.1.1 correspond with their description and any applicable Specification;
  - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Seller or made known to the Seller by the Buyer, expressly or by implication;

3.1.3 where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

3.2 The Seller shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

3.3 The Buyer shall have the right to inspect and test the Goods at any time before delivery. If following such inspection or testing the Buyer considers that the Goods do not conform or are unlikely to comply with the Seller's undertakings at Condition 3.1, the Buyer shall inform the Seller and the Seller shall immediately take such remedial action as is necessary to ensure compliance. Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Seller's obligations under the Contract. The Buyer shall have the right to conduct further inspections and tests after the Seller has carried out its remedial actions.

**4. Delivery of Goods**

4.1 The Seller shall ensure that:

4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

4.1.2 each delivery of the Goods is accompanied by any applicable certificate required by Condition 6 and a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.3 if the Seller requires the Buyer to return any packaging material for the Goods to the Seller, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned by way of collection by the Seller, at the Seller's expense, during normal business hours on a Working Day and following reasonable prior notice to the Buyer.

4.2 The Seller shall deliver the Goods:

4.2.1 on the date specified in the Order or, if no date is specified or otherwise agreed between the parties, then within a reasonable time of the date of the Order (taking into account the nature and quantity of the Goods ordered);

4.2.2 to such location as is set out in the Order or as instructed by the Buyer before delivery ("Delivery Location");

4.2.3 during normal hours of business on a Working Day, unless otherwise instructed by the Buyer.

4.3 Time of delivery of the Goods is of the essence. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 Title and risk in the Goods shall pass to the Buyer on completion of delivery.

4.5 The Buyer shall not be deemed to have accepted any Goods until it has had the a reasonable time to inspect them following delivery or, if later, within a reasonable time of any latent defect in the Goods becoming apparent.

4.6 If the quantity of Goods delivered by the Seller differs from the quantity of Goods ordered by more than 10%, the Buyer may:

4.6.1 reject the Goods; or

4.6.2 require the Seller to deliver any shortfall or collect any surplus (at the Seller's risk and expense) within 5 Working Days; or

4.6.3 accept the amount of Goods delivered in satisfaction of the relevant Order, subject to the Seller (in the event of a shortfall) making a pro rata adjustment to the invoice for those Goods to reflect the shortfall.

4.7 The Seller shall not deliver the Goods in instalments without the Buyer's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they shall be invoiced and paid for separately. However, failure by the Seller to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Buyer to the remedies set out in Condition 8 in respect of the entire Order.

**5. Supply of Services**

5.1 The Seller shall from the date, and for the duration, set out in an Order for Services provide those Services to the Buyer in accordance with the terms of the Contract.

5.2 The Seller shall meet any performance dates for Services specified in an Order or otherwise agreed in writing between the Seller and the Buyer.

5.3 In providing Services, the Seller shall:

5.3.1 co-operate with the Buyer in all matters relating to the Services, and comply with all reasonable instructions of the Buyer;

5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Seller's industry, profession or trade;

5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them;

5.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification (if any), and shall be of fit for any purpose expressly or impliedly made known to the Seller by the Buyer;

5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;

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- 5.3.6 use good quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Buyer, will be free from defects in workmanship, installation and design;
- 5.3.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 5.3.8 hold all materials, equipment and tools, drawings, specifications and data supplied by the Buyer to the Seller ("Buyer's Materials") in safe custody at its own risk, maintain the Buyer's Materials in good condition until returned to the Buyer, and not dispose or use the Buyer's Materials other than in accordance with the Buyer's written instructions or authorisation; and
- 5.3.9 not do or omit to do anything which may cause the Buyer to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business.
- 6. Conformity of Goods and Services**
- All Goods and Services shall be supplied by the Seller in accordance with the Seller's registration under the applicable recognised approval authority and be supported by the relevant certificate of conformity, test certificate or certificate of analysis (as applicable). The Buyer shall be entitled to verify the conformity of the Goods and/or Services with this Condition 6 and shall not be deemed to have accepted any Goods or Services until such verification process has taken place to the Buyer's reasonable satisfaction.
- 7. Buyer's premises**
- 7.1 Upon arrival on the Buyer's premises, the Seller shall first report, and shall ensure that its agents, employees and sub-contractors first report, to the Buyer's reception area or the Buyer's representative specified by the Buyer.
- 7.2 The Seller shall observe, and shall ensure that its agents, employees and sub-contractors observe, all health and safety rules and regulations and any other security requirements that apply at any of the Buyer's premises.
- 8. Buyer's remedies**
- 8.1 If the Seller fails to deliver the Goods in accordance with Condition 4.2.1 or perform the Service in accordance with Condition 5.2, without limiting its other rights or remedies, the Buyer may exercise one or more of the following rights:
- 8.1.1 to terminate the Contract and any other Contract, and to cancel any Orders, with immediate effect by giving written notice to the Seller;
- 8.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Seller attempts to make;
- 8.1.3 to recover from the Seller any costs incurred by the Buyer in obtaining substitute goods and/or services from a third party;
- 8.1.4 where the Buyer has paid in advance for Services that have not been provided by the Seller and/or Goods which have not been delivered by the Seller, to have such sums refunded by the Seller; and
- 8.1.5 to claim damages for any additional costs, loss or expenses incurred by the Buyer which are in any way attributable to the Seller's failure to meet such dates.
- 8.2 If the Seller has delivered Goods that do not comply with the undertakings set out in Condition 3.1, then, without limiting its other rights or remedies, the Buyer shall have one or more of the following rights, whether or not it has accepted the Goods:
- 8.2.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Seller at the Seller's own risk and expense;
- 8.2.2 to terminate the Contract and any other Contract, and to cancel any Orders, with immediate effect by giving written notice to the Seller;
- 8.2.3 to require the Seller to repair or replace the rejected Goods within 5 Working Days, or to provide a full refund of the price of the rejected Goods (including freight costs);
- 8.2.4 to refuse to accept any subsequent delivery of the Goods which the Seller attempts to make;
- 8.2.5 to recover from the Seller any expenditure incurred by the Buyer in obtaining substitute goods from a third party; and
- 8.2.6 to claim damages for any additional costs, loss or expenses incurred by the Buyer arising from the Seller's failure to supply Goods in accordance with Condition 3.1.
- 8.3 These Conditions shall extend to any substituted or remedial Services and/or repaired or replacement Goods supplied by the Seller.
- 8.4 The Buyer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.
- 9. Buyer's obligations**
- 9.1 The Buyer shall:
- 9.1.1 provide the Seller with reasonable access at reasonable times and upon reasonable prior notice to the Buyer's premises for the purpose of providing the Services and/or delivering the Goods; and
- 9.1.2 provide such information as the Seller may reasonably request and which the Buyer considers reasonably necessary for the provision of the Services and/or the supply of the Goods.
- 10. Cancellation and Termination**
- 10.1 The Buyer shall be entitled to cancel or amend any part of an Order for which a Contract has not come into existence in accordance with Condition 2.3 without any liability to the Seller by providing written notice to the Seller.
- 10.2 Subject to Condition 10.3, and without limiting its other rights or remedies, the Buyer may terminate the Contract:
- 10.2.1 in respect of the supply of Services, by giving the Seller reasonable prior written notice; and
- 10.2.2 in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Seller, upon which the Seller shall discontinue all work on the Contract. The Buyer shall pay the Seller fair and reasonable compensation for the costs incurred by the Seller exclusively in relation to the Contract and any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 10.3 Without limiting its other rights or remedies, the Buyer shall be entitled to terminate the Contract without any liability to the Seller other than payment for any Goods actually delivered or Services actually performed by the date of termination, by written notice to the Seller if:
- 10.3.1 the Seller commits a material breach of these Conditions and (if such a breach is remediable) fails to remedy that breach within 7 days of receipt of notice in writing to do so; or
- 10.3.2 the Seller suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business; or the Seller suspends payment of its debts or in the reasonable opinion of the Buyer is unable to pay its debts as they fall due; or any step is taken in connection with the administration, liquidation or insolvency of the Seller; or any event occurs which has an effect equivalent or similar to any of the foregoing in any other jurisdiction.
- 10.4 In any of the circumstances in these Conditions in which a party may terminate the Contract, where both Goods and Services are supplied, that party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- 10.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 10.6 Conditions which expressly or by implication survive termination of the Contract shall continue in full force and effect.
- 10.7 On termination of the Contract for any reason, the Seller shall immediately deliver to the Buyer all Deliverables whether or not then complete, and return all of the Buyer's Materials in its possession. If the Seller fails to do so, then the Buyer may enter the Seller's premises and take possession of them.
- 11. Charges and Payment**
- 11.1 The price of the Goods shall be:
- 11.1.1 the price set out in the Order, or, if no price is quoted, the price set out in the Seller's published price list in force as at the date of the Order; and
- 11.1.2 inclusive of the costs of packaging, insurance and freight and delivery of the Goods, unless otherwise agreed in writing by the Buyer. No extra charges shall be effective unless agreed in writing and signed by the Buyer.
- 11.2 The charges for the Services shall be set out in the relevant Order, and shall be the full and exclusive remuneration of the Seller in respect of the performance of the Services. Unless otherwise agreed in writing by the Buyer, the charges shall include every cost and expense of the Seller directly or indirectly incurred in connection with the performance of the Services.
- 11.3 The Seller shall maintain complete and accurate records of the time spent and materials used by the Seller in providing the Services, and the Seller shall allow the Buyer to inspect such records at all reasonable times on request.
- 11.4 In respect of Goods, the Seller shall invoice the Buyer on or at any time after completion of delivery. In respect of Services, the Seller shall invoice the Buyer on completion of the Services. Each invoice shall include such supporting information required by the Buyer to verify the accuracy of the invoice.
- 11.5 In consideration of the supply of Goods and/or Services by the Seller, the Buyer shall pay the invoiced amounts in accordance with the terms of credit as agreed in writing between the parties.
- 11.6 Unless otherwise expressly stated in writing, all prices are inclusive of any taxes, duties, imports and levies (including VAT).
- 11.7 If the Buyer disputes in good faith any portion of an invoice, it may withhold payment in respect of the disputed amount, provided that it pays the undisputed amount in accordance with this Condition 11. The parties will use reasonable endeavours, acting in good faith, to resolve the dispute as soon as possible.
- 11.8 The Buyer may at any time, without limiting any of its other rights or remedies, set off any liability of the Seller to the Buyer against any liability of the Buyer to the Seller, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under a Contract.
- 12. Intellectual property rights**
- 12.1 In respect of the Goods and any goods that are transferred to the Buyer as part of the Services under a Contract, including without limitation the Deliverables or any part of them, the Seller warrants that it has full, clear and unencumbered title to all such

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- items, and that at the date of delivery of such items to the Buyer, it will have full and unrestricted rights to sell and transfer all such items to the Buyer.
- 12.2 The Seller assigns to the Buyer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 12.3 The Seller shall obtain waivers of all moral rights in the products of the Services, including for the avoidance of doubt the Deliverables, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 12.4 The Seller shall, promptly at the Buyer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Buyer may from time to time require for the purpose of securing for the Buyer the full benefit of any Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Buyer in accordance with Condition 12.2.
- 12.5 The Buyer's Materials shall remain the exclusive property of the Buyer.
13. **Indemnity**
- 13.1 The Seller shall keep the Buyer indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered incurred by the Buyer as a result of or in connection with:
- 13.1.1 any claim made against the Buyer for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services, to the extent that the claim is attributable to the acts or omissions of the Seller, its employees, agents or subcontractors;
- 13.1.2 any claim made against the Buyer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defects in the Goods are attributable to the acts or omissions of the Seller, its employees, agents or subcontractors; and
- 13.1.3 the breach, negligent performance or failure or delay in performance of a Contract by the Seller, its employees, agents or subcontractors.
- 13.2 This Condition 13 shall survive termination of the Contract.
14. **Insurance**
- During the term of a Contract and for a period of 12 months thereafter, the Seller shall maintain in force, with a reputable insurance company appropriate insurance policies to cover the liabilities that may arise under or in connection with the Contract, but in any event each being for a sum not less than £1,000,000 and including product liability and public liability insurance. The Seller shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
15. **Confidentiality**
- 15.1 The Seller shall keep in strict confidence all technical and commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Seller by the Buyer, an Associated Company, or their employees, agents or subcontractors, and any other confidential information concerning the Buyer or an Associated Company's business, its products and services which the Seller may obtain. The Seller shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the Seller's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Condition as though they were a party to the Contract. The Seller may also disclose such of the Buyer's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction, or to the extent that it becomes generally available to the public (other than as a result of its disclosure by the Seller in breach of this Condition 15).
- 15.2 This Condition 15 shall survive termination of the Contract.
16. **Force Majeure**
- 16.1 Neither party shall be under any liability for any delay in performing, or failure to perform, any of its obligations under the Contract, or for any loss or damage, if such delay or failure result from, or any loss or damage is caused wholly or in part by, circumstances or causes beyond its reasonable control (a "Force Majeure Event").
- 16.2 In the circumstances set out in Condition 16.1 above, the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If a Force Majeure Event prevents, hinders or delays performance for a continuous period of more than 10 Working Days, the innocent party may terminate the affected Contract by giving 2 Working Days' written notice to the other party.
- 16.3 The Seller shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
17. **Law Applicable**
- These Conditions and each Contract shall be subject to and construed in accordance with English law. The parties shall submit any dispute relating to the interpretation, operation or alleged violation of these Conditions to arbitration by a single arbitrator to be agreed between the Seller and the Buyer or in default of agreement to be nominated by the President for the time being of the Law Society of England and
- Wales. Such arbitration shall be held in accordance with the provisions of the Arbitration Act 1996.
18. **Notices**
- 18.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- 18.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 18.1.2 sent by fax to its main fax number.
- 18.2 Any notice shall be deemed to have been received:
- 18.2.1 if delivered by hand, on signature of a delivery receipt;
- 18.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting or at the time recorded by the delivery service.
- 18.2.3 if sent by fax, at 9.00 am on the next Working Day after transmission.
- 18.3 This Condition does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
19. **General**
- 19.1 The Seller shall not assign, transfer, subcontract or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the Buyer.
- 19.2 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this Condition shall not affect the validity and enforceability of the rest of this Agreement.
- 19.3 No failure or delay by the Buyer in exercising any of its rights under the Contract shall operate as a waiver nor shall any waiver by the Buyer of any breach by the Seller of any of its obligations under the Contract affect the rights of the Buyer in the event of any further or continuing breach.
- 19.4 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 19.5 No one other than a party to the Contract, their successors and permitted assignees shall have any right to enforce any of its terms.
- 19.6 No alteration to these Conditions shall be effective unless expressly agreed to in writing by both parties.