



APEX TUBES AND VALVES LIMITED

Apex Tubes & Valves Limited
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TERMS & CONDITIONS OF SALE

1. All contracts for the sale of goods, and where appropriate services, by Apex Tubes & Valves Limited shall be deemed to incorporate these conditions. Where the context so admits within these conditions the word goods shall be deemed to include goods which are the property of the Buyer upon which Apex Tubes & Valves Limited contracts to perform services. Any terms and conditions in the Buyer's order which are inconsistent with these conditions shall have no effect.

2. If subsequent to any contract for sale, which is subject to these conditions, a contract for sale is made with the same Buyer, howsoever made, without express reference to any conditions, such contract shall be deemed to be subject to these conditions.

3. Any variation of these conditions shall only be effective if agreed in writing and signed by a Director of Apex Tubes & Valves Limited following the placing of an order by the Buyer.

4. Unless otherwise agreed in writing by Apex Tubes & Valves Limited the price payable by the Buyer shall be Apex Tubes & Valves Limited's ruling price at the date of despatch of each delivery.

5. A charge may be made for carriage, pallets, cases and packaging etc where appropriate. No allowances will be made when collection is arranged by the Buyer.

Apex Tubes & Valves Limited shall not be required to supply test certificates unless the same are requested at the time of placing the order and Apex Tubes & Valves Limited may charge a fee for any certificate supplied.

7. All invoiced amounts are subject to the addition of VAT at the prevailing rate. Payment is due by the end of the month following the month of delivery, subject to Condition 3 above. Interest at the rate of 4% per annum above Barclays PLC Base Rate shall be payable by the Buyer in respect of all overdue accounts. In the event of the Buyer being referred to a debt collection agency, the Buyer will be liable to all costs associated with the collection of any outstanding monies.

8. Dates or periods for delivery are approximate and are given for information only and shall under no circumstances be essential terms. A delay in delivery shall not constitute a breach of contract and shall not entitle the Buyer to avoid the contract or to any other remedy.

Apex Tubes & Valves Limited shall not be liable for delay in delivery or failure to make delivery of any goods due to fire, the elements, war, civil commotion, industrial dispute, shortage of raw materials and fuel, shortage of labour, breakdown of plant and machinery, late receipt of the Buyer's specification or other necessary information, acts, orders or regulations of Governments or other regulatory bodies, delay on the part of any subcontractor or supplier or any cause whatsoever beyond the reasonable control of Apex Tubes & Valves Limited concerned with the processing or delivery of the goods notwithstanding any warranty modifying Condition 8 herein.

10. Each part delivery or instalment of the goods shall be deemed to be sold under a separate contract.

11. Apex Tubes & Valves Limited reserves the right to deliver and charge for goods within the manufacturers' tolerances as to weight, dimension and quantity.

12. The buyer shall have no right under any circumstances to cancel the contract or any part thereof without the prior written consent of Apex Tubes & Valves Limited which consent shall not be unreasonably withheld and which shall be conditional upon the payment of such compensation as Apex Tubes & Valves Limited shall reasonably require.

13.

Apex Tubes & Valves Limited reserves the right to supply the goods from any of its sites or from any location or to sub-contract any part of the contract and unless otherwise agreed the method of carriage of the goods shall be at the discretion of Apex Tubes & Valves Limited.

If Apex Tubes & Valves Limited so agrees the goods may be collected from the site by the Buyer. In such event when the Buyer is notified that the goods are ready for collection the Buyer shall collect them without delay at the specified time. If the goods are not collected by the Buyer within 3 days of being so notified Apex Tubes & Valves Limited may despatch the goods itself at the Buyer's expense and risk, or store them at the expense and risk of the Buyer.

(b) Apex Tubes & Valves Limited reserves the right to charge to the Buyer any costs, charges or expenses incurred by Apex Tubes & Valves Limited as a result of vehicle or wagon detention in consequence of any act or omission of the Buyer, its servants or agents, or as a result of special requirements or of stipulations of the Buyer not provided for in the contract.

14. Apex Tubes & Valves Limited accepts no responsibility for the accuracy of drawings, patterns or specifications supplied by the Buyer. The Buyer shall indemnify Apex Tubes & Valves Limited against all claims whatsoever for damages and costs and against all liability in respect of any infringement of patent or other intellectual property rights resulting from compliance with the Buyer's instructions express or implied.

15. Subject to the provisions of these conditions, goods supplied by Apex Tubes & Valves Limited will comply with the specification and standard, if any, detailed on Apex Tubes & Valves Limited's despatch documents.

16.(a) Notwithstanding the provisions of Condition 15 above, any condition or warranty, statement or undertaking as to the quality of the goods, or their fitness or suitability for any purpose, however and whenever expressed, or which may be implied by statute, custom of the trade, or otherwise, is hereby excluded.

(b) Without prejudice to the foregoing, no statement or undertaking contained in any British Standard, Euronorm, ISO Recommendation, or other standard or technical specification as to the suitability of the goods for any purpose shall give rise to any legal liability. The Buyer shall satisfy itself that the goods are suitable for any product or application for which they are to be used before the goods are incorporated into such product or application.

17. Where the contract provides for testing or inspection of the goods by or on behalf of the Buyer before delivery whether at Apex Tubes & Valves Limited's site or elsewhere, then upon Apex Tubes & Valves Limited giving notice of the availability of the goods for inspection/testing the Buyer shall inspect and/or test the goods within 7 days of such notice. If the Buyer does not inspect or test the goods within the time specified, or within 14 days of such testing or inspection the Buyer does not notify Apex Tubes & Valves Limited in writing that the goods are not in accordance with the contract, specifying the matter complained of, then the Buyer shall conclusively be deemed to have accepted the goods as being in accordance with the contract and shall not thereafter be entitled to reject the goods on the grounds of anything which such testing or inspection has or would have revealed.

18. The Buyer shall be deemed to have accepted the goods and it shall be conclusively agreed that the goods are in accordance with the contract unless;

(a) the Buyer gives notice in accordance with Condition 17 herein, or;

(b) in respect of material suffering from any defect apparent from careful inspection or reasonable testing the Buyer

(i) gives an appropriately qualified signature eg "goods received damaged (signed)" on the delivery note, and

(ii) advises Apex Tubes & Valves Limited in writing within 7 days of receipt of the goods and prior to their use or resale, and

(iii) gives Apex Tubes & Valves Limited the opportunity to inspect the goods within a further 3 days and before they have been used or resold;

(c) with regard to a defect in the quality or state of the goods or other respect in which the goods are not in accordance with the contract which would not be apparent upon careful inspection or reasonable testing, the Buyer serves upon Apex Tubes & Valves Limited written notice of such defect or respect forthwith upon its discovery and in any event not more

than 12 months after receipt of the goods specifying the matters complained of and affording to Apex Tubes & Valves Limited a reasonable opportunity of inspecting the goods before any making good or replacement is undertaken. The Buyer shall not be excused from providing such opportunity by reason only of the incorporation of the goods in the property of a third party or the location of the goods in, upon or under the premises or land of a third party.

19. Claims by the Buyer for non-delivery of goods shall only be considered by Apex Tubes & Valves Limited if

(a) in any case of partial non-delivery of goods the Buyer:-

(i) gives an appropriately qualified signature e.g. "goods received incomplete (signed)" on the delivery note, and

(ii) advises Apex Tubes & Valves Limited in writing within 14 days of receipt of the goods and prior to their use or resale, and

(iii) gives Apex Tubes & Valves Limited the opportunity to inspect the goods within a further 3 days and before they have been used, or resold;

(b) in any case of total non-delivery of goods the Buyer advises Apex Tubes & Valves Limited in writing within 14 days of the date of Apex Tubes & Valves Limited's despatch documents.

20. In any case of total or partial non-delivery of goods, or damage to goods in transit, where the goods are transported by an independent freight carrier, Apex Tubes & Valves Limited shall only consider a claim if the Buyer has complied in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit.

21. Provided that the Buyer has complied with the requirements as to notice in Conditions 17 and 18, whichever may be applicable, and subject to the provisions of Condition 23 herein, if the goods or any part thereof are defective in quality or state or (save for discrepancy in weight or quantity) otherwise not in accordance with the contract then, if Apex Tubes & Valves Limited and the Buyer do not agree that the Buyer should accept the goods at an agreed value or that the goods should be made good at Apex Tubes & Valves Limited's expense, Apex Tubes & Valves Limited undertakes to accept a return of the relevant goods and at the Buyer's option either to:

(a) repay or allow the Buyer the invoice price thereof (including carriage, pallets, cases, packings and test certificates where appropriate) and any reasonable transport costs incurred by the Buyer in carrying the relevant goods from the place of original delivery of such goods to Apex Tubes & Valves Limited's site from which they were despatched or to such other place as Apex Tubes & Valves Limited may nominate, or

(b) replace the goods by delivering replacement goods to the original place of delivery as soon as may be reasonably practicable.

22. The undertakings in Condition 21 herein are in lieu of any other legal remedy and the liability of Apex Tubes & Valves Limited shall be for all purposes limited to the giving of any appropriate credit or repayment or to the replacement of the goods in accordance with that condition. Under no circumstances shall Apex Tubes & Valves Limited be liable for any other loss, damage or expense whatsoever occasioned by any breach of contract, negligence or breach of any duty of Apex Tubes & Valves Limited whatsoever and howsoever such loss, damage, or expense may have been caused provided that nothing in these conditions shall exclude or limit or purport to exclude or limit the liability of Apex Tubes & Valves Limited where such exclusion or limitation is void or unenforceable under any applicable law.

23. Goods sold as *non-prime* or as *untested* or goods accepted by the Buyer pursuant to Condition 21 herein which Apex Tubes & Valves and the Buyer agree to be *non-prime* are sold in their actual state, as seen, without warranty and with all faults whether or not the goods have been inspected by the Buyer prior to delivery. Any statement, specification, description or other information provided by Apex Tubes & Valves Limited in respect of such goods is given in good faith but Apex Tubes & Valves Limited can accept no responsibility for its accuracy. Under no circumstances will Apex Tubes & Valves Limited be under an obligation to replace or make good such goods or entertain any claim whatsoever in respect thereof. If the Buyer shall re-sell such goods the Buyer shall ensure that a provision in similar form to this condition is incorporated in the re-sale agreement unless prior to reselling the goods, the Buyer has caused the goods or such part of the goods as the Buyer resells to comply with a recognised specification or standard,

The Buyer shall indemnify Apex Tubes & Valves Limited against all claims made against Apex Tubes & Valves Limited and all losses, liabilities, costs and expenses consequent thereon which arise out of loss or damage to property or injury to or death of any person caused or alleged to be caused by or consequent upon the supply of a product as defined in Section 1 of the Consumer Protection Act 1987 to the Buyer as *non-prime* or *untested* or to any third party by the Buyer which comprises *non-prime* or *untested* goods sold to the Buyer by Apex Tubes & Valves Limited or which has as a component or components, includes or is otherwise manufactured from any *non-prime* or *untested* goods supplied by Apex Tubes & Valves Limited whether or not such claim is made pursuant to the said Act or the legislation of any member state of the European Community made pursuant to or in accordance with the directive of the Council of European Communities date 25th July 1985 (No, 85/374/EEC).

24. Delivery shall be deemed to be effective and the risk in the goods shall pass from Apex Tubes & Valves Limited to the Buyer when the goods are unloaded at the address nominated by the Buyer or his Agent for delivery, save where collection is arranged by the Buyer or his Agent, when risk in the goods shall pass when goods are loaded onto the vehicle collecting them.

25. (a) All goods supplied by Apex Tubes & Valves Limited to the Buyer shall remain the property of Apex Tubes & Valves Limited until such time as all sums due to Apex Tubes & Valves Limited from the Buyer whether in respect of goods supplied by Apex Tubes & Valves Limited to the Buyer or otherwise are paid in full or the goods are incorporated in or utilised in the manufacture of products. Until such time the Buyer shall in all respects treat and deal with the goods as the bailee of Apex Tubes & Valves Limited and shall store the goods so that they are readily identifiable as the property of Apex Tubes & Valves Limited save that, subject to (c) below, the Buyer shall be at liberty to resell the goods in the normal course of trading. Until full payment of all sums due to Apex Tubes & Valves Limited have been made the Buyer shall not be entitled to dispose of any property in the goods (by sale or otherwise) to the holding company of the Buyer or to any subsidiary of the Buyer or of such holding company.

(b) Until such time as property in the goods passes to the Buyer, Apex Tubes & Valves Limited (and without prejudice to its other rights) may retake possession of the goods and Apex Tubes & Valves Limited, its servants or its agents shall be deemed to have been granted an irrevocable licence by the Buyer to enter upon the Buyer's premises or premises under the Buyer's control with or without vehicles for this purpose.

(c) In the event of any resale by the Buyer of Apex Tubes & Valves Limited's goods, the beneficial entitlement of Apex Tubes & Valves Limited shall attach to any claim against the Buyer's purchaser, and to any proceeds of that sale so that such claims or proceeds of sale shall be held in

trust for Apex Tubes & Valves Limited and the Buyer shall have a fiduciary duty to account to Apex Tubes & Valves Limited for that claim and any proceeds of sale. Where proceeds of such a resale are received by the Buyer, he shall keep them in a separate account as agent for Apex Tubes & Valves Limited until the proceeds are handed over to Apex Tubes & Valves Limited.

For the purposes of this condition decoiling, cutting, shearing, slitting, painting or rebundling of goods shall not constitute the manufacture of a product or products.

26. Apex Tubes & Valves Limited shall be entitled without prejudice to its other rights and remedies either to terminate wholly or in part any or every contract between itself and the Buyer or to suspend any further deliveries under any or every contract in any of the following events:

(a) if any debt is due and payable by the Buyer to Apex Tubes & Valves Limited but is unpaid;

(b) if the Buyer has failed to provide any letter of credit, bill of exchange or any other security required by the contract provided that in such event the aforesaid rights of termination or suspension shall apply only in regard to the particular contract in respect of which the Buyer shall have so failed;

(c) if the Buyer has failed to take delivery of the goods under any contract between it and Apex Tubes & Valves Limited otherwise than in accordance with the Buyer's contractual rights;

(d) if Apex Tubes & Valves Limited obtains any unfavourable reports on the financial standing of the Buyer;

(e) if any distress execution or other legal process shall be levied against the Buyer or if the Buyer becomes insolvent or enters into any composition or arrangement (including a voluntary arrangement) with its creditors or, being a body corporate, has passed a resolution for voluntary winding up except where solely for the purpose of reconstruction or if a petition has been presented for an order for its winding up or for a Receiver (including an Administrative Receiver) or Administrator to be appointed or if any such order or appointment is made

or if, being an individual or partnership, the Buyer suspends payment of his or their debts in whole or in part or if an application has been made for an Interim Order or a petition has been presented for a Bankruptcy Order or if any such order is made or if the Buyer, whether or not a body corporate, shall carry out or be subject to any analogous act or proceedings under foreign law.

Apex Tubes & Valves Limited shall be entitled to exercise its aforesaid rights of termination or suspension at any time during which the event or default giving rise thereto has not ceased or been remedied and, in the event of any suspension, Apex Tubes & Valves Limited shall be entitled as a condition of resuming delivery under any contract between it and the Buyer to require prepayment of, or such security as it may require for the payment of, the price of any further delivery.

27. The Buyer shall not be entitled to withhold payment of any amount payable under the contract to Apex Tubes & Valves Limited because of any disputed claim of the Buyer in respect of defective goods or any other alleged breach of the contract, nor shall the Buyer be entitled to set off against any amount payable under the contract to Apex Tubes & Valves Limited any monies which are not then presently payable by Apex Tubes & Valves Limited or for which Apex Tubes & Valves Limited disputes liability.

28. Apex Tubes & Valves Limited's rights shall not be prejudiced or restricted by any indulgence or forbearance extended to the Buyer and no waiver by Apex Tubes & Valves Limited in respect of any breach shall operate as a waiver in respect of any subsequent breach.

29. Apex Tubes & Valves Limited has drawn up these Conditions of Sale having considered the provisions of the Unfair Contract Terms Act 1977 as amended and considers them, to be fair and reasonable and its prices are based on contracts made under these conditions. In the event that the Buyer considers any of these terms to be unreasonable he must inform Apex Tubes & Valves Limited before entering into any contract otherwise he will be deemed to have accepted that these conditions are fair and reasonable.

30. In the event that, for any reason, any provision or provisions in these conditions or any part thereof is or is held to be void, unenforceable or otherwise invalid, any contract made which incorporates these conditions shall continue to be fully binding and all other conditions herein, including the remainder of any condition where the effect of some part thereof is avoided shall remain fully effective.

31. No contract for sale, which is subject to these conditions may be assigned by the Buyer without the prior written consent of Apex Tubes & Valves Limited.

32. For the purpose of these conditions the expressions *holding company* and *subsidiary* shall have the meaning attributed to them by Section 736 of the Companies Act 1985.

33. The provisions of these conditions shall remain in full force and effect notwithstanding that the parties' obligations under any contract may have been performed or discharged.

34. The contract between Apex Tubes & Valves Limited and the Buyer shall be deemed to have been made in England and shall be governed in all respects by English law.

The Buyer shall submit to the non-exclusive jurisdiction of the English Courts.

Signed

Print Name

Position