

# Conditions of Sale

## 1 Interpretations

1.1 In these Conditions unless the context otherwise requires the following words have the following meanings:

“ABS Ltd”	means Aluminium Bending Specialists Limited incorporated in England with registered number 02883903 and whose registered office is at Unit 1, Ventura Court, Lowmoor Business Park, Kirkby in Ashfield, Nottingham, Nottinghamshire NG17 7DF;
“Customer”	means the person, firm, company or corporation with whom ABS Ltd enters into the Contract;
“Contract”	means the contract for the supply of Goods between ABS Ltd and the Customer, consisting of these Conditions and ABS Ltd’s acceptance of the Customer’s order for the supply of such Goods in the form of a written acknowledgement of order; and
“Goods”	means all or any of the goods or services described in the acknowledgement of order forming part of the Contract and/or in the order in respect of which such acknowledgement constitutes ABS Ltd’s acceptance or any goods or services in replacement thereof (as applicable).

1.2 These Conditions are the only terms and conditions upon which ABS Ltd is prepared to deal with the Customer and they shall govern the Contract to the entire exclusion of any other express terms or conditions.

1.3 These Conditions may only be modified by a variation in writing signed by a director of ABS Ltd and no other action on the part of ABS Ltd (whether supply of any or all of the Goods or otherwise) shall be construed as an acceptance of any other terms or conditions.

1.4 These Conditions (as modified in accordance with clause 1.3) together with the matters referred to in the acknowledgement of order constituting ABS Ltd’s acceptance of the Customer’s order for the supply of Goods embody the entire understanding of the parties and supersede any prior agreements, arrangements, representations, statements or undertakings in respect of such supply, save for any representation made fraudulently by either party prior to entering into the Contract.

1.5 The Contract is only concluded when ABS Ltd despatches its acceptance of the Customer’s order for the supply of the Goods in the form of a written acknowledgement of such order to the Customer. Any quotation in whatever form given by ABS Ltd to the Customer in respect of the supply of any Goods is given subject to these Conditions and does not constitute an offer to sell or supply.

## 2 Quotations

- 2.1 In respect of any Goods required by any Customer, ABS Ltd shall supply to the Customer a quotation for the supply of such Goods that is ex-works and net of Value Added Tax and any other similar tax or levies.
- 2.2 Where a fixed price is quoted by ABS Ltd for the supply of any Goods, such price will be the Contract price for such Goods (unless varied in accordance with these Conditions) providing delivery of the materials to be processed for production bends is completed within 60 days of the date of the fixed price quotation.
- 2.3 ABS Ltd quotations for the supply of any Goods (excluding fixed price quotations) are based upon the cost of materials, labour, transport, fuel and all other factors relating to such supply and the applicable laws, statutes and regulations prevailing at the time of the quotation. If, at any time between the date of ABS Ltd's quotation for the supply of any Goods and the date of their actual delivery to the Customer, any variations to any of the foregoing shall occur, then the Contract price shall be amended to provide for these variations.

## 3 Templates and specifications

- 3.1 In respect of any Goods to be supplied by ABS Ltd, the Customer shall provide ABS Ltd with a written order giving such details of the materials to be processed and the specification of the work to be carried out by ABS Ltd in connection with such supply as ABS Ltd reasonably requires. The Customer acknowledges that the processing of any materials may entail an element of trialing, the setting up of machines for each batch quantity and/or rejects during production that may produce wastage and accepts that a greater quantity of the materials to be processed may therefore be required to comply with any Customer's order for the supply of Goods than originally estimated by the Customer. Where the Customer provides a template and specification in accordance with which Goods are to be supplied it is agreed that the specification shall take precedence over the template. Where the Customer provides ABS Ltd with a template in accordance with which Goods are to be supplied but no specification or an incomplete specification is provided, ABS Ltd reserves the right to require a full and complete specification as a precondition to proceeding.

## 4 Legal and statutory compliance

- 4.1 The responsibility for ensuring that Goods comply with all of the applicable laws, statutes and regulations of the country where the Goods are to be used, sold or further processed rests solely with the Customer, who shall fully indemnify ABS Ltd and keep ABS Ltd fully indemnified from and against all liability, loss, claims, damages, costs and expenses incurred or suffered by ABS Ltd by reason of any Goods' non-compliance with any such laws, statutes or regulations.

## 5 Production process

- 5.1 Trials
- 5.1.1 Orders for the supply of any Goods are accepted by ABS Ltd subject to the production of satisfactory trial bends. Upon completion of any trial bends, ABS Ltd may elect to proceed with the production bends or, where considered appropriate by ABS Ltd in its sole but reasonable opinion, request inspection and approval by the Customer of the trial bends.

5.1.2 If any trial bends do not meet the specification in accordance with which the relevant Goods are to be supplied, the Customer or ABS Ltd may immediately terminate the Contract by giving the other written notice, in which case all costs incurred by ABS Ltd in connection with carrying out such trial bends, including (without limitation) any related tooling costs, will become immediately due and payable by the Customer.

## 5.2 Production Bends

5.2.1 Upon receipt by ABS Ltd of the materials and/or order to be processed from the Customer, ABS Ltd shall provide an estimated date of completion in respect of the production bends. Such estimated dates are business estimates only and time for completion of the production bends shall not be of the essence of the Contract.

5.2.2 When the production bends that are the subject of the Contract are complete, ABS Ltd shall notify the Customer as soon as reasonably possible.

5.2.3 ABS Ltd shall be responsible only for ensuring that production bends are carried out to within reasonable limits of the corresponding specification, it hereby being acknowledged and agreed between the parties that any production bend within 2.5mm or 0.5% of the inside radius either way of the corresponding specification (whichever is the greater) shall be deemed to comply with the specification and: (i) ABS Ltd shall have no further responsibility with regard to any such production bends; and (ii) the Customer shall not be entitled to reject any such production bends or claim any breach of contract in respect thereof.

5.2.4 Where any of the production bends do not conform to the specification in accordance with which they are to be supplied, the Customer must advise ABS Ltd in writing within 3 days of receipt of the Goods. ABS Ltd may elect to re-process any such production bends or otherwise treat them in order to bring them into conformity with the corresponding specification. Where, notwithstanding any such re-processing or treatment, any of the production bends still do not conform to the specification in accordance with which they are to be supplied ("rejected pieces"), the Customer shall accept all production bends that do conform to the corresponding specification, whereupon the full production bends fee shall be payable in respect of each of the production bends that do so conform, and either require ABS Ltd (at ABS Ltd's expense):

5.2.4.1 to process further pieces of material to be supplied by the Customer equal in number to the rejected pieces, in which event the provisions of clauses 5.2.1 to 5.2.4 shall apply to the materials, their processing and the resulting production bends; or

5.2.4.2 to take back the production bends found not to conform to the corresponding specification and the Contract price shall reduce accordingly.

5.2.5 The title to all materials supplied to ABS Ltd that do not produce approved production bends shall vest in ABS Ltd and, subject to clause 5.2.4, no credit shall be allowed to the Customer therefore.

- 5.2.6 No fee shall be payable by the Customer for each original rejected piece. Where the Customer elects to require re-processing in accordance with clause 5.2.4 then: (i) the full production bend fee shall become payable in accordance with these Conditions in respect of all subsequently approved, re-processed production bends; and (ii) in respect of each subsequently rejected, re-processed production bends a fee equivalent to the trial bend fee shall become immediately due and payable by the Customer upon inspection by the Customer or its agents.

## 6 Customer materials

- 6.1 Whilst ABS Ltd undertakes to take all reasonable care of the Customer's materials in its possession, ABS Ltd accepts no responsibility for any distortion, damage, defects or faults therein that appear or develop during the course of the work undertaken by ABS Ltd in processing such materials. Without prejudice to the generality of the foregoing, where the Customer supplies painted or anodised materials for processing, ABS Ltd accepts no responsibility for any distortion, damage, defects or faults that appear or develop in the paint or anodising notwithstanding the otherwise successful bending of such materials. All materials received by ABS Ltd for processing or otherwise are held by ABS Ltd at the Customer's risk as regards damage or loss, except to the extent such damage or loss results from the negligence of ABS Ltd or its employees or agents.
- 6.2 When processing the Customer's materials, every effort is made by ABS Ltd to meet the requirements of the Customer from the information supplied by the Customer. When the Customer supplies any materials and it is therefore the Customer and not ABS Ltd who is in a position to establish the precise composition of such materials, no responsibility is accepted by ABS Ltd as to the suitability of the materials for processing or any other purpose.
- 6.3 When processing or supplying any third party goods or materials for or to the Customer, the Customer shall only be entitled to the benefit of such warranties and guarantees in respect thereof as is given by the third party manufacturer to ABS Ltd but only to the extent that ABS Ltd is entitled to pass such warranties and guarantees on to the Customer.

## 7 Completion and delivery dates

- 7.1 Whilst dates for the completion of trial or production bends or the delivery of any Goods are given by ABS Ltd in good faith based on the information available to ABS Ltd at that time, such dates are not guaranteed and ABS Ltd shall not be liable to the Customer for any loss, damage, costs or expenses sustained by the Customer or any third party as a result of ABS Ltd's failure to comply with any such completion or delivery dates and no delay in achieving any such completion or delivery dates shall entitle the Customer to reject any delivery, further instalment or part of any Goods ordered, to treat the Contract or any part thereof as repudiated or to claim any damages or compensation in respect of the delay.
- 7.2 ABS Ltd shall not be liable for any loss, damage, costs or expenses sustained by the Customer or any third party as a result of any delay in the performance of or any non-performance of any of its obligations under the Contract where the same is occasioned by any cause whatsoever that is beyond ABS Ltd's reasonable control, including (without limitation) act of God, fire, flood, strikes (whether involving ABS Ltd's employees or those of another party,) lockout or other labour dispute, accident to or breakdown of machinery, shortage of labour or materials or delay in transport, civil commotion, insurrection, embargoes, quotas, acts or restrictions of government, import or export regulations governmental regulations or any other event of force majeure.

- 7.3 Where the Customer requests of ABS Ltd that delivery of any Goods be advanced by the working of overtime by ABS Ltd, then (unless the quotation for the supply of such Goods expressly includes such overtime) the Contract price shall be adjusted to include such amounts as shall indemnify ABS Ltd for all extra costs, wages and overheads so incurred.

## 8 Acceptance and storage

- 8.1 The Customer shall promptly accept the Goods when they are delivered or tendered for delivery in accordance with the Contract. In the event of the Customer failing to so accept the Goods or give ABS Ltd forwarding instructions within one month after notification that the Goods are ready for delivery, the Customer shall (in addition to any other liabilities which it may have to ABS Ltd) be fully liable for all costs, charges and expenses, including (without limitation) storage and handling expenses, directly or indirectly incurred by ABS Ltd as a result of the Customer's failure to accept the Goods in accordance with the Contract.
- 8.2 Whilst it is ABS Ltd's normal policy to deliver or make available Goods in one lot, the Customer shall accept delivery or availability of the Goods by instalments or split deliveries and each instalment or part delivery shall be considered a separate transaction, which shall not affect the rights or liabilities of either party under the Contract as to the other instalments or part deliveries.

## 9 Delivery

- 9.1 Delivery of the Goods will take place when: (i) the Customer or its agent signs the delivery note; or (ii) five days from written notification by ABS Ltd to the Customer that the Goods are completed, whichever is the earlier, and all risk in the Goods will thereupon pass to the Customer.
- 9.2 ABS Ltd accepts no responsibility for loss or damage to the Goods howsoever arising after delivery has taken place.
- 9.3 Where ABS Ltd itself has agreed to undertake transport of the Goods, ABS Ltd accepts responsibility only for repair or replacement of damaged or lost Goods where the cause of damage or loss was the negligence of ABS Ltd or its employees or agents. The Customer is strongly recommended to make suitable insurance arrangements in respect of Goods in transit out of ABS Ltd's works by carriers and claims in respect of loss or damage to such Goods should be made direct to the carrier concerned.
- 9.4 Carriage of any Goods to and from ABS Ltd will be at the Customer's expense.

## 10 Packaging

- 10.1 ABS Ltd will provide standard packing to the Goods prior to despatch from its works. The Customer or its agents shall have the opportunity to inspect the packaging upon collection and may request special packing in lieu of ABS Ltd's standard packing. The Customer may be charged extra for any special packing. In all circumstances, ABS Ltd accepts no liability whatsoever for the adequacy or suitability of the packing whether standard or special and whether authorised as agents for the Customer under clause 9.3.

## 11 Title to goods

- 11.1 ABS Ltd shall (without prejudice to any other remedy available to it) have in respect of all unpaid debts due from the Customer a general lien on all materials and other property of the Customer in ABS Ltd's possession for whatever purposes and whether worked upon or not.

- 11.2 Notwithstanding the delivery of the Goods or any part thereof in pursuance of this Contract, the Goods shall remain the sole and absolute property of ABS Ltd as legal and beneficial owner until such time as the Customer shall have paid in full and cleared funds all sums due to ABS Ltd under the Contract.
- 11.3 ABS Ltd reserves the right to terminate the Contract at any time after payment for the Goods has become due and before payment in full and cleared funds has been received by ABS Ltd and, in that event, ABS Ltd reserves the right for its employees or authorised agents to enter any premises in which any such Goods are kept and recover possession of such Goods.
- 11.4 Notwithstanding that the Contract price has not been paid by the Customer in full and cleared funds and that the Customer therefore holds the Goods as bailee, the Customer shall have a licence to sell the Goods in the normal course of its business, provided that any goods received in exchange for the Goods or any proceeds of sale for the Goods are held by the Customer as trustee for ABS Ltd (in a separate bank account in the case of any such proceeds of sale) and the Customer shall assign to ABS Ltd absolutely the benefit of any such contract of sale. In the event that the Customer has not received the benefit of such sale or disposal, the Customer will, if called upon to do so, assign to ABS Ltd within 7 days of being called upon to do so all rights that the Customer has against any third party in respect of the sale or disposal.

## 12 Payment

- 12.1 Unless otherwise stated in the Contract, the Contract price and all trial and production bend fees are ex-works and net of Value Added Tax and any other similar tax or levies.
- 12.2 Unless otherwise agreed in writing with ABS Ltd, contracts for the supply of Goods with new customers are paid on a pro-forma basis and all orders for the supply of Goods with a net value of £1,000 or less are subject to payment on collection. In all other cases, subject to credit being approved, the Customer shall make all payments due under the Contract not later than 30 days from the date of invoice.
- 12.3 Where Goods are delivered or are available by instalments, each consignment will be invoiced as delivered and each month's invoices will be treated as a separate account and be payable accordingly.
- 12.4 If any payment to be made under the Contract by the Customer is overdue, interest shall be chargeable thereon from the day such payment becomes overdue until it is paid in full and cleared funds with interest. Interest shall be paid at the rate of 4% above the base rate from time to time of HSBC Bank PLC.
- 12.5 Time of payment shall be of the essence of the Contract and any failure by the Customer to make any payment to be paid under the Contract on the due date for such payment shall entitle ABS Ltd at its option to treat the Contract as repudiated and terminate it immediately on giving the Customer written notice. Without prejudice to the generality of the foregoing, where the Customer fails to pay for any Goods on the applicable due date under the Contract or where genuine doubts arise as to the Customer's financial position, ABS Ltd reserves the right (without prejudice to any other remedies which it may have under these Conditions, at law or in equity), at its option to: (i) to suspend delivery of the Goods under the Contract or any part or instalment thereof without liability, until payment or satisfactory security for payment has been received; or (ii) cancel or delay any undelivered Goods or works whether under the Contract or any other contract with the Customer.

- 12.6 Without prejudice to any other remedies which it may have under these Conditions, at law or in equity, ABS Ltd may, having given the customer 30 days' notice thereof, sell by public auction or private treaty such of the Goods or materials then in the custody of ABS Ltd under the Contract or any other contract with the Customer as is required to discharge such overdue account, provided that ABS Ltd shall account to the Customer for any costs of such sale in excess of the overdue amount and interest thereon.
- 12.7 Payment for Goods delivered outside the United Kingdom must be made against delivery of the Goods or shipping documents f.o.b. UK port, unless credit arrangements approved by ABS Ltd have been previously agreed in writing.

## 13 Licences

- 13.1 The Customer shall be responsible in all instances for obtaining any necessary import/export licences or permits or any other authority necessary for, and to ensure compliance with all applicable laws, statutes and regulations governing, admission or transfer of the Goods into the country of destination and for payment of all duties, levies or charges howsoever incurred.

## 14 Intellectual property

- 14.1 The Customer shall fully indemnify ABS Ltd and keep ABS Ltd fully indemnified from and against all actions, losses, damages, costs, expenses (including the cost of defending any legal proceedings) claims, proceedings, accounts and demands in respect of any infringement of any third party's patent rights, copyright, design rights, trade marks or other intellectual property or protected rights incurred or suffered by ABS Ltd as a result of supplying any Goods in accordance with a template or specification provided by the Customer and/or compliance with any of the Customer's instructions whether expressed or implied.

## 15 Restrictions on ABS Ltd liability

- 15.1 Neither party in any way seeks to exclude or limit its liability for: (i) death or personal injury due to its negligence; (ii) fraudulent misrepresentation or concealment; (iii) any indemnity given; or (iv) any other liability that cannot be in any way excluded or limited at law.
- 15.2 Subject to clause 15.1: (i) ABS Ltd's liability under the Contract, whether in contract, tort or otherwise, shall in no event exceed the cost of rectifying or replacing the Goods in respect of which such liability arises (such rectification or replacement to be made as quickly as is reasonably possible) or the actual proceeds received by ABS Ltd under its relevant insurance policy in respect of the liability in question, whichever is the greater; and (ii) ABS Ltd accepts no liability for any economic loss (including, without limitation, loss of profits, business, contracts, revenue, goodwill or anticipated savings) or any indirect or consequential loss. In no circumstances shall any responsibility fall ABS Ltd to rectify or replace any Goods after the Customer and/or its agents have begun to erect, assemble or use any of such Goods or subject them to any process of any nature whatsoever. A claim in respect of any defect in any Goods or failure of any Goods to comply with their corresponding specification or in respect of any delivery or instalment of an order or any part thereof shall not entitle the Customer to cancel or refuse delivery of or payment for any other order, delivery or instalment or any part of the same order delivery or instalment.
- 15.3 Except as otherwise expressly provided in these Conditions, all warranties, conditions, representations or undertakings, whether imposed by statute, common law, custom or otherwise, are hereby expressly excluded to the fullest extent permitted by law and, in particular without

prejudice to the generality of the foregoing, no statement or description contained in any catalogue, or advertisement issued by ABS Ltd or its agents, or any communication from ABS Ltd made verbally or in writing by any ABS Ltd employee, agent, representative or officer, shall give or imply or be construed as giving or implying any such warranty, condition, representation or undertaking as aforesaid, nor shall such statement of description enlarge, vary or override or be construed to enlarge, vary or override in any way these Conditions.

## 16 Miscellaneous

- 16.1 The invalidity, illegality or unenforceability for any reason of any part of the contract shall not prejudice or affect the validity, legality, or enforceability of the remainder.
- 16.2 Any notice or other communication required or permitted to be given under the Contract shall be in writing and shall be served on ABS Ltd and the Customer respectively by delivering the same or sending it by facsimile transmission or by first class post, to the normal office of the respective party. Such notice shall be deemed to have been served at the expiration of forty eight hours after posting of the same correctly addressed has been put into the post or at the expiration of twenty four hours after transmission in the case of a facsimile transmission.
- 16.3 The headings used in these terms and conditions are for the purpose of convenience and identification and are not to be taken as limiting in any way the scope or possible construction of any clause.
- 16.4 . No failure or delay on the part of either party hereto to exercise any right or remedy under the Contract shall be construed or operated as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in the Contract are cumulative and are not exclusive of any rights or remedies provided by law.
- 16.5 Neither party shall assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or burden of this Agreement without the prior written consent of the other, provided that ABS Ltd reserves the right to sub-contract part or all of the Contract without the prior consent of the Customer.
- 16.6 The Contract does not create any right enforceable by any person not a party to it, except that a person who is the permitted successor to or assignee of the rights and obligations of either party is deemed to be a party to the Contract.

## 17 Governing law and jurisdiction

The contract and the rights of the parties hereto shall be governed by and interpreted in accordance with English law. The Customer hereby irrevocably agrees to submit to the jurisdiction of the English courts and waives any objection to any legal proceedings in the said courts on the grounds of venue or forum non conveniens.