



Technical Fixings Solutions Ltd

## **TERMS AND CONDITIONS OF SALE**

### **GENERAL**

1. (a) All orders placed with Technical Fixings Solutions Ltd (hereinafter referred to as 'The Company') are subject to the terms and conditions set out below. No modifications or variations to these terms and conditions and no other terms and conditions shall be valid or effective unless expressly accepted in writing by a Director of the Company.

(b) Any subsequent orders placed with the Company shall be deemed to be placed subject to these terms and conditions unless expressly agreed otherwise in writing by a Director of the Company.

### **QUOTATIONS**

2. A quotation by the Company does not constitute an offer and the Company reserves the right to withdraw or amend the same at any time prior to the Company's acceptance of the Purchaser's order. The Buyer's purchase order is binding and the Buyer is responsible for costs arising from any changes of nature to the order.

### **PRICE**

3. The price of any goods shall be the Company's list price of the goods prevailing at the date of acceptance of the order by the Company (less any agreed discount).

4. Unless otherwise stated all prices are exclusive of V.A.T.

5. The Company shall be entitled from time to time to vary list price or list prices without prior notice.

### **PAYMENT**

6. Unless otherwise specified in writing by the seller, payment is due on or before the end of the month following that in which the goods were invoiced.

7. Failure by the Buyer to pay for any goods on the due date shall entitle the Company:

(a) to cancel the balance (if any) of the contract under which the Buyer has failed to pay for the goods and to recover from the Buyer damages for any loss suffered by the Company as a result of such cancellation, and/or

(b) to cancel any other contract or the balance of any other contract which the Company may have with the Buyer and to recover from the Buyer damages for any loss suffered by the Company as a result of such cancellation, and/or

(c) to charge the Buyer interest at the rate of 2.5% per month calculated on a day-to-day basis on the amount due from the date of invoice to the date of actual payment thereof (both before and after any judgement) such interest to be paid on demand.

### **ACCOUNTS**

8. The Company reserves the right to close a credit account at any time without prior notice whereupon the whole of the amount outstanding on such account shall become immediately due and payable in full.

### **COLLECTION AND DELIVERY**

9. Where the Company agrees to deliver any goods to the Buyer:

(a) The Buyer shall pay the Company's delivery charges therefore at the rate or rates prevailing at the date of acceptance of the order by the Company or at such other rate or rates as may be agreed between the Company and the Buyer prior to the date of acceptance of the order by the Company.

(b) Delivery of the goods shall be made to such place or places as agreed between the Company and the Buyer.

(c) The Buyer will ensure that there is adequate access to the place of delivery and that there is made available at the place of delivery adequate labour and other facilities in order to enable the goods to be unloaded promptly and safely and the Buyer will indemnify the Company in respect of any losses costs and expenses incurred by the Company as a consequence thereof and (without prejudice to the generality of the foregoing) the Company shall be entitled to charge the Buyer for the storage of the goods whether at the Company's premises or otherwise.

(d) If the Buyer shall refuse for any reason whatsoever to accept delivery of the goods the Buyer will indemnify the Company in respect of all losses costs and expenses incurred by the Company as a consequence thereof and (without prejudice to the generality of the foregoing) the Company shall be entitled to charge the Buyer for the storage of the goods whether at the Company's premises or otherwise.

(e) The Company shall be entitled to make part deliveries of the goods and for the purposes of these terms and conditions each such part delivery shall be treated as a separate and independent

contract for the sale of goods to the Buyer.

10. (a) Any times stated for collection or delivery shall be a bona fide estimate only and whilst the Company will use all reasonable endeavours to meet any such times stated the Company shall not be liable for any delay howsoever caused.

(b) Where no times are stated for collection or delivery the Company will use all reasonable endeavours to make the goods available for collection or to deliver the goods (as the case may be) as soon as reasonably practicable.

(c) The Company shall be entitled to stop collection by or to withhold delivery to the Buyer of any goods where at the time collection or delivery payment is due to the Company in respect of any goods supplied to the Buyer under any contract whatsoever.

#### **DAMAGE OR LOSS IN TRANSIT**

11. Where the Company is responsible for delivering the goods to the Buyer the Company will at its option repair or replace free of charge any goods lost or damaged in transit provided that:

(a) (save in respect of a total loss or non-delivery of the goods) details of any loss or damage have been marked on the copy of the consignment note or delivery documents signed by the Buyer and advised to the Company within 48 hours of delivery and confirmed in writing to the Company with full particulars within 3 days of delivery, and

(b) in respect of a total loss or non-delivery of the goods details are advised to the Company in writing (otherwise than on a consignment note or delivery document) with full particulars within (7 days) of the date of the Company's invoice in respect of the goods.

#### **PART SHIPMENTS**

12.(a) The Company reserves the right to make deliveries by instalments and to render a separate invoice in respect of each such instalment.

(b) If the Company exercises its right to make deliveries in accordance with sub-paragraph (a) above, then any delay in the provision of such deliveries, or failure to deliver any further instalments, shall not entitle the Buyer to reject the Contract or the delivery of any other instalment previously delivered.

#### **SHORT DELIVERY**

13. The Company shall not be responsible for any short delivery unless details thereof are marked on the consignment note or delivery document signed by the Buyer and in the case of loss in transit all the requirements set out in Condition 10(b) above are fulfilled.

#### **14. STORAGE**

Where the Company has notified the Buyer that the goods are ready for delivery, the Buyer shall take delivery or arrange for storage. If the Buyer does not so take delivery or arrange for storage within 7 days of notification the Company shall be entitled to invoice and be paid for the goods as though the goods had been duly delivered in accordance with these instructions and the Company may arrange storage either at the Company's own premises or elsewhere on the Buyer's behalf and all charges for storage, insurance and demurrage shall be payable by the Buyer.

#### **DEFECTIVE GOODS**

15. The Company shall at their option repair or replace any goods which are defective as to materials or workmanship provided that:

(a) where any alleged defect is discoverable on an inspection of the goods (whether or not the Buyer shall actually inspect the goods) notification of the alleged defect with full particulars thereof is received by the Company in writing within 7 days of the date of collection or delivery of the goods and in any other case notification of the alleged defect is received by the Company in writing with full particulars thereof within 10 days of the date of collection or delivery of the goods, and

(b) the Company is notified in writing with full particulars immediately upon discovery of the alleged defect and is afforded the opportunity of inspecting the goods at the premises of the Buyer or if so required by the Company the Buyer immediately returns the goods to the Company's premises carriage paid (but refundable insofar as the goods are repaired or replaced), and

(c) any defect is not due to wear and tear neglect abnormal use misuse or improper adjustment.

(d) The Company shall not be liable for transportation or installation charges, for expense of the Buyers for repairs or replacements or for damages for delay or loss of use or other indirect, incidental or consequential damage of any kind.

16. (a) As against a person dealing as a consumer as defined by Section 12 of the Unfair Contract Terms Act 1977 all conditions and warranties and liabilities whatsoever whether express or implied by statute (save those implied by virtue of Sections 12 to 15 of the Sale of Goods Act 1979) common law usage or otherwise are hereby excluded.

(b) As against a person dealing otherwise than as a consumer as defined by Section 12 of the Unfair Contract Terms Act 1977 the provisions contained in Condition 12 above shall be accepted in substitution for and to the entire exclusion of all conditions and warranties and liabilities whatsoever whether express or implied by statute (save those implied by virtue of Section 12 of the Sale of

Goods Act 1979) common law usage or otherwise.

17. Save and except as expressly stated in Conditions 12 and 13 above the Company shall not be liable for any defect in the goods or for any injury or loss resulting from the goods or any defect therein or from any work done in connection therewith whether such liability is due to the negligence of any servant employee or agent of the Company or otherwise.

18. In the event that the Company shall be liable to repair or replace the goods, in no circumstances shall the Company's liability extend beyond the cost of repair or replacing the goods. In any event, notwithstanding anything contained in the contract, in no circumstances shall the Company be liable in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever and whatsoever the cause thereof:

i. For any increased costs or expenses

ii. For any loss or profit, business contracts, revenues or anticipated savings or

iii. For any special direct or consequential damage of any nature whatsoever said to have occurred consequent on the supply or the circumstances of the supply of the goods or services herein contracted to be supplied by the company or any subcontractor to its customer.

#### **RETURNED GOODS**

19. (a) Where returned Goods are found to be damaged due to the Buyer's fault the Buyer will be liable for the cost of remedying such damage

(b) The vendor will not accept goods for credit or rectification unless such return has been preauthorised by Evolution Fasteners UK Ltd, and the goods are received by the vendor in stock condition, with original packaging and the vendor retains the right at its sole discretion whether to accept the return of the goods or whether to rectify the goods or whether to issue a credit note in respect thereof.

(c) The purchaser shall unless otherwise stated be responsible for the cost of outward and return carriage and insurance of all goods returned by the purchaser to the vendor for service or credit which goods shall be at the risk of the purchaser until actual receipt of the goods by the vendor.

The onus of proof of safe delivery shall rest with the purchaser.

(d) All items returned to the vendor by prearrangement and found to contain no fault, will be subject to a 30% restocking charge, providing the goods are in original stock condition. Any downward variation of this restocking charge shall be at the sole discretion of the vendor.

(e) No credit shall be allowed for goods until they have been received complete.

#### **FORCE MAJEURE**

20. (a) The Company shall not be responsible for any loss damage delay or non- performance of any contract arising whether directly or indirectly from any cause outside the control of the Company including (but without prejudice to the generality of the foregoing) any cause arising from or attributable to strike lock-out shortage of labour or materials governmental action civil commotion riots wars sabotage storm flood earthquake drought machinery breakdown failure of plant collapse of structures voluntary or mandatory compliance with any direction request or order of any person having or appearing to have authority whether for defence or other governmental or national purposes inability to obtain raw materials equipment fuel power components or transportation.

(b) In the event of any delay or non- performance of any contract arising whether directly or indirectly from any cause referred to in Condition 19(a) above the Company shall be entitled to cancel any contract without payment to the buyer in respect of any loss or damage or otherwise.

#### **PROPERTY AND RISK**

21. Property in any goods sold shall not pass to the Buyer until all sums outstanding from the Buyer to the Company whether in respect of the goods or for any other reason whatsoever have been paid in full by the Buyer.

22. Notwithstanding that property in any goods sold may not have passed to the Buyer the goods shall be at the risk of the Buyer from the time they are loaded onto the transport vehicle at the Company's premises or other place of storage of the goods save that where the Company has agreed to deliver the goods to the Buyer the goods shall be at the risk of the Buyer from the moment they are unloaded from the transport vehicle at the place of delivery.

23. (a) The ownership of the goods shall only be transferred to the buyer when the buyer has paid the full price for the goods and other goods ordered by the buyer delivered by the Company (including where applicable interest on any sums not paid on the due date) and until such payment is made the goods are held by the Buyer as Bailee for the Company.

(b) If the Buyer shall sell or purport to sell the goods so as to purport to pass a valid title to a third party, the proceeds of such sale shall be held by the buyer on trust for the company and if such proceeds are not paid to the company they shall be placed in a separate Designated bank account.

(c) The goods shall be stored by the buyer in a safe and proper manner and in such a way so as to distinguish them from goods not owned by the Company and shall be separately identified in such manner as approved or directed by the Company.

(d) Until payment of the whole price has been made by the buyer to the company (including interest where applicable) the Company shall have the right to require the immediate return of the goods and be granted a Licence to enter the buyer's premises or any premises where the goods are being

kept or are thought by the company to be kept, and to remove the goods.

(e) The right to trace any goods, the price of which remains unpaid or any proceeds of the purported sale of such goods into whomsoever's hands the same may pass is expressly reserved to the company.

(f) Each and every sub-clause of this clause shall be deemed to be separate from the remainder of the contract and severable accordingly.

**GOVERNING LAW AND JURISDICTION**

24. All contracts between the Company and the Buyer shall in respects be governed by English Law and all disputes which may arise out of or in connection with these Conditions or any contract between the Company and the Buyer or any goods supplied or to be supplied under any contract shall be subject to the exclusive jurisdiction of the English Courts save that the Company shall be at liberty to bring any legal proceedings against the Buyer in the Courts of any other country which it considers appropriate.

25. In the event that the Company shall bring any legal proceedings against the Buyer in connection with these Conditions or any contract between the Company and the Buyer or any goods supplied or to be supplied under the contract the Buyer shall indemnify the Company against all costs and expenses incurred by the Company in connection therewith on a full indemnity basis.

26. For the avoidance of doubt nothing in these trading terms and conditions are intended to confer on any third party any benefit or the right to enforce any terms within the conditions.

**I/WE HAVE READ AND UNDERSTOOD AND AGREE TO BE BOUND BY YOUR STANDARD TERMS AND CONDITIONS HEREIN**

\_\_\_\_\_ **SIGN**

\_\_\_\_\_ **PRINT NAME**

\_\_\_\_\_ **DATE**