

## CONDITIONS OF SALE

- 1) DEFINITIONS
  - a) "THE COMPANY": shall mean CAPITAL REFRACTORIES LIMITED
  - b) "THE CUSTOMER": shall mean the person, company, firm or business buying goods from CAPITAL REFRACTORIES LIMITED.
  - c) "GOODS": shall mean goods, materials, equipment and services provided by the Company to the customer under the contract between them.
- 2) CONTRACTS
  - a) All orders are subject to these conditions of sale, to which the Customer is deemed to assent on placing an order.
  - b) These conditions of sale shall prevail over any other terms and conditions including any conditions of purchase of the Customer.
  - c) No employee, agent or representative of the Company holds the right to waive, suspend or amend in any way these conditions without the express authorisation in writing of a Director of the Company.
  - d) No order shall be binding on the Company until acknowledged in writing by the Company.
- 3) QUOTATIONS
  - a) Quotations and Pro-Forma invoices which will indicate the prices at which the Company would be willing to supply goods will be valid for 30 days only, unless specifically stated otherwise in writing by the Company.
  - b) Clerical errors and omissions will be subject to correction.
- 4) PRICES
  - a) All prices quoted are exclusive of Value Added Tax, and any other tax or duty demanded by H.M. Government relating to the supply of goods, whether covered by current or future legislation.
  - b) The Company shall not be bound by any price quoted which is not in writing.
  - c) Where it is not agreed in writing, the price will be such reasonable price as the Company may determine.
  - d) Unless otherwise expressly stated in writing, any price agreed in a contract for the sale of goods shall be an "ex works" price. The cost of the delivery of goods as directed by the Customer, shall be at the expense of the Customer.
  - e) Prices quoted will be current and orders will be accepted on condition that goods shall be invoiced at the price ruling at date of despatch. If a change in price occurs during the currency of delivery the undespached portion shall be adjusted accordingly.  
Where packing is provided free of charge, pallets, packing cases and containers must be returned in serviceable condition carriage paid within 2 months, failing which the Company reserves the right to charge their replacement cost.
  - f) The Company reserve the right to apply a minimum order charge.
- 5) PAYMENT
  - a) Unless otherwise agreed in writing, all payments will be made in Pounds Sterling.
  - b) Each invoice will become payable at its net value, end of month following the date of the invoice, unless expressly agreed by the Company in writing.
  - c) The Company reserves the right at any time to demand full or partial payment before proceeding or proceeding further with any order.  
Should the Customer default in payment at any time the Company may without prejudice to its other rights delay delivery and/or cancel any outstanding orders or part orders and charge interest on any overdue payment at the rate of 2.5% per month.
  - d) We reserve the right to add interest and compensation charges as detailed in "*The Late Payment of Commercial Debt Regulations 2002*".
- 6) DELIVERY
  - a) The time quoted for the delivery of the goods shall not be the essence of the contract and the Company shall not be liable for any loss, injury, damage or expense consequent upon any delay in the delivery of the goods.  
Delivery to a Carrier or to any person, firm or company on the Customer's behalf shall constitute delivery to the Customer. Signature of the Delivery Ticket/Advice Note by any agent, employee or representative of the Carrier or the Customer shall be conclusive proof of delivery of the goods.
  - b) All risk of loss or damage to the goods shall pass to the Customer on delivery notwithstanding that property in the goods may not have passed to the Customer.
- 7) FORCE MAJEURE  
The Company shall not be responsible for any failure to perform or delay in performing the contract due or principally due to Act of God, embargo, Governmental Act, fire, accident, war, riot, civil commotion, inclement weather, strikes, lock-outs, trade disputes or labour troubles, breakdown of plant or machinery, inability to obtain adequate labour, materials, manufacturing facilities or any other cause whatsoever beyond the control of the Company.
- 8) WARRANTY
  - a) The Company warrants that the goods comply with the Company's specification for the goods in question as current from time to time.
  - b) The Company does not warrant the fitness of the goods for any particular purpose, unless specifically expressed in writing, and no such warranty is to be assumed from the name or description under which the goods are sold.
  - c) Subject to the foregoing all warranties, conditions and statements, express or implied, statutory or otherwise, are excluded to the fullest extent permitted by law and the Company shall be under no liability in contract or tort for any damage arising directly or indirectly out of the supply or use of the goods or the packages, pallets or containers by which the goods are delivered, nor be under any liability for consequential loss or loss of market however, caused, nor for any loss, damage or expense arising from or in any way connected with the marks, weights, numbers, brands, quality, contents or description of the goods however caused.
- d) The Company reserves the right to alter, amend or delete any product or specification without notice.
- e) Nothing in these terms shall affect the statutory rights of any person dealing as a consumer nor shall any provision of these terms limit or exclude liability for fraud or fraudulent misrepresentation or liability for death or personal injury caused by the negligence of the Company, its agents or employees.
- 9) RETENTION TO TITLE
  - a) Risk of damage to or loss of the Goods shall pass to the Customer:
    - i) in the case of Goods to be delivered at the Company's premises, at the time when the Company notifies the Customer that the Goods are available for collection; or
    - ii) in the case of Goods to be delivered otherwise than at the Company's premises, at the time of delivery or, if the Customer wrongfully fails to take delivery of the Goods, the time when the Company has tendered delivery of the Goods.
  - b) Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Company to the Customer for which payment is then due.
  - c) Until such time as the property in the Goods passes to the Customer, the Customer shall hold the Goods as the Company's fiduciary agent and bailee, and shall keep the Goods separate from those of the Customer and third parties and properly stored, protected and insured and identified as the Company's property, but the Customer shall be entitled to resell or use the Goods in the ordinary course of its business.
  - d) Until such time as the property in the Goods passes to the Customer (and provided the Goods are still in existence and have not been resold), the Company shall be entitled at any time to require the Customer to deliver up the Goods to the Company and, if the Customer fails to do so forthwith, to enter upon any premises of the Customer or any third party where the Goods are stored and repossess the Goods.
  - e) The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the goods which remain the property of the Company, but if the Customer does so all monies owing by the Customer to the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.
- 10) DRAWINGS AND INFORMATION
  - a) The Company is entitled to assume that all drawings, descriptions, specifications and other information supplied by the Customer to the Company, whether written or verbal, is in all respects complete, accurate and entirely suitable for the Customer's requirements.
  - b) Unless otherwise expressly agreed in writing the Company shall have no responsibility for the performance, suitability or durability of any goods or any materials, workmanship comprised therein to the extent that the same is manufactured in accordance with the Customer's designs, drawings, standards or specifications.
- 11) TOLERANCES AND TESTS
  - a) Weights, chemical composition and analysis, quantities and sizes will, so far as possible, be adhered to, but reasonable excesses and deficiencies thereof shall be accepted by the Customer who shall not be entitled to reject any goods or to replacement of any goods on the grounds that they are not precisely as specified.
  - b) Unless otherwise specifically agreed, all tests and test pieces whatsoever required by the Customer will be at the Customer's expense and at a place and time convenient to the Company.
  - c) Should the Customer not attend such test or inspection, the Company shall make it in accordance with the terms notified or deemed to be applicable or suitable and the Customer shall be deemed to have accepted the result.
- 12) PATENTS  
The Customer shall indemnify the Company against all actions, costs (including the cost of defending any legal proceedings), claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, copyright, trade mark or other industrial or intellectual property rights resulting from compliance by the Company with the Customer's instructions, whether express or implied.
- 13) ASSIGNMENT  
The Customer shall not without the Customer's prior written consent assign or transfer or purport to assign or transfer the contract or the benefit thereof to any third party whatsoever.
- 14) SUB-CONTRACTING  
The Company reserves the right to sub-contract the whole or any part of the contract, with or without reference to the Customer.
- 15) APPLICABLE LAW  
The contract shall in all respects be governed and construed in accordance with English Law and the Customer hereby submits to the non-exclusive jurisdiction.

29<sup>th</sup> January 2003